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THE
ENGLISH AND EMPIRE DIGEST
WITH
COMPLETE AND EXHAUSTIVE
ANNOTATIONS.

VOLUME VIII.

THE ENGLISH AND EMPIRE DIGEST

WITH

COMPLETE AND EXHAUSTIVE

ANNOTATIONS

BEING

A COMPLETE DIGEST OF EVERY ENGLISH CASE REPORTED FROM EARLY TIMES TO THE PRESENT DAY, WITH ADDITIONAL CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE OF INDIA, AND THE DOMINIONS BEYOND THE SEAS,

AND INCLUDING

COMPLETE AND EXHAUSTIVE ANNOTATIONS GIVING ALL THE SUBSEQUENT CASES IN WHICH JUDICIAL OPINIONS HAVE BEEN GIVEN CONCERNING THE ENGLISH CASES DIGESTED.

VOLUME VIII.

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CHARITIES.
CHOSES IN ACTION.
CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

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REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.*, [1891] A. C.)	Eng.
A. Jur. Rep.	Australian Jurist Reports	Aus.
A. L. T.	Australian Law Times	Aus.
A. R.	Ontario Appeals	Can.
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841	Eng.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	Eng.
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)	Scot.
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	Eng.
Agra	Agra High Court	Ind.
Agra F. B.	Agra High Court, Full Bench	Ind.
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	Ir.
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	Ir.
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649	Eng.
All.	New Brunswick Reports (Allen)	Can.
Alta. L. R.	Alberta Law Reports	Can.
Amb.	Ambler's Reports, Chancery, 2 vols., 1725—1783	Eng.
And.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605	Eng.
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	Eng.
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890	Eng.
App. Ct. Rep.	Appeal Court Reports	N.Z.
App. D.	South African Law Reports, Appellate Division	S. Af.
Argus L. R.	Argus Law Reports	Aus.
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848	Scot.
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	Ir.
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839	Eng.
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Ashb.	Ashburner's Principles of Equity, 1902	Eng.
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)	Eng.
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754	Eng.
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law	Eng.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani	Eng.
B.	Barber's Gold Law	S. Af.
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834	Eng.
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	Eng.
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830	Eng.
B. & C. R. (preceded by date)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) (*e.g.*, [1918—19] B. & C. R.)	Eng.
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. C. R.	British Columbia Reports	Can.
B. Dig.	Bose's Digest	Ind.
B. L. R.	Bengal Law Reports	Ind.
B. L. R. A. C.	Bengal Law Reports, Appeal Cases	Ind.
B. L. R. P. C.	Bengal Law Reports, Privy Council	Ind.
B. L. R. Sup. Vol.	Bengal Law Reports, Supp. Vol.	Ind.
B. W. C. C.	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Bac. Abr.	Bacon's Abridgment	Eng.

Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.
Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)	Eng.
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814	Ir.
Bankr. & Ins. R.	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855	Eng.
Bar. & Arn.	Barron and Arnold's Election Cases, 1 vol., 1843—1846	Eng.
Bar. & Aust.	Barron and Austin's Election Cases, 1 vol., 1842	Eng.
Barn. Ch.	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741	Eng.
Barn. K. B.	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734	Eng.
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760	Eng.
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826	Ir.
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830	Ir.
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866	Eng.
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846	Eng.
Beaw.	Beawes's Lex Mercatoria	Eng.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860	Eng.
Bell, Ct. of Sess.	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792	Scot.
Bell, Ct. of Sess. fol.	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795	Scot.
Bell, Dict. Dec.	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833	Scot.
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850	Scot.
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol.	Eng.
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756	Eng.
Ben. & D.	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—1579	Eng.
Benl.	Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol., 1 vol., 1515—1627	Eng.
Ber.	New Brunswick Reports (Berton)	Can.
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834	Eng.
Bing. N. C.	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840	Eng.
Biss. & Sm.	Bisset and Smith's Digest	S. Af.
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876	Eng.
Bitt. Rep. in Ch.	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884	Eng.
Bl. Com.	Blackstone's Commentaries	Eng.
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848	Ir.
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821	Eng.
Bli. N. S.	Bligh's Reports, House of Lords, New Series 11 vols., 1827—1837	Eng.
Bluett	Bluett's Isle of Man Cases	I. of M.
Bom.	Bombay High Court Reports	Ind.
Bom. A. C.	Bombay Reports, Appellate Jurisdiction	Ind.
Bom. O. C.	Bombay Reports, Original Civil Jurisdiction	Ind.
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804	Eng.
Bos. & P. N. R.	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807	Eng.
Bourke	Bourke's Reports	Ind.
Br. & Col. Pr. Cas.	British and Colonial Prize Cases, 3 vols., 1914—1919	Eng.
Bract.	Bracton De Legibus et Consuetudinibus Angliæ	Eng.
Bro. Abr.	Sir J. Brooke's Abridgement	Eng.
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794	Eng.
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872	Eng.
Bro. N. C.	Sir R. Brooke's New Cases, 1 vol., 1515—1558	Eng.
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800	Eng.
Bro. Supp. to Mor.	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.	Scot.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827	Scot.
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822	Eng.
Brod. & F.	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864	Eng.
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845	Scot.
Brown. & Lush.	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866	Eng.
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624	Eng.
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715	Scot.

Buch.	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879	S. Af.
Buch. A. C.	Buchanan's Reports of Appeal Court (Cape)	S. Af.
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813	Scot.
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	Eng.
Bull. N. P.	Buller's Nisi Prius (published, London, 1772)	Eng.
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	Eng.
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741	Eng.
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772	Eng.
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776	Eng.
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840	Eng.
C. A.	Court of Appeal Reports, 3 vols., 1867—1877	N.Z.
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841	Eng.
C. B.	Common Bench Reports, 18 vols., 1845—1856	Eng.
C. B. N. S.	Common Bench Reports, New Series, 20 vols., 1856—1865	Eng.
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—(current)	Eng.
C. L. Ch.	Common Law Chambers	Can.
C. L. J.	Cape Law Journal	S. Af.
C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.
C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
C. L. R.	Common Law Reports, 3 vols., 1853—1855	Eng.
C. L. R.	Commonwealth Law Reports	Aus.
C. L. R.	Calcutta Law Reporter	Ind.
C. L. R.	Cape Law Reports	S. Af.
C. L. T.	Canadian Law Times	Can.
C. L. T. Occ. N.	Canadian Law Times, Occasional Notes	Can.
C. P.	Upper Canada Common Pleas	Can.
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880	Eng.
C. P. D.	Cape Provincial Division Reports	S. Af.
C. R. [date] A. C.	Canadian Reports, Appeal Cases	Can.
C. T. R.	Cape Times Reports of the Supreme Court of the Cape of Good Hope	S. Af.
C. W. N.	Calcutta Weekly Notes	Ind.
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	Eng.
Cald. Mag. Cas.	Caldecott's Magistrates' Cases, 1 vol., 1776—1785	Eng.
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618	Eng.
Cam. Cas.	Cameron's Supreme Court Cases	Can.
Cam. Prac.	Cameron's Supreme Court Practice	Can.
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816	Eng.
Can. Com. Cas.	Commercial Law Reports of Canada	Can.
Can. Crim. Cas.	Canadian Criminal Cases, Annotated	Can.
Can. Ry. Cas.	Canadian Railway Cases	Can.
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	Eng.
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842	Eng.
Car. C. L.	Carrington's Treatise on Criminal Law	Eng.
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842	Eng.
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673	Eng.
Cart.	Cases on British North America Act (Cartwright)	Can.
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700	Eng.
Cary	Cary's Reports, Chancery, 1 vol.	Eng.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697	Eng.
Cas. Pract. K. B.	Cases of Practice, King's Bench, 1 vol., 1655—1775	Eng.
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1685—1727	Eng.
Cas. *temp.* Finch	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680	Eng.
Cas. *temp.* King	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733	Eng.
Cas. *temp.* Talb.	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737	Eng.
Cass. Dig.	Cassells' Digest	Can.
Ch. (preceded by date)	Law Reports, Chancery Division, since 1890 (*e.g.*, [1891] 1 Ch.)	Eng.
Ch. App.	Law Reports, Chancery Appeals, 10 vols., 1865—1875	Eng.
Ch. Cas. in Ch.	Choyce Cases in Chancery, 1557—1606	Eng.
Ch. Ch.	Upper Canada Chancery Chambers Reports	Can.
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890	Eng.
Ch. Rob.	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808	Eng.
Char. Cham. Cas.	Charley's Chamber Cases, 1 vol., 1875—1876	Eng.
Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876	Eng.
Chip.	New Brunswick Reports (Chipman)	Can.
Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822	Eng.
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846	Eng.
Cl. & Sc. Dr. Cas.	Clark and Scully's Drainage Cases	Can.
Clay	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	Eng.

Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	Eng.
Co. A.	Cook's Lower Canada Admiralty Court Cases	Can.
Co. Ent.	Coke's Entries	Eng.
Co. Inst.	Coke's Institutes	Eng.
Co. L. J.	Colonial Law Journal	N.Z.
Co. Litt.	Coke on Littleton (1 Inst.)	Eng.
Co. Rep.	Coke's Reports, 13 parts, 1572—1616	Eng.
Cochran	Nova Scotia Law Reports	Can.
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833	Eng.
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846	Eng.
Coll. Jurid.	Collectanea Juridica, 2 vols.	Eng.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713	Eng.
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885	Eng.
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	Eng.
Com. Cas.	Commercial Cases, 1895—(current)	Eng.
Com. Dig.	Comyns' Digest	Eng.
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	Eng.
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843	Ir.
Cong. Dig.	Congdon's Digest	Can.
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834	Ir.
Cooke, Pr. Cas.	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	Eng.
Cooke, Pr. Reg.	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742	Eng.
Coop. G.	G. Cooper's Reports, Chancery, 1 vol., 1792—1815	Eng.
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	Eng.
Coop. *temp.* Brough.	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834	Eng.
Coop. *temp.* Cott.	C. P. Cooper's Cases *temp.* Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)	Eng.
Cor.	Coryton's Reports	Ind.
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819	Eng.
Correspondances Jud.	Correspondances Judiciaires	Can.
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885	Scot.
Cout.	Coutlees' Unreported Cases	Can.
Cout. Dig.	Coutlees' Digest	Can.
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778	Eng.
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846	Eng.
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)	Eng.
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797	Eng.
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852	Eng.
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	Eng.
Cr. & M.	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	Eng.
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841	Eng.
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1908—(current)	Eng.
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835	Eng.
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	Ir.
Craw. & D. Abr. C.	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	Ir.
Cress. Insolv. Cas.	Cresswell's Insolvency Cases, 1 vol., 1827—1829	Eng.
Cripps' Church Cas.	Cripps' Church and Clergy Cases, 2 parts, 1847—1850	Eng.
Cro. Car.	Croke's Reports *temp.* Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641	Eng.
Cro. Eliz.	Croke's Reports *temp.* Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603	Eng
Cro. Jac.	Croke's Reports *temp.* James I., King's Bench and Common Pleas, 1 vol., 1603—1625	Eng.
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.	Eng.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	Eng
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844	Eng.
D.	Duxbury's Reports of the High Court of the South African Republic	S. Af.
D. C. A.	Dorion's Queen's Bench Reports	Can.
D. L. R.	Dominion Law Reports	Can.
Dalr.	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720	Scot
Dan.	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823	Eng.
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829	Eng.

Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844	Eng.
Dav. Ir.	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—1611	Ir.
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816	Eng.
Day	Day's Election Cases, 1 vol., 1892—1893	Eng.
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857	Eng.
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840	Eng.
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835	Eng.
Dears. & B.	Dearsley and Bell's Crown Cases Reserved, 1 vol., 1856—1858	Eng.
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856	Eng.
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832	Scot.
De G.	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848	Eng.
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859	Eng.
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852	Eng.
De G. F. & J.	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1862	Eng.
De G. J. & Sm.	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865	Eng.
De G. M. & G.	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1851—1857	Eng.
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835	Eng.
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852	Eng.
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798	Eng.
Dig.	Justinian's Digest or Pandects	Eng.
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677	Scot.
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822	Eng.
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837	Eng.
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776	Eng.
Doug. K. B.	Douglas' Reports, King's Bench, 4 vols., 1778—1785	Eng.
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818	Eng.
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832	Eng.
Dow. & L.	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849	Eng
Dow. & Ry. K. B.	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827	Eng.
Dow. & Ry. M. C.	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827	Eng.
Dow. & Ry. N. P.	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823	Eng.
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841	Eng.
Dowl. N. S.	Dowling's Practice Reports, New Series, 2 vols., 1841—1843	Eng.
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841	Ir.
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843	Ir.
Dra.	Draper's King's Bench Reports	Can.
Drew.	Drewry's Reports, Chancery, 4 vols., 1852—1859	Eng.
Drew. & Sm.	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865	Eng.
Drinkwater	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841	Eng.
Drury *temp.* Nap.	Drury's Reports *temp.* Napier, Chancery (Ireland), 1 vol., 1858—1859	Ir.
Drury *temp.* Sug.	Drury's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1841—1844	Ir.
Dugd. Orig.	Dugdale's Origines Juridiciales	Eng.
Dunl. (Ct. of Sess.)	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862	Scot.
Dunning	Dunning's Reports, King's Bench, 1 vol., 1753—1754	Eng.
Durie	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642	Scot.
Dyer	Dyer's Reports, King's Bench, 3 vols., 1513—1581	Eng.
E. & A.	Upper Canada Error and Appeal	Can.
E. & B.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858	Eng.
E. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861	Eng.
E. B. & E.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860	Eng.
E. D. C.	Reports of the Eastern Districts Court (Cape) from 1880	S. Af.
E. D. L.	South African Law Reports, Eastern Districts Local Division	S. Af.
E. L. R.	Eastern Law Reporter	Can.
E. R. (or Eng. Rep.)	English Reports	Eng.
E. R.	Ontario Election Reports	Can.
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825	Eng.
East	East's Reports, King's Bench, 16 vols., 1800—1812	Eng.

East, P. C.	East's Pleas of the Crown	Eng.
Ecc. & Ad.	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855	Eng.
Eden	Eden's Reports, Chancery, 2 vols., 1757—1766	Eng.
Edgar	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	Scot.
Edw.	Edwards' Reports, Admiralty, 1 vol., 1808—1812	Eng.
Elchies	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754	Scot.
Emden's B. C.	Emden's Building Contracts, Building Leases and Building Statutes	Eng.
Eng. Pr. Cas.	Roscoe's English Prize Cases, 2 vols., 1745—1858	Eng.
Eq. Cas. Abr.	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744	Eng.
Eq. Rep.	Equity Reports, 3 vols., 1853—1855	Eng.
Esp.	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810	Eng.
Ex. D.	Law Reports, Exchequer Division, 5 vols., 1875—1880	Eng.
Exch.	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856	Eng.
Exch. C. R.	Exchequer Court Reports	Can.
F. (Ct. of Sess.)	Fraser, Court of Session Cases (Scotland), 5th series, 1898—1906	Scot.
F.	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880	S. Af.
F. & F.	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	Eng.
F. N. D.	Finnemore's Notes and Digest of Natal Cases, 1863—1867	S. Af.
Fac. Coll.	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841	Scot.
Falc.	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751	Scot.
Falc. & Fitz.	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838	Eng.
Fenton	Fenton, Important Judgments	N.Z.
Ferg.	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	Scot.
Fitz. Nat. Brev.	Fitzherbert's Natura Brevium	Eng.
Fitz-G.	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	Eng.
Fl. & K.	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842	Ir.
Fonbl.	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852	Eng.
For.	Forrest's Reports, Exchequer, 1 vol., 1800—1801	Eng.
Forb.	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713	Scot.
Fort. De Laud.	Fortesque, De Laudibus Legum Angliæ	Eng.
Fortes. Rep.	Fortescue's Reports, fol., 1 vol., 1692—1736	Eng.
Fost.	Foster's Crown Cases, 1 vol., 1708—1760	Eng.
Fount.	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712	Scot.
Fox & S. Ir.	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825	Ir.
Fox & S. Reg.	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895	Eng.
Fras.	Fraser (Simon), Election Cases, 2 vols., 1793	Eng.
Freem. Ch.	Freeman's Reports, Chancery, 1 vol., 1660—1706	Eng.
Freem. K. B.	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704	Eng.
G.	Gregorowski's Reports of the High Court of the Orange Free State from 1883	S. Af.
G. I. Dig.	General Index Digest	Can.
Gal. & Dav.	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843	Eng.
Gale	Gale's Reports, Exchequer, 2 vols., 1835—1836	Eng.
Gaz. L. R.	New Zealand Gazette Law Reports	N.Z.
Geld. Dig.	Geldert's Digest	Can.
Gib. Cod.	Gibson's Codex Juris Ecclesiastici Anglicani	Eng.
Giff.	Giffard's Reports, Chancery, 5 vols., 1857—1865	Eng.
Gilb.	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714	Eng.
Gilb. C. P.	Gilbert's History and Practice of the Court of Common Pleas	Eng.
Gilb. Ch.	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726	Eng.
Gilm. & F.	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686	Scot.
Gl. & J.	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	Eng.
Glanv.	Glanville, De Legibus et Consuetudinibus Regni Angliæ	Eng.
Glanv. El. Cas.	Glanville's Election Cases, 1 vol., 1623—1624	Eng.
Glascock	Glascock's Reports (Ireland), 1 vol., 1831—1832	Ir.
Godb.	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	Eng.

Gouldsb.	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	Eng.
Gow	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	Eng.
Gr.	Upper Canada Chancery (Grant)	Can.
Griffin's Patent Cases ...	Griffin's Patent Cases, 1884—1886	Eng.
Gwill.	Gwillim's Tithe Cases, 4 vols., 1224—1824	Eng.
H.	Hertzog's Reports of the High Court of the South African Republic, 1893	S. Af.
H. & C.	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	Eng.
H. & N	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	Eng.
H. & Tw.	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850 ...	Eng.
H. & W.	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	Eng.
H. B. R. (preceded by date)	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (*e.g.*, [1915] H. B. R.)	Eng.
H. C.	Reports of the High Court of Griqualand West	S. Af.
H. E. C.	Hodgin's Election Reports	Can.
H. L. Cas.	Clark's Reports, House of Lords, 11 vols., 1847—1866 ...	Eng.
Hag. Adm.	Haggard's Reports, Admiralty, 3 vols., 1822—1838	Eng.
Hag. Con.	Haggard's Consistorial Reports, 2 vols., 1789—1821	Eng.
Hag. Ecc.	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833	Eng.
Hailes	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	Scot.
Hale, C. L.	Hale's Common Law	Eng.
Hale, P. C.	Hale's Pleas of the Crown, 2 vols.	Eng.
Han.	New Brunswick Reports (Hannay)	Can.
Har. & Ruth.	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866	Eng.
Har. & W.	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836	Eng.
Harc.	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	Scot.
Hard.	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	Eng.
Hare	Hare's Reports, Chancery, 11 vols., 1841—1853	Eng.
Hawk. P. C.	Hawkins's Pleas of the Crown, 2 vols.	Eng.
Hay	Hay's Reports	Ind.
Hayes	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832 ...	Ir.
Hayes & Jo.	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	Ir.
Hem. & M.	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	Eng.
Het.	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631 ...	Eng.
Hob.	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625 ...	Eng.
Hodg.	Hodges' Reports, Common Pleas, 3 vols., 1835—1837	Eng.
Hog.	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834 ...	Ir.
Holt, Adm.	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	Eng.
Holt, Eq.	W. Holt's Equity Reports, 2 vols., 1845	Eng.
Holt, K. B.	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	Eng.
Holt, N. P.	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	Eng.
Home, Ct. of Sess. ...	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744	Scot.
Hong Kong L. R. ...	Hong Kong Reports	Hong Kong.
Hop. & Colt.	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	Eng.
Hop. & Ph.	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	Eng.
Horn & H.	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	Eng.
Hov. Supp.	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	Eng
How. C.	Howard's Chancery Practice	Ir.
How. C. S.	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	Ir.
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How. P. L.	Howard on the Popery Laws	Ir.
Hud. & B.	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	Ir.
Hudson's B. C.	Hudson on Building Contracts, 2 vols.	Eng.
Hume	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	Scot.
Hut.	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638 ...	Eng.
Hy. Bl.	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	Eng.
Hyde	Hyde's Reports	Ind.

I. C. L. R.	Irish Common Law Reports, 17 vols., 1849—1866	Ir.
I. Ch. R.	Irish Chancery Reports, 17 vols., 1850—1867	Ir.
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I. L. R.	Irish Law Reports, 13 vols., 1838—1851	Ir.
I. L. R. (Vol.) All.	Indian Law Reports, Allahabad	Ind.
I. L. R. (Vol.) Bom.	Indian Law Reports, Bombay	Ind.
I. L. R. (Vol.) Calc.	Indian Law Reports, Calcutta	Ind.
I L. R. (Vol.) Lah.	Indian Law Reports, Lahore	Ind.
I. L. R. (Vol.) Mad.	Indian Law Reports, Madras	Ind.
I. L. T.	Irish Law Times, 1867—(current)	Ir.
I. L. T. Jo.	Irish Law Times Journal, 1867—(current)	Ir.
I. R. (preceded by date)	Irish Reports, since 1893 (*e.g.* [1894] 1 I. R.)	Ir.
I. R. (Vol.) C. L.	Irish Reports, Common Law, 11 vols., 1866—1877	Ir.
I. R. Eq.	Irish Reports, Equity, 11 vols., 1866—1877	Ir.
Ind. Awards	Industrial Awards Recommendations	N.Z.
Ind. Jur. N. S.	Indian Jurist, New Series	Ind.
Ind. Jur. O. S.	Indian Jurist, Old Series	Ind.
Ir. Cir. Rep.	Reports of Irish Circuit Cases, 1 vol., 1841—1843	Ir.
Ir. Jur.	Irish Jurist, 18 vols., 1849—1866	Ir.
Ir. L. Rec. 1st ser.	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831	Ir.
Ir. L. Rec. N. S.	Law Recorder (Ireland), New Series, 6 vols., 1833—1838	Ir.
Ir. Term Rep.	Irish Term Reports	Ir.
Irv.	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867	Scot.
J. Bridg.	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	Eng.
J. D. R.	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	S. Af.
J. P.	Justice of the Peace, 1837—(current)	Eng.
J. P. Jo.	Justice of the Peace (Weekly Notes of Cases)	Eng.
J. R.	Jurist Reports	N.Z.
J. R. N. S.	Jurist Reports, New Series	N.Z.
J. Shaw, Just.	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852	Scot.
Jac.	Jacob's Reports, Chancery, 1 vol., 1821—1823	Eng.
Jac. & W.	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821	Eng.
James	Nova Scotia Law Reports (James)	Can.
Jebb & B.	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842	Ir.
Jebb & S.	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	Ir.
Jebb, C. C.	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840	Ir.
Jebb, Cr. & Pr. Cas.	Jebb's Crown and Presentment Cases	Ir.
Jenk.	Jenkins' Reports, 1 vol., 1220—1623	Eng.
Jo. & Car.	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	Ir.
Jo. & Lat.	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	Ir.
Jo. Ex. Ir.	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838	Ir.
John.	Johnson's Reports, Chancery, 1 vol., 1858—1860	Eng.
John. & H.	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	Eng.
Jur.	Jurist Reports, 18 vols., 1837—1854	Eng.
Jur. N. S.	Jurist Reports, New Series, 12 vols., 1855—1867	Eng.
Just. Inst.	Justinian's Institutes	Eng.
K.	Kotze's Reports of the High Court of the Transvaal Province, 1877—1881	S. Af.
K. & G.	Keane and Grant's Registration Cases, 1 vol., 1854—1862	Eng.
K. & J.	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858	Eng.
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900 (*e.g.*, [1901] 2 K. B.)	Eng.
Kames, Dict. Dec.	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	Scot.
Kames, Rem. Dec.	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	Scot.
Kames, Sel. Dec.	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	Scot.
Kay	Kay's Reports, Chancery, 1 vol., 1853—1854	Eng.
Keb.	Keble's Reports, fol., 3 vols., 1661—1677	Eng.
Keen	Keen's Reports, Rolls Court, 2 vols., 1836—1838	Eng.
Keil.	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578	Eng.
Kel.	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	Eng
Kel. W.	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734	Eng
Keny.	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759	Eng.
Keny. Ch.	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	Eng.

Kerr	New Brunswick Reports (Kerr)	Can.
Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	Scot.
Kn. & Omb.	Knapp and Ombler's Election Cases, 1 vol., 1834—1835 ...	Eng.
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836	Eng.
Knox	Knox's Reports	Aus.
Konst. & W. Rat. App.	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Eng.
Konst. Rat. App. ...	Konstam's Reports of Rating Appeals, 2 vols., 1894—1904 ...	Eng.
L. & G. *temp.* Plunk. ...	Lloyd and Goold's Reports *temp.* Plunkett, Chancery (Ireland), 1 vol., 1834—1839	Ir.
L. & G. *temp.* Sugd. ...	Lloyd and Goold's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1835	Ir.
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830	Eng.
L. C. & M. Gaz. ...	Local Courts and Municipal Gazette	Can.
L. C. J.	Lower Canada Jurist	Can.
L. C. L. J.	Lower Canada Law Journal	Can.
L. C. R.	Lower Canada Reports	Can.
L. G. R.	Local Government Reports, 1902—(current)	Eng.
L. J. Adm.	Law Journal, Admiralty, 1865—1875	Eng.
L. J. Bcy.	Law Journal, Bankruptcy, 1832—1880	Eng.
L. J. C. C.	Law Journal (County Courts Reporter), 1912—(current) ...	Eng.
L. J. C. P.	Law Journal, Common Pleas, 1831—1875	Eng.
L. J. Ch.	Law Journal, Chancery, 1831—(current)	Eng.
L. J. Eccl.	Law Journal, Ecclesiastical Cases, 1866—1875	Eng.
L. J. Ex.	Law Journal, Exchequer, 1831—1875	Eng.
L. J. Ex. Eq.	Law Journal, Exchequer in Equity, 1835—1841	Eng.
L. J. K. B. or Q. B. ...	Law Journal, King's Bench or Queen's Bench, 1831—(current)	Eng.
L. J. M. C.	Law Journal, Magistrates' Cases, 1831—1896	Eng.
L. J. N. C.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal)	Eng.
L. J. O. S.	Law Journal, Old Series, 10 vols., 1822—1831	Eng.
L. J. P.	Law Journal, Probate, Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M.	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875	Eng.
L. J. P. C.	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A. ...	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	Leader Law Reports	S. Af.
L. M. & P.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	Legal News	Can.
L. R. A. & E.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875	Eng.
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875 ...	Eng.
L. R. C. P.	Law Reports, Common Pleas, 10 vols., 1865—1875	Eng.
L. R. Eq.	Law Reports, Equity Cases, 20 vols., 1865—1875	Eng.
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865—1875	Eng.
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875	Eng.
L. R. Ind. App. ...	Law Reports, Indian Appeals, Privy Council, 1873—(current) ...	Eng.
L. R. Ind. App. Supp. Vol.	Law Reports, India Appeals, Privy Council, Supplementary Volume, 1872—1873	Eng.
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893	Ir.
L. R. P. & D.	Law Reports, Probate and Divorce, 3 vols., 1865—1875 ...	Eng.
L. R. P. C.	Law Reports, Privy Council, 6 vols., 1865—1875	Eng.
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865—1875	Eng.
L. R. Q. B.	Quebec Reports, Queen's Bench	Can.
L. R. Sc. & Div. ...	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols., 1866—1875	Eng.
L. T.	Law Times Reports, 1859—(current)	Eng.
L. T. Jo.	Law Times Newspaper, 1843—(current)	Eng.
L. T. O. S.	Law Times Reports, Old Series, 34 vols., 1843—1860	Eng.
L. Th.	La Themis	Can.
Lane	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611	Eng.
Lat.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628 ...	Eng.
Laws. Reg. Cas. ...	Lawson's Registration Cases, 1895—(current)	Eng.
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732	Eng.
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865 ...	Eng.
Leach	Leach's Crown Cases, 2 vols., 1730—1814 ...	Eng.
Lee	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758 ...	Eng.
Lee *temp.* Hard. ...	T. Lee's Cases *temp.* Hardwicke, King's Bench, 1 vol., 1733—1738	Eng.

Leg. Rep.	Legal Reporter	Ir.
Legge	Legge's Reports	Aus.
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	Eng.
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	Eng.
Lew. C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	Eng.
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	Eng.
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.	Eng.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	Eng.
Litt.	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	Eng.
Lloyd, L. R.	Lloyd's List Law Reports, 1919—(current)	Eng.
Lloyd, Pr. Cas.	Lloyd's Reports of Prize Cases, 5 vols., 1914—1918	Eng.
Lofft	Lofft's Reports, King's Bench, foll., 1 vol., 1772—1774	Eng.
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	Ir.
Lords Journals	Journals of the House of Lords	Eng.
Lud. E. C.	Luder's Election Cases, 3 vols., 1784—1787	Eng.
Lumley, P. L. C.	Lumley's Poor Law Cases, 2 vols., 1834—1842	Eng.
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862	Eng.
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	Eng.
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	Eng.
Lynd.	Lyndwood, Provinciale, fol., 1 vol.	Eng.
M.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	Eng.
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	Eng.
M. C. R.	Montreal Condensed Reports	Can.
M. H. C. R.	Madras High Court Reports	Ind.
M. L. R. (Vol.) K. B. or Q. B.	Montreal Law Reports, King's Bench or Queen's Bench	Can.
M. L. R. (Vol.) S. C.	Montreal Law Reports, Superior Court	Can.
M. M. Cas.	Martin's Reports of Mining Cases	Can.
Mac.	Macassey's New Zealand Reports	N.Z.
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	Eng.
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	Eng.
M'Cle	M'Cleland's Reports, Exchequer, 1 vol., 1824	Eng.
M'Cle. & Yo.	M'Cleland and Younge's Reports, Exchequer, 1 vol., 1824—1825	Eng.
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	Scot.
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	Scot.
Macph. (Ct. of Sess.)	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	Scot.
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	Scot.
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856	Eng.
Mad.	Madras High Court Reports	Ind.
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1821	Eng.
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	Eng.
Madox	Madox's Formulare Anglicanum	Eng.
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols.	Eng.
Mag.	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	Eng.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	Eng.
Man. & Ry. K. B.	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	Eng.
Man. & Ry. M. C.	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	Eng.
Man. L. J.	Manitoba Law Journal	Can.
Man. L. R.	Manitoba Law Reports	Can.
Man. R. *temp.* Wood	Manitoba Reports *temp.* Wood	Can.
Mans.	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	Eng.
Mar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871	Eng.
March	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642	Eng.
Marr.	Marriott's Decisions, Admiralty, 1 vol., 1776—1779	Eng.
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	Eng.
Marsh.	Marshall's Reports	Ind.
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326	Eng.
Meg.	Megone's Companies Acts Cases, 2 vols., 1889—1891	Eng.

Men.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
Mer.	Merivale's Reports, Chancery, 3 vols., 1815—1817	Eng.
Milw.	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843	Ir.
Mod. Rep.	Modern Reports, 12 vols., 1669—1755	Eng.
Mol.	Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831 ...	Ir.
Mont.	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832	Eng.
Mont. & A.	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838	Eng.
Mont. & B.	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833	Eng.
Mont. & Ch.	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840	Eng.
Mont. & M.	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830	Eng.
Mont. D. & De G. ...	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844	Eng.
Moo. & P.	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831	Eng.
Moo. & S.	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834	Eng.
Moo. Ind. App.	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872	Eng.
Moo. P. C. C.	Moore's Privy Council Cases, 15 vols., 1836—1863	Eng.
Moo. P. C. C. N. S. ...	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873	Eng.
Mood. & M.	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830 ...	Eng.
Mood. & R.	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844	Eng.
Mood. C. C.	Moody's Crown Cases Reserved, 2 vols., 1824—1844	Eng.
Moore, C. P.	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827 ...	Eng.
Moore, K. B.	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620	Eng.
Mor. Dict.	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808	Scot.
Morr.	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893	Eng.
Mos.	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730	Eng.
Mun. Rep.	Municipal Reports	Can.
Murd. Epit.	Murdoch's Epitome	Can.
Murp. & H.	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837 ...	Eng.
Murr.	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830	Scot.
My. & Cr.	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841 ...	Eng.
My. & K.	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835 ...	Eng.
N. A. C.	Native Appeal Cases	S. Af.
N. & S.	Nichols and Stop's Reports (Tasmania)	Tasmania.
N. B. Dig.	New Brunswick Digest (Stevens)	Can.
N. B. Eq. Rep. ...	New Brunswick Equity Reports	Can.
N. B. R.	New Brunswick Reports	Can.
N. B. R. (All.) ...	New Brunswick Law Reports (Allen)	Can.
N. B. R. (Ber.) ...	New Brunswick Law Reports (Berton)	Can.
N. B. R. (Chip.) ...	New Brunswick Reports (Chipman)	Can.
N. B. R. (Han.) ...	New Brunswick Reports (Hannay)	Can.
N. B. R. (Kerr) ...	New Brunswick Law Reports (Kerr)	Can.
N. B. R. (P. & B.) ...	New Brunswick Reports (Pugsley and Burbidge)	Can.
N. B. R. (P. & T.) ...	New Brunswick Law Reports (Pugsley and Trueman)	Can.
N. B. R. (Pug.) ...	New Brunswick Reports (Pugsley)	Can.
N. L. R.	Natal Law Reports	S. Af.
N. S. R.	Nova Scotia Reports	Can.
N. S. R. (James) ...	Nova Scotia Reports (James)	Can.
N. S. R. (Old.)	Nova Scotia Reports (Oldrights)	Can.
N. S. R. (R. & C.) ...	Nova Scotia Reports (Russell and Chesley)	Can.
N. S. R. (R. & G. ...	Nova Scotia Reports (Russell and Geldert)	Can.
N. S. R. (Thom.) ...	Nova Scotia Reports (Thomson)	Can.
N. S. W. Adm. or Ad.	New South Wales Reports, Admiralty	Aus.
N. S. W. B.	New South Wales Reports, Bankruptcy	Aus.
N. S. W. Bkpty. Cas. ...	New South Wales Bankruptcy Cases	Aus.
N. S. W. Eq.	New South Wales Reports, Equity	Aus.
N. S. W. Ind. Arbtn. Cas.	New South Wales Industrial Arbitration Cases	Aus.
N. S. W. L. R. ...	New South Wales Law Reports	Aus.
N. S. W. Land App. Cts.	New South Wales Land Appeal Courts	Aus.
N. S. W. S. C. R. ...	New South Wales Supreme Court Reports	Aus.
N. S. W. S. C. R. N. S.	New South Wales Supreme Court Reports, New Series ...	Aus.
N. S. W. W. N. ...	New South Wales Weekly Notes	Aus.
N. W.	North-Western Provinces High Court Reports	Ind.
N. W. T. R.	North-West Territories Reports	Can.
N. Z. Jur.	New Zealand Jurist	N.Z.
N. Z. Jur. Mining Law	New Zealand Jurist Mining Law	N.Z.
N. Z. Jur. N. S. ...	New Zealand Jurist, New Series	N.Z.
N. Z. L. R.	New Zealand Law Reports, 1883—(current)	N.Z.
N. Z. L. R. C. A. ...	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels.	Nelson's Reports, Chancery, 1 vol., 1625—1693	Eng.

Nev. & M. K. B.	Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836	Eng.
Nev. & M. M. C.	Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836	Eng.
Nev. & P. K. B.	Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838	Eng.
Nev. & P. M. C.	Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837	Eng.
New Mag. Cas.	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850	Eng.
New Pract. Cas.	New Practice Cases (Bittleston and others), 3 vols., 1844—1848	Eng.
New Rep.	New Reports, 6 vols., 1862—1865	Eng.
New Sess. Cas.	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851	Eng.
Nfld. L. R.	Newfoundland Reports	Nfld.
Nolan	Nolan's Magistrates' Cases, 1 vol., 1791—1793	Eng.
Notes of Cases	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850	Eng.
Noy	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649	Eng.
O. B. & F.	Ollivier Bell and Fitzgerald's Reports	N.Z.
O. B. S. P.	Old Bailey Session Papers	Eng.
O. Bridg.	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666	Eng.
O. F. S.	Reports of the High Court of the Orange Free State, 1879—1883	S. Af.
O. L. R.	Ontario Law Reports	Can.
O'M. & H.	O'Malley and Hardcastle's Election Cases, 1869—(current)	Eng.
O. P. D.	South African Law Reports, Orange Free State Provincial Division	S. Af.
O. R.	Ontario Reports	Can.
O. R.	Official Reports of the South African Republic, 1894—1899	S. Af.
O. R. C.	Reports of the High Court of the Orange River Colony	S. Af.
O. S.	Upper Canada Queen's Bench, Old Series	Can.
O. W. N.	Ontario Weekly Notes	Can.
O. W. R.	Ontario Weekly Reporter	Can.
Old.	Nova Scotia Reports (Oldrights)	Can.
Ont. Dig.	Digest of Ontario Case Law, 4 vols., 1823—1900	Can.
Owen	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614	Eng.
P. (preceded by date)	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (*e.g.*, [1891] P.)	Eng.
P. & B.	New Brunswick Reports (Pugsley and Burbidge)	Can.
P. & T.	New Brunswick Law Reports (Pugsley and Trueman)	Can.
P. D.	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890	Eng.
P. E. I.	Prince Edward Island Reports	Can.
P. R.	Ontario Practice	Can.
P. Wms.	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735	Eng.
Palm.	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629	Eng.
Park.	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767	Eng.
Pat. App.	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822	Scot.
Pater. App.	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873	Scot.
Peake	Peake's Reports, Nisi Prius, 1 vol., 1790—1794	Eng.
Peake, Add. Cas.	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812	Eng.
Peck.	Peckwell's Election Cases, 2 vols., 1803—1806	Eng.
Pelham	Pelham (S. A.) Reports	Aus.
Per. & Dav.	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841	Eng.
Per. & Kn.	Perry and Knapp's Election Cases, 1 vol., 1833	Eng.
Per. C. S.	Perrault's Counseil Superieur	Can.
Per. P.	Perrault's Prévosté de Quebec, 1726—1756	Can.
Ph.	Phillips' Reports, Chancery, 2 vols., 1841—1849	Eng.
Phil. El. Cas.	Philipps' Election Cases, 1 vol., 1780	Eng.
Phillim.	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821	Eng.
Phillim. Eccl. Jud.	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875	Eng.
Phip.	Phipson's Digest of Natal Reports, 1858—1859	S. Af.
Pig. & R.	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845	Eng.
Pitc.	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624	Scot.
Plowd.	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I.	Eng.
Poll.	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682	Eng.
Poph.	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627	Eng.
Pow. R. & D.	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856	Eng.
Prec. Ch.	Precedents in Chancery, fol., 1 vol., 1689—1722	Eng.
Price	Price's Reports, Exchequer, 13 vols., 1814—1824	Eng.
Price	Price's Mining Commissioners' Cases	Can.

Pug.	New Brunswick Reports (Pugsley)	Can.
Py. R.	Pykes' Lower Canada Reports	Can.
Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (*e.g.*, [1891] 1 Q. B.)	Eng.
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	Eng.
Q. J. P.	Queensland Justice of Peace Reports	Aus.
Q. L. J.	Queensland Law Journal	Aus.
Q. L. R.	Quebec Law Reports	Can.
Q. L. R. (Beor)	Queensland Law Reports by Beor	Aus.
Q. P. R.	Quebec Practice Reports	Can.
Q. R. (Vol.) K. B. or Q. B.	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—(current)	Can.
Q. R. (Vol.) S. C.	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	Can.
Q. S. C. R.	Queensland Supreme Court Reports	Aus.
Q. S. R.	Queensland State Reports	Aus.
Q. W. N.	Weekly Notes, Queensland	Aus.
R.	The Reports, 15 vols., 1893—1895	Eng.
R.	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861—1867, 1871—1872, 1877—1878	S. Af.
R. (Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	Scot.
R. A. C.	Ramsay, Appeal Cases	Can.
R. & C.	Nova Scotia Reports (Russell & Chesney)	Can.
R. & G.	Nova Scotia Reports (Russell and Geldert)	Can.
R. C.	La Revue Critique de Législation et de Jurisprudence de Canada	Can.
R. de J.	Revue de Jurisprudence	Can.
R. de L.	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	Can.
R. E. D.	New South Wales, Reserved and Equity Decisions	Aus.
R. E. D.	Ritchie's Equity Decisions (Russell)	Can.
R. J. R. Q.	Quebec Revised Reports	Can.
R. L. N. S.	Revue Légale, New Series, 1895—(current)	Can.
R. L. O. S.	Revue Légale, Old Series, 21 vols., 1869—1892	Can.
R. P. C.	Reports of Patent Cases, 1884—(current)	Eng.
R. R.	Revised Reports	Eng.
Rast.	Rastell's Entries	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	Eng.
Real Prop. C.	Real Property Cases, 2 vols., 1843—1847	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	Eng.
Rep. in C. of A.	Reports in Courts of Appeal	N.Z.
Res. & Eq. Jud.	New South Wales Reserved and Equity Judgments	Aus.
Reserv. Cas.	Reserved Cases	Ir.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	Eng.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	Eng.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports Ireland), 1 vol., 1793—1795	Ir.
Ridg. Parl. Rep.	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	Ir.
Ridg. *temp.* H.	Ridgeway's Reports *temp.* Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	Eng.
Ritch. Eq. Rep.	Ritchie's Equity Reports	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	Eng.
Rom.	Romilly's Notes of Cases in Equity, 1 part, 1772—1787	Eng.
Roscoe's B.C.	Roscoe, Digest of Building Cases	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	Eng.
Rul. Cas.	Campbell's Ruling Cases, 25 vols.	Eng.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829	Eng.
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	Eng.
Russ. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
Russ. E. R.	Russell's Election Reports	Can.
Ry. & Can. Cas.	Railway and Canal Cases, 7 vols., 1835—1854	Eng.
Ry. & Can. Tr. Cas.	Railway and Canal Traffic Cases, 1855—(current)	Eng.
Ry. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826	Eng.

Ryde & K. Rat. App.	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904	Eng.
Ryde, Rat. App. ...	Ryde's Rating Appeals, 3 vols., 1871—1893	Eng.
S.	Searle's Reports of the Supreme Court of the Cape of Good Hope	S. Af.
S. A. L. J.	South African Law Journal	S. Af.
S. A. L. R.	South Australian Law Reports	Aus.
S. A. L. R.	South African Law Reports	S. Af.
S. A. R.	Reports of the High Court of the South African Republic, 1881—1892	S. Af.
S. C.	Reports of the Supreme Court of the Cape of Good Hope from 1880	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (*e.g.*, [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date).	Court of Session Cases (Scotland) (House of Lords), since 1906 (*e.g.*, [1906] S. C. (H. L.))	Scot.
S. C. (J.) (preceded by date).	Court of Justiciary Cases (Scotland), since 1906 (*e.g.*, [1906] S. C. (J.))	Scot.
S. C. R.	Canada, Supreme Court Reports	Can.
S. L. T.	Scots Law Times, 1893 (current)	Scot.
S. Q. R.	Queensland State Reports	Aus.
S. R.	Reports of the High Court of Southern Rhodesia	S. Af.
S. R. C.	Stuart's Lower Canada Reports	Can.
S. R. N. S. W.	New South Wales, State Reports	Aus.
S. R. Q.	Queensland Reports, Supreme Court	Aus.
S. V. A. R.	Stuart's Vice-Admiralty Reports	Can.
Saint	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689—1712	Eng.
Sask. L. R.	Saskatchewan Law Reports	Can.
Sau. & Sc.	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840	Ir.
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund. & A.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	Eng.
Saund. & B.	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund. & C.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund. & M.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858	Eng.
Sav.	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say.	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur.	Scottish Jurist, 46 vols., 1829—1873	Scot.
Sc. L. R.	Scottish Law Reporter, 1865—(current)	Scot.
Sc. R. R.	Scots Revised Reports	Scot.
Sch. & Lef.	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806	Ir.
Scott	Scott's Reports, Common Pleas, 8 vols., 1834—1840	Eng.
Scott, N. R.	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm.	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860	Eng.
Sel. Cas. Ch.	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)	Eng.
Sess. Cas. K. B. ...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	Eng.
Sh. (Ct. of Sess.) ...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838	Scot.
Sh. & Macl.	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838	Scot.
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868	Scot.
Sh. Just.	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831 ...	Scot.
Sh. Sc. App.	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct.	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch.	Sheppard's Touchstone of Common Assurances	Eng.
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695	Eng.
Show. Parl. Cas. ...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699	Eng.
Sid.	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670	Eng.
Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852	Eng.
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826 ...	Eng.
Sim. N. S.	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852 ...	Eng.
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697 ...	Eng.
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825	Ir.
Sm. & G.	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857 ...	Eng.
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806 ...	Eng.
Smith, L. C.	Smith's Leading Cases, 2 vols.	Eng.

Smith, Reg. Cas.	C. L. Smith's Registration Cases, 1895—(current)	Eng.
Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	Ir.
Sol. Jo.	Solicitors' Journal, 1856—(current)	Eng.
Spence	Spence's Equitable Jurisdiction of the Court of Chancery	Eng.
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856	Eng.
St. R. Qd. (preceded by date)	Queensland State Reports, since 1902 (*e.g.*, [1902] St. R. Qd.)	Aus.
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681	Scot.
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823	Eng.
State Tr.	State Trials, 34 vols., 1163—1820	Eng.
State Tr. N. S.	State Trials, New Series, 8 vols., 1820—1858	Eng.
Stewart	Stewart's Nova Scotia Admiralty Reports, 1803—1813	Can.
Stockton	Stockton's Vice-Admiralty Report and Digest	Can.
Story	Story's Commentaries on Equity Jurisprudence	Eng.
Stra.	Strange's Reports, 2 vols., 1716—1747	Eng.
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853	Scot.
Stuart	Sessions Cases (Stuart)	Scot.
Stuart, Adm.	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856	Can.
Stuart, Adm. N. S.	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874	Can.
Stuart, K. B.	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835	Can.
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655	Eng.
Sw.	Swabey's Reports, Admiralty, 1 vol., 1855—1859	Eng.
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865	Eng.
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821	Eng.
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841	Scot.
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829	Scot.
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851	Eng.
T. H.	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909	S. Af.
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685	Eng.
T. L.	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current)	S. Af.
T. L. R.	The Times Law Reports, 1884—(current)	Eng.
T. P.	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D.	South African Law reports, Transvaal Provincial Division	S. Af.
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683	Eng.
T. S.	Reports of the Supreme Court of the Transvaal, 1902—1909	S. Af.
Taml.	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830	Eng.
Tas. L. R.	Tasmanian Law Reports	Aus.
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819	Eng.
Tax Cas.	Tax Cases, 1875—(current)	Eng.
Tay.	Taylor's King's Bench Reports	Can.
Temp. Wood	Manitoba Reports *temp.* Wood	Can.
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800	Eng.
Terr. L. R.	Territories Law Reports	Can.
Thom.	Nova Scotia Reports (Thomson)	Can.
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646	Eng.
Town. St. Tr.	Townsend, Modern State Trials	Eng.
Trist.	Tristram's Consistory Judgments, 1 vol., 1872—1890	Eng.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law	Eng.
Tudor, L. C. Real. Prop.	Tudor's Leading Cases on Real Property	Eng.
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825	Eng.
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835	Eng.
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	Eng.
U. C. Jur.	Upper Canada Jurist	Can.
U. C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.
U. C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
U. C. R.	Upper Canada Reports, Queen's Bench	Can.
Udal	Fiji Law Reports (Udal)	Fiji.
V. L. R.	Victorian Law Reports	Aus.
V. R.	Victorian Reports	Aus.
V. R. (Adm.)	Victorian Reports (Admiralty)	Aus.
V. R. (Eq.)	Victorian Reports (Equity)	Aus.
V. R. (Law)	Victorian Reports (Law)	Aus.

Vaugh.	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673	Eng
Vent.	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	Eng.
Vern.	Vernon's Reports, Chancery, 2 vols., 1680—1719	Eng.
Vern. & Scr.	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	Ir.
Ves.	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	Eng.
Ves. & B.	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814	Eng.
Ves. Sen.	Vesey Sen.'s Reports, 2 vols., 1747—1756	Eng.
Vin. Abr.	Viner's Abridgment of Law and Equity, fol., 22 vols.	Eng.
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	Eng.
W.	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857	S. Af.
W. A. L. R.	West Australian Law Reports	Aus.
W. A'B. & W.	Webb, A'Beckett and Williams' Victorian Reports	Aus.
W. & W.	Wyatt and Webb	Aus.
W. C. C.	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	Eng.
W. H. C.	South African Law Reports, Witwatersrand High Court	S. Af.
W. Jo.	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	Eng.
W. L. D.	South African Law Reports, Witwatersrand Local Division	S. Af.
W. L. R.	Western Law Reporter	Can.
W. L. T.	Western Law Times	Can.
W. N. (preceded by date)	Law Reports, Weekly notes, 1866—(current) (*e.g.*, [1866] W. N.)	Eng.
W. N.	Calcutta Weekly Notes	Ind.
W. R.	Weekly Reporter, 54 vols., 1852—1906	Eng.
W. R.	Sutherland's Weekly Reporter	Ind.
W. R.	Weekly Reporter, reporting cases in the Cape Provincial Division	S. Af.
W. W. & A'B.	Wyatt, Webb and A'Beckett	Aus.
W. W. R.	Western Weekly Reports	Can.
Wallis	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791	Ir.
Web. Pat. Cas.	Webster's Patent Cases, 2 vols., 1602—1855	Eng.
Welsh, Reg. Cas.	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	Ir.
Went. Off. Ex.	Wentworth's Office and Duty of Executors	Eng.
West	West's Reports, House of Lords, 1 vol., 1839—1841	Eng.
West *temp.* Hard.	West's Reports *temp.* Hardwicke, Chancery, 1 vol., 1736—1740	Eng.
West. Tithe Cas.	Western's London Tithe Cases, 1 vol., 1592—1822	Eng.
White	White's Justiciary Reports (Scotland), 3 vols., 1886—1893	Scot.
White & Tud. L. C.	White and Tudor's Leading Cases in Equity, 2 vols.	Eng.
Wight.	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	Eng.
Will. Woll. & Dav.	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	Eng.
Will. Woll. & H.	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	Eng.
Willes	Willes' Reports, Common Pleas, 1 vol., 1737—1758	Eng.
Wilm.	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	Eng.
Wils.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	Eng.
Wils & S.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	Scot.
Wils. Ch.	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	Eng.
Wils. Ex.	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817	Eng.
Win.	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625	Eng.
Wm. Bl.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	Eng.
Wm. Rob.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850	Eng.
Wms. Saund.	Williams' Notes to Saunders' Reports, 2 vols.	Eng.
Wolf. & B.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	Eng.
Wolf. & D.	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858	Eng.
Woll.	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	Eng.
Wood	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	Eng.
Y. A. D.	Young's Vice-Admiralty Reports	Can.
Y. & C. Ch. Cas.	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843	Eng.
Y. & C. Ex.	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841	Eng.
Y. & J.	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830	Eng.
Y. B.	Year Books	Eng.
Yelv.	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613	Eng.
You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, *see* pp. xvii.—xxxii., *ante*.)

A.-G.	for Attorney-General.
Act.	,, Actiengesellschaft.
Admlty.	,, Admiralty.
Affd.	,, Affirmed.
Affg.	,, Affirming.
Akt.	,, Aktiengesellschaft ; Aktiebolaget ; Aktieselskabet.
Anon.	,, Anonymous.
Apld.	,, Applied.
Appct.	,, Applicant.
Appln.	,, Application.
Appln.	,, Application to Register a Trade Mark.
Applt.	,, Appellant.
Apprvd.	,, Approved.
Arbn.	,, Arbitration.
Archbp.	,, Archbishop.
Art.	,, Article.
Assce.	,, Assurance.
Assocn.	,, Association.
B. C.	,, Borough Council.
Bkpcy.	,, Bankruptcy.
Bkpt.	,, Bankrupt.
Bldg. Soc.	,, Building Society.
Bp.	,, Bishop.
C. A.	,, Court of Appeal.
C & S. L. Ry. Co.	,, City & South London Railway Co.
C. C. A.	,, Court of Criminal Appeal.
C. C. R.	,, County Court Rules.
C. C. R.	,, Court of Crown Cases Reserved.
C. L. P. Act	,, Common Law Procedure Act.
C. L. Ry. Co.	,, Central London Railway Co.
C. S. U. C.	,, Consolidated Statutes of Upper Canada.
Cale. Ry. Co.	,, Caledonian Railway Co.
Ct.	,, Court.
Ct. of Eq.	,, Court of Equity.
Ct. of R.	,, Court of Review.
Co.	,, Company.
Co-op. Assocn.	,, Co-operative Supply Association.
Comrs.	,, Commissioners.
Consd.	,, Considered.
Corpn.	,, Corporation.
D. C.	,, Divisional Court.
Dbtd.	,, Doubted.
Deft.	,, Defendant
Distd.	,, Distinguished.
Eccl. Comrs.	,, Ecclesiastical Commissioners.
Eccl. Ct.	,, Ecclesiastical Court.

Ex. Ch.	for Exchequer Chamber.
Ex p.	„ *Ex parte.*
Exch.	„ Exchequer.
Exor.	„ Executor.
Exorship.	„ Executorship.
Expld.	„ Explained.
Extd.	„ Extended.
Extrix.	„ Executrix.
Folld.	„ Followed.
G. & S. W. Ry. Co.	„ Glasgow & South Western Railway Co.
G. C. Ry. Co.	„ Great Central Railway Co.
G. E. Ry. Co.	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co.	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.	„ Great Western Railway Co.
Govt.	„ Government.
Grdns.	„ Guardians or Guardians of the Poor.
H. C. of A.	„ High Court of Australia.
H. L.	„ House of Lords.
I. R. Comrs.	„ Inland Revenue Commissioners.
Insce.	„ Insurance.
JJ.	„ Justices.
Jud. Act	„ Judicature Act.
L. & B. Ry. Co.	„ London & Brighton Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co.	„ Lancashire & Yorkshire Railway Co.
L. B.	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L.C.	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C.	„ London County Council.
L. Elec. Ry. Co.	„ London Electric Railway Co.
L. G. Board	„ Local Government Board.
L.J.	„ Lord Justice.
L.JJ.	„ Lords Justices.
L. T. & S. Ry. Co.	„ London, Tilbury & Southend Railway Co.
M. S. Act	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	„ Magistrates.
Mentd.	„ Mentioned.
Met. Dist. Ry. Co.	„ Metropolitan District Railway Co.
Met. Ry. Co.	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	„ Midland Great Western Railway Co.
Mid. Ry. Co.	„ Midland Railway Co.
Mtge.	„ Mortgage.
Mtgee.	„ Mortgagee.
Mtgor.	„ Mortgagor.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F.	„ Not Followed.
N. P.	„ Nisi Prius.
O.	„ Order.
O. H.	„ Outer House.
Overd.	„ Overruled.
P. C.	„ Privy Council.
Petn.	„ Petition or Election Petition.
Pltf.	„ Plaintiff.
R. C.	„ Rural Council.
R. D. C.	„ Rural District Council.
R. S. A.	„ Rural Sanitary Authority.
R. S. C.	„ Revised Statutes of Canada.

R. S. C.	for Rules of the Supreme Court, 1883.
Refd.	,, Referred.
Regn. of Trade Mk.	,, Registration of Trade Mark.
Regr. of Trade Mks.	,, Registrar of Trade Marks.
Resp.	,, Respondent.
Restg.	,, Restoring.
Revsd	,, Reversed.
Revsg.	,, Reversing.
Ry. Co.	,, Rail. Co. or Railway Co.
S. C.	,, Same Case.
S. C. (name of colony following)	,, Supreme Court of a Colony.
S. E.	,, Settled Estates.
S. E. & C. Ry. Co	,, South Eastern & Chatham Railway Co.
S. E. Ry. Co.	,, South Eastern Railway Co.
S. P	,, Same Point.
S.S. Co.	,, Steamship Co.
Sect.	,, Section.
Set. Land Act	,, Settled Land Act.
Settlmt.	,, Settlement.
Soc.	,, Society.
Soc. Anon.	,, Société Anonyme, etc.
Solr.	,, Solicitor.
Trade Mk.	,, Trade Mark.
Tram. Co.	,, Tramways Company.
U. C.	,, Urban Council.
U. D. C.	,, Urban District Council.
U. S. A.	,, United States of America.
Union Assmt. Com.	,, Union Assessment Committee.
Urban S. A.	,, Urban Sanitary Authority.
V. A. C.	,, Vice-Admiralty Court.
V.-C.	,, Vice-Chancellor.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases are listed chronologically except such as are classified as "Referred to" or "Mentioned." These come at the end and are arranged *inter se* in chronological order. The terms used in classifying the annotating cases are as follows :—

"APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.

"APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.

"CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.

"DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not neces sarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.

"DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.

"EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.

"EXTENDED" (Extd.).—Compare "APPLIED," *supra*.

"FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.

"NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.

"OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.

"REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.

"MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

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Part I.—Who is a Common Carrier.

SECT. 1.—HOW DETERMINED.

1. Question of fact.]—The question whether the liability of a common carrier has been undertaken in a particular case is one of fact & not of law.—TAMVACO *v.* TIMOTHY & GREEN (1882), Cab. & El. 1.

Annotation :—**Consd.** Travers *v.* Cooper, [1915] 1 K. B. 73.

2. By warranty of safety—Liable as common carrier.]—If A. send goods by B. who says "I will warrant they shall go safe," B. is liable for any damage sustained by the goods notwithstanding A. send one of his own servants in B.'s cart to look after them.

Deft. is not a common carrier by trade, but has

Sect. 1.—*How determined. Sects.* 2 & 3.]

put himself in the situation of a common carrier by his particular warranty (CHAMBRE, J.).—ROBINSON *v.* DUNMORE (1801), 2 Bos. & P. 416; 126 E. R. 1359.

Annotations :—**Distd.** Hutchinson *v.* Guion (1858), 4 Jur. N. S. 1149; Bergheim *v.* G. E. Ry. (1878), 3 C. P. D. 221. **Refd.** Butcher *v.* L. & S. W. Ry. (1855), 16 C. B. 13; Talley *v.* G. W. Ry. (1870), L. R. 6 C. P. 44.

3. Notice at booking office—Whether sufficient proof.]—Evidence that at the door of a booking office, there is a board on which is painted, "conveyances to all parts of the world," & a list of names of places, is not sufficient proof that the owner of the office is a common carrier, so as to charge him for the loss of a box which was booked there.—UPSTON *v.* SLARK (1827), 2 C. & P. 598, N. P.

Annotation :—**Distd.** Muschamp *v.* Lancaster & Preston Junction Ry. (1841), 8 M. & W. 421.

4. Carrying on business as a carrier—Furniture remover.]—Deft., a furniture remover, undertook to remove pltf.'s furniture from B. to M. for an agreed price. Before fixing the price, deft. first inspected the furniture. Apart from the fixing of the price there were no other terms expressed with regard to the removal. On the journey a fire broke out, through no fault of deft., in one of the vans & destroyed some of the furniture. Pltf. sued deft. for the loss. It was admitted that deft. was not a common carrier, but it was contended that he was carrying on the public employment of a carrier, & was consequently under the same liability as a common carrier :—*Held* : in the absence of any express agreement that deft. undertook the liability of a common carrier, the admission that he was not a common carrier was sufficient to defeat pltf.'s claim.—WATKINS *v.* COTTELL, [1916] 1 K. B. 10; 85 L. J. K. B. 287; 114 L. T. 333; 32 T. L. R. 91; 60 Sol. Jo. 404, D. C.

Annotation :—**Refd.** Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210.

See, also, Nos. 13, 233, *post.*

5. Carrier of goods—Of all persons—For hire.]—H. undertaking to carry goods of all persons indifferently for hire, is a common carrier, & the goods are privileged against distress.—GISBOURN *v.* HURST (1710), 1 Salk. 249; 91 E. R. 220.

Annotations :—**Consd.** Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210. **Refd.** Watkins *v.* Cottell (1915), 114 L. T. 333. **Mentd.** Gilman *v.* Elton (1821), 3 Brod. & Bing. 75; Thompson *v.* Mashiter (1823), 1 Bing. 283; Matthias *v.* Mesuard (1826), 2 C. & P. 353; Wood *v.* Clarke (1831), 1 Cr. & J. 484; Adams *v.* Grane (1833), 1 Cr. & M. 380; Brown *v.* Shevill (1834), 2 Ad. & El. 138; Muspratt *v.* Gregory (1836), 1 M. & W. 633; Joule *v.* Jackson (1841), 7 M. & W. 450; Clarke *v.* Millwall Dock Co. (1886), 17 Q. B. D. 494.

6. —— Terminus beyond seas.]—(1) One who holds himself out as a carrier of goods between two places one of which is beyond the confines of England, is still subject to the common law liability of a carrier for hire, & is bound to accept all goods which are reasonably tendered to him for conveyance between those limits.

(2) A common carrier has no general right to refuse to receive a parcel tendered to him for conveyance, unless informed of the nature of its contents.

(3) A railway co. acting as common carriers, & bound by statute to deal equally with all persons, cannot make a regulation for the conveyance of goods, which in practice affects one individual only.

(4) The fact that a package is composed of separate parcels, the aggregate amount of the carriage of which, if carried separately, would be greater than will be chargeable for the entire package, & that the person who tenders the package is himself a carrier, & collects such parcels in the way of his business, is no legal ground for refusing to carry it on the same terms as similar packages for other persons.—CROUCH *v.* LONDON & NORTH WESTERN RY. CO. (1854), 14 C. B. 255; 7 Ry. & Can. Cas. 717; 23 L. J. C. P. 73; 22 L. T. O. S. 224; 18 Jur. 148; 2 W. R. 166; 2 C. L. R. 188; 139 E. R. 105.

Annotations :—*As to* (1) **Refd.** Nugent *v.* Smith (1875), 1 C. P. D. 19. *As to* (2) **Refd.** Sutton *v.* G. W. Ry., Sutton *v.* S. E. Ry. (1863), 13 L. T. 221; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94. *As to* (3) **Refd.** Peck *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473.

SECT. 2.—CARRIERS BY LAND.

See, now, Carriers Act, 1830 (c. 68), s. 11 (Railways Act, 1921 (c. 55), s. 56, Sched. VI.).

7. Stage coachman—Of passengers & passengers' luggage.]—A stage coachman is a common carrier within the custom of the realm, & is liable for the loss of goods which the passengers take with them, for he has the charge of both their property & their persons.—LOVETT *v.* HOBBS (1680), 2 Show. 127; 89 E. R. 836.

8. —— 3 Car. 1, c. 1.]—The driver of a stage van travelling to & from London to York is a common carrier within 3 Car. 1, c. 1, & subject to the penalties thereof, for travelling on Sunday.—*Ex p.* MIDDLETON (1824), 3 B. & C. 164; 2 L. J. O. S. K. B. 220; 107 E. R. 695; *sub nom.* R. *v.* MIDDLETON, 4 Dow. & Ry. K. B. 824; 2 Dow. & Ry. M. C. 412.

9. Town-carman—Plying for hire.]—(1) *Semble* : a town carman, whose carts ply for hire near the wharfs, & who lets them by the hour, day, or job, is not a common carrier.

(2) If a person, who is not a common carrier, agree to carry goods for hire, he thereby agrees to make good losses arising from the negligence of his own servants, although (3) he is not liable for any loss by thieves, or (4) from any taking by force,

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PART I. SECT. 1.

a. *Carrying on business as a carrier—Wharfinger.*]—BASTON *v.* DALGETY & CO., LTD. (1905), 7 W. A. L. R. 195.—**AUS.**

5 i. *Carrier of goods—Of all persons—For hire.*]—A common carrier of goods must carry as a public employment & undertake to carry them for all persons indiscriminately, & must hold himself out, either expressly or by conduct, as ready to engage in the transportation of goods for hire as a business & not as a casual occupation.—ROUSSEL *v.* AUMAIS (1901), 20 C. L. T. 445; Q. R. 18 S. C. 474.—**CAN.**

b. —— *The Crown—Whether a common carrier.*]—The Crown accepting goods to be carried may become a common carrier.—ORIENTAL BANK CORPN. *v.* R. (1867), 6 N. S. W. S. C. R. 122.—**AUS.**

c. —— —— —— *Of horses.*]—CHEEKE *v.* RAILWAYS COMR. (1870), 9 N. S. W. S. C. R. 31.—**AUS.**

d. —— —— ——.]—A contract is not created with the Crown because an individual pays statutory slide dues for passing his logs through govt. slides : in such case the Crown is not a common carrier.—R. *v.* MCFARLANE (1882), 7 S. C. R. 216.—**CAN.**

e. —— —— ——.]—LAVOIE *v.* R. (1892), 3 Exch. C. R. 96.—**CAN.**

f. —— —— ——.]—NICHOLLS CHEMICAL CO. *v.* R. (1905), 25 C. L. T. 82; 9 Exch. C. R. 272.—**CAN.**

g. —— —— ——.]—In respect of the govt. bullock train, Govt. must be regarded as an ordinary bailee for hire, & not as a common carrier.—BAREILLY POSTMASTER *v.* EARLE (1871), 3 N. W. 195.—**IND.**

h. —— —— —— *In absence of contract or statute.*]—The Crown in its operation of the intercolonial railway is not a common carrier in the absence of an express or implied contract or statute.—WILLIAMS *v.* GOVERNMENT RAILWAY MANAGING BOARD (1911), 11 E. L. R. 10.—**CAN.**

See, further, CONSTITUTIONAL LAW, CROWN PRACTICE.

PART I. SECT. 2.

7 i. *Stage coachman—Of passengers & passengers' luggage.*]—A proprietor of a stage-coach is a common carrier of a passenger's personal luggage carried

or (5) if the owner accompanies the goods to take care of them, & was himself guilty of negligence.

(6) If goods be delivered to A., under a contract that the owner should go with them, & take care of them, that is not a delivery of the goods to A., as a common carrier.—BRIND *v.* DALE (1837), 8 C. & P. 207; 2 Mood. & R. 80, N. P.

Annotations :—As to (1) **Consd.** Liver Alkali Co. *v.* Johnson (1874), L. R. 9 Exch. 338; Chattock *v.* Bellamy (1895), 64 L. J. Q. B. 250. **Refd.** Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210.

Cab proprietor.]—*See* Part VI., Sect. 3, subsect. 1, *post*.

10. Collecting agent—Goods forwarded by rail—Method of charge.]—Defts. collected goods in W., & sent them by railway to their destination, sometimes receiving the whole cost of carriage, at other times receiving only the charge for conveyance to the station. In this case the goods were sent to E., & defts. received the whole charge for conveyance :—*Held :* defts. must be considered as common carriers.—HELLABY *v.* WEAVER (1851), 17 L. T. O. S. 271.

11. Forwarding agent—Contract made in Germany.]—A contract having been made in Germany to carry certain goods to this country the consignees here sued the carriers for damage to them *in transitu*. It having been proved that defts., having only acted as forwarding agents, were by German law not liable as common carriers, pltfs. were non-suited :—*Held :* pltfs. could not recover, as the contract was governed by German law.—DE CLERMONT *v.* BRASCH (1885), 2 T. L. R. 116, D. C.

See, also, Part II., *post, & further*, CONFLICT OF LAWS.

12. Furniture remover—Special contract—Liability limited.]—SCAIFE *v.* FARRANT, No. 233, *post*.

13. —— Not holding out to carry for all persons indifferently—On reasonable terms.]—A carman & furniture remover, who is prepared to enter into contracts for the carrying & removal of furniture, but who does not hold himself out to carry furniture for anybody who may bring it to him, on any reasonable terms that may be offered, is not a common carrier & has no lien for his charges on goods he has carried or removed for a third party against the true owner of the goods.—ELECTRIC SUPPLY STORES *v.* GAYWOOD (1909), 100 L. T. 855.

Annotation :—**Refd.** Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210.

See, also, No. 4, *ante*.

14. Corporation tramway—Of passengers.]—A municipal corpn. owned a tramway constructed under statutory powers. In accordance with a statutory requirement they exhibited in a conspicuous place in their tramcars a list of the fares to be exacted, & they appended thereto a special notice to passengers stating, as the fact was, that the fares charged were less than the maximum authorised charges, & that in consideration thereof a passenger was only carried on the terms that the maximum amount recoverable from the corpn. on account of any injury suffered by a passenger & for which the corpn. were legally liable was £25 :—*Held :* (1) so long as the tramway was open for public traffic, the corpn. were bound to carry any passenger, not being an objectionable person, who offered himself & was willing to pay the published fare, provided they had accommodation for him; (2) they were not entitled to impose a condition limiting their liability for negligence without giving the passenger the option of travelling at a higher fare without any such condition; either (3) upon the construction of the statutes regulating the tramway (COZENS-HARDY, M.R., & KENNEDY, L.J.), or (4) upon the ground that the corpn. were common carriers of passengers at common law in the sense that they were bound to carry according to their profession (FARWELL & KENNEDY, L. JJ.).

(5) *Semble :* if the corpn. published alternative lists of fares, one containing the maximum rates, & the other containing reduced rates, & gave an option to the passenger to pay either the full rate without any condition limiting their liability or the reduced rate with such a condition, a passenger electing to pay the smaller rate would be bound by the condition (COZENS-HARDY, M.R., & FARWELL, L.J.).—CLARKE *v.* WEST HAM CORPN., [1909] 2 K. B. 858; 79 L. J. K. B. 56; 101 L. T. 481; 73 J. P. 461; 25 T. L. R. 805; 53 Sol. Jo. 731; 7 L. G. R. 1118, C. A.

Annotation :—As to (4) **Refd.** Baker *v.* Ellison, [1914] 2 K. B. 762.

See, further, Part V., Sect. 1, *post*.

15. Haulage contractor—No general offer of carriage.]—Deft. described his business as that of an automobile engineer & haulage contractor. He owned two lorries intended for sale. With these & others which he hired when necessary he carried sugar from L. to M. At M. he invited offers of goods of all kinds except machinery, for carriage to L. & other places at charges varying with the state of his business. These offers he accepted or rejected according as the rate, route, & class of goods were or were not satisfactory. Deft. through an agent made a contract with pltfs. to carry certain hemp belonging to them from M. to L. In the course of the transit the hemp was damaged by fire without negligence of deft. :—*Held :* inasmuch as he reserved to himself the right of accepting or rejecting offers of goods for carriage from M. to L. he was not a common carrier of such goods & consequently not liable.—BELFAST ROPEWORK CO. *v.* BUSHELL, [1918] 1 K. B. 210; 87 L. J. K. B. 740; 118 L. T. 310; 34 T. L. R. 156.

See, also, No. 27, *post*.

Railway company.]—*See* Sect. 3, *post*.

SECT. 3.—RAILWAY COMPANIES.

16. General rule—No statutory obligation.]—Railway cos. are under no statutory obligation to be common carriers. The statutes affecting such cos. give them certain rights & impose on them certain duties as carriers. They may be common carriers if they choose, & if they profess to act as such. Even where railway cos. have acted as common carriers they have a right to cease to be common carriers at any time.—SMITH & SONS *v.* LONDON & NORTH WESTERN RY. (1918), 88 L. J. K. B. 742; 120 L. T. 273; 35 T. L. R. 99.

17. —— Goods.]—Railway Clauses Consolidation Act, 1845 (c. 20), s. 86, is permissive only, & a railway co. who under it elect to carry goods,

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in the coach with him.—KENT *v.* PETRINE (1914), 28 W. L. R. 542; 6 W. W. R. 1111.—**CAN.**

i. *Expressman — Duly licensed — Carrying goods for hire.*]—CULVER *v.* LESTER, 21 O. L. T. Occ. N. 295.—**CAN.**

k. *Express company—Incorporated by special Act of Dominion of Canada,* 1875 (*c.* 115).]—GRAHAM & STRANG *v.* DOMINION EXPRESS CO. (1920), 48 O. L. R. 83; 18 O. W. N. 355.—**CAN.**

PART I. SECT. 3.

16 i. *General rule—No statutory limitation.*]—Where its powers are not limited by statute a ry. co. holds itself out as a carrier of all descriptions of property, capable of being reasonably & conveniently transported over rails by a locomotive engine, to the extent to which it has the means of accommodation for such traffic.—GREENE *v.* ST. JOHN & MAINE RY. CO. (1882), 22 N. B. R. 252.—**CAN.**

l. *Of military clothing.*]—On the facts :—*Held :* defts. were common

Sect. 3.—Railway companies. Sect. 4.]

are subject to no greater liability than attaches to carriers at common law.

Such co. are not bound to carry every description of goods & between all places on their line, but only such goods, & to & from such places, as they have publicly professed to do, & have convenience for that purpose.—JOHNSON *v.* MIDLAND RY. CO. (1849), 4 Exch. 367 ; 6 Ry. & Can. Cas. 61 ; 18 L. J. Ex. 366 ; 13 L. T. O. S. 305 ; 154 E. R. 1254.

Annotations :—**Distd.** Carr *v.* L. & Y. Ry. (1852), 7 Exch. 707. **Consd.** Hearn *v.* L. & S. W. Ry. (1855), 10 Exch. 793. **Folld.** Oxlade *v.* N. E. Ry. (1864), 15 C. B. N. S. 680. **Consd.** Dickson *v.* G. N. Ry. (1886), 18 Q. B. D. 176. **Refd.** R. *v.* Gibbs (1855), Dears. C. C. 445 ; Phillips *v.* Edwards (1858), 3 H. & N. 813 ; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327 ; Harrison *v.* L. B. & S. C. Ry. (1862), 2 B. & S. 152 ; Hales *v.* L. & N. W. Ry. (1863), 4 B. & S. 66 ; R. *v.* L. & N. W. Ry. (1863), 8 L. T. 421 ; Alton *v.* Mid. Ry. (1865), 19 C. B. N. S. 213 ; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858 ; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94. **Mentd.** West *v.* L. & N. W. Ry. (1870), L. R. 5 C. P. 622.

18. —— Passengers—Dogs.]—A condition, contained in a ticket signed by a person delivering a dog for carriage to a railway co., stated that " the co. are not & will not be common carriers of dogs, nor will they receive dogs for conveyance except on the terms that they shall not be responsible for any amount of damages for the loss thereof, or for injury thereto beyond the sum of £2 unless a higher value be declared at the time of delivery to the co. & a percentage of 5 per cent. paid upon the excess of value beyond the £2 so declared " :—*Held :* although the co. were not bound to be common carriers of dogs, yet, being bound by Railway & Canal Traffic Act, 1854 (c. 31), to afford reasonable facilities for the carriage of dogs, they could only limit their liability in respect thereof by reasonable conditions, & the above-mentioned condition was not just & reasonable within sect. 7 of the Act, & therefore did not protect the co. from liability to an amount exceeding £2 in respect of damage done to the dog through the negligence of their servants.

It would be a mistake to suppose that railway cos. are bound to carry as common carriers everything whch they can be required to carry under the provisions of Railway & Canal Traffic Act. Railway cos. are bound by that Act to provide reasonable facilities for carrying passengers, but they are not common carriers of passengers (LINDLEY, L.J.).—DICKSON *v.* GREAT NORTHERN RY. CO. (1886), 18 Q. B. D. 176 ; 56 L. J. Q. B. 111 ; 55 L. T. 868 ; 51 J. P. 388 ; 35 W. R. 202 ; 3 T. L. R. 200, C. A.

Annotations :—**Consd.** Winsford L. B. *v.* Cheshire Lines Committee (1890), 24 Q. B. D. 456. **Distd.** Darlaston L. B. *v.* L. & N. W. Ry., [1894] 2 Q. B. 694. **Consd.** Williams *v.* Mid. Ry., [1908] 1 K. B. 252. **Refd.** Glamorganshire County Council *v.* G. W. Ry. (1894), 8 Ry. & Can. Tr. Cas. 196 ; Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478.

—— —— .]—*See, generally,* Part V., *post.*

—— **Passenger's luggage.**]—*See* Part VI., Sect. 3, *post.*

—— **Animals.**]—*See* Part VII., *post.*

19. Coal.]—(1) A railway co., in order to prevent the obstruction of their railway, which would be caused by an unlimited coal traffic, ascertained the probable consumption of coal in the neighbourhood of each of their stations, & the sort required, & made arrangements with the collieries supplying the particular sort of coal for the requisite supply ; they appointed depot agents to manage the sale of the coal, who from time to time ordered the quantity wanted from the collieries, & caused the number of waggons wanted for the carriage to be sent up. All the depots were in the hands of these agents, who accounted to the collieries for the proceeds of the sale. No coal merchant was dealt with in this way, but only coalowners ; but each dealer was treated alike, & as one of the public. On a motion by a coal merchant to enjoin the co. to afford to him the same facilities for receiving and forwarding his coals as to those who consigned their coals to the co. :—*Held :* the arrangements of the co. were proper, & not such as gave or caused any unreasonable preference or disadvantage ; & the injunction was refused.

(2) When the rule was first before the ct. it was considered that (the coal merchant) had no right to call upon the co. to carry all coals & coke that he might offer for that purpose ; & since then an opinion has been expressed by the Ct. of Exch., in an action between these very parties that the co. are not common carriers of coal ; thus confirming our view of the claim in question (*per* CUR.).—*Re* OXLADE *v.* NORTH EASTERN RY. CO. (1857), No. 974, *post.*

20. —— Evidence of.]—Where a railway co. posted up in a particular station a list of tolls, including those taken for coals :—*Held :* this was not sufficient evidence of their holding themselves out to the public as common carriers of coal from that station.—OXLADE *v.* NORTH EASTERN RY. CO. (1861), 3 L. T. 671 ; 9 W. R. 272.

See, also, No. 51, *post.*

SECT. 4.—CARRIERS BY WATER.

See, now, Carriers Act, 1830 (c. 68), s. 11 (Railways Act, 1921 (c. 55), s. 56, Sched. VI.).

21. Shipowner—Trading ship.]—In an action against the owner of a ship for non-delivery to the consignee of gold shipped from Portugal :—*Held :* (1) the fact that the export of gold is forbidden by the law of Portugal could not alter the right of an English subject, unless there had been a particular determination in his case ; (2) a usage in such trade for the master & not the owner, to be entitled to the freight, would not prevent the owner being liable on the bill of lading ; (3) where there is a trading ship concerned in a voyage, it must be considered in the nature of a common carrier.—BOUCHER *v.* LAWSON (1736), Cunn. 144 ; Lee *temp.* Hard. 85, 194 ; 95 E. R. 53, 125.

Annotations :—**Mentd.** Yates *v.* Hall (1785), 1 Term Rep. 73 ; Ashmall *v.* Wood (1857), 30 L. T. O. S. 20 ; Jackson *v.* The Blanche, [1908] A. C. 126.

See, further, Part III., Sect. 7, sub-sect. 6, *post ;* CONFLICT OF LAWS.

22. —— General ship.]—The owner of a general ship is subject to the same responsibility for loss or damage of goods as a common carrier.

By the terms of a bill of lading containing the usual exceptions, the owner undertook absolutely to deliver goods shipped on board his vessel :—*Held :* he was not excused by reason of the goods having been damaged by rats, notwithstanding he had kept cats on board, such damage not being within any of the exceptions in the bill of lading.—LAVERONI *v.* DRURY (1852), 8 Exch. 166 ; 22 L. J. Ex. 2 ; 16 Jur. 1024 ; 1 W. R. 55 ; 155 E. R. 1304.

Annotations :—**Consd.** Hamilton, Fraser *v.* Pandorf (1887),

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carriers of military clothing shipped on instructions of an Ordnance officer by defts.' railway.—R. *v.* CANADIAN PACIFIC RY. CO. (1912), 21 W. L. R. 709 ; 2 W. W. R. 627 ; 5 D. L. R. 176. **CAN.**

m. *Of private waggons.*]—When a ry. co. undertakes to haul waggons belonging to private traders, its liability is not that of a common carrier & the extent of its obligation is to use reasonable care & diligence.—WATSON *v.* NORTH BRITISH RY. CO. (1876), 3 R. (Ct. of Sess.) 637.—**SCOT.**

12 App. Cas. 518. **Refd.** Kay *v.* Wheeler (1867), L. R. 2 C. P. 302; Nugent *v.* Smith (1875), 1 C. P. D. 19; The Chasca (1875), 32 L. T. 838. **Mentd.** Carstairs *v.* Taylor (1871), L. R. 6 Exch. 217.

23. —— Whether all shipowners.]—NUGENT *v.* SMITH, No. 88, *post.*

24. —— Goods shipped without bill of lading—Insured by shipowner.]—Pltf., a wool merchant at B., bought wool in L. & handed a delivery order to deft., who shipped the wool on board his steamer in L., carried it by sea to G., & forwarded it thence by rail to B., charging pltf. a through rate of £1 7*s.* 6*d.* per ton, which covered all expenses of the transit from L. to B., including insurance. The insurance was effected by deft., who selected the underwriters & paid the premium, after receiving directions from pltf. as to the amount per bale for which he was to insure. Pltf. did not receive possession of the policy; on previous occasions, when losses had occurred, deft. had received payment from the underwriters, & had settled with pltf. The wool was shipped without a bill of lading. In cases where pltf. imported wool, he insured it for the whole transit, & deft. charged only £1 5*s.* 9*d.* per ton for its conveyance from L. to B.:—*Held:* deft. had insured the wool, not as agent for pltf. but to cover his own liability of carrier, & had undertaken a liability equal to that of a common carrier, & had not, either expressly or impliedly, stipulated for any limitation of his liability, & was liable without proof of negligence.—HILL *v.* SCOTT, [1895] 2 Q. B. 713; 65 L. J. Q. B. 87; 73 L. T. 458; 12 T. L. R. 58; 8 Asp. M. L. C. 109; 1 Com. Cas. 200, C. A.

Annotations:—**Distd.** Consolidated Tea & Lands Co. *v.* Oliver's Wharf, [1910] 2 K. B. 395. **Refd.** Lynch *v.* Edwards & Fase (1921), 90 L. J. K. B. 506.

See, generally, SHIPPING & NAVIGATION.

25. Shipping agent—Distinguished from shipowner.]—Pltf. was a merchant & deft. was a shipping agent. Pltf. sent deft. two cases of goods with instructions to forward them to the address of certain customers of his at S. & V. Deft. caused them to be delivered to the agent of a steam navigation co. for carriage & delivery to those addresses, taking from him bills of lading signed by him made out to deft., as shipper, but for delivery to pltf.'s customer abroad. There was a mistake in the delivery, the goods intended for the one being delivered to the other, & both packages were refused & returned. Pltf. brought action against deft. as a carrier, on a bailment of goods to be safely & securely carried & delivered:—*Held:* the action was misconceived. Deft. was charged as carrier on a duty to carry & deliver, but his employment was as a shipping agent to forward, that is, to cause to be carried & delivered by carriers. The duties of shipping agent & shipowner are different & distinct.—PLATZHOFF *v.* LEBEAN (1865), 4 F. & F. 545, N. P.

26. Wharfinger—Carriage incidental to business—From wharf to ship.]—(1) The liability of a wharfinger who undertakes to convey goods from his wharf to the vessel in his own lighters is similar to that of a carrier.

(2) Notice to the vendor of goods that the carrier by whom he sends them, limits his responsibility, is equivalent to notice to the vendee who directs them to be sent.

(3) A carrier may not only limit, but exclude all responsibility by notice.—MAVING *v.* TODD (1815), 1 Stark. 72; 4 Camp. 225, N. P.

Annotations:—*As to* (1) **Distd.** Chattock *v.* Bellamy (1895), 64 L. J. Q. B. 250. **Dbtd.** Consolidated Tea & Lands Co. *v.* Oliver's Wharf, [1910] 2 K. B. 395. **Refd.** Liver Alkali Co. *v.* Johnson (1872), L. R. 7 Exch. 267.

27. —— —— For customers only.]—Wharfingers, who described themselves as wharfingers, lightermen, & carmen, carried goods from their wharf for their own wharf customers, but not for strangers unless at arranged prices, & not then unless they considered the business good:—*Held:* they were wharfingers & not carriers, &, if carriers, not common carriers.—CHATTOCK & CO. *v.* BELLAMY & CO. (1895), 64 L. J. Q. B. 250; 15 R. 340.

Annotations:—**Distd.** Travers *v.* Cooper, [1915] 1 K. B. 73. **Refd.** Consolidated Tea & Lands Co. *v.* Oliver's Wharf, [1910] 2 K. B. 395.

See, also, No. 15, *ante.*

28. —— —— ——.]—Wharfingers who, as incidental to their business as wharfingers, transport goods for their customers by lighter from the importing ships to their warehouse, but do not hold themselves out as ready to carry goods for any other persons, are not in respect of that transport subject to the common law liability of common carriers, but are liable only for negligence.—CONSOLIDATED TEA & LANDS CO. *v.* OLIVER'S WHARF, [1910] 2 K. B. 395; 79 L. J. K. B. 810; 102 L. T. 648; 26 T. L. R. 388; 54 Sol. Jo. 506; 15 Com. Cas. 212.

Annotation:—**Consd.** Travers *v.* Cooper, [1915] 1 K. B. 73.

29. —— Goods received as agents—Admissibility of parol evidence.]—Pltfs. requested defts., wharfingers & lightermen in L., to quote a through rate for carriage of machinery from L. to C., & handed to them a specification of the machinery in writing headed, "Approximate specification of the parts, pieces & contents of ironwork for transit to C." Defts., in reply, sent to pltfs. the following written quotation:—"From L. to C. Cylinders & castings 33*s.* 4*d.* per ton (12*s.* 6*d.* per ton extra for pieces over 2½ tons each, & we require twenty-four hours' notice of intended shipment, provided we can get ship alongside British & Foreign Wharf to load). Pilotage 21*s.* At owner's risk. Includes collection within three miles & delivery at other side. Includes freight & wharfage at both ends." Pltfs. paid the through rate to defts., & delivered the machinery to them. In an action to recover damages for injury caused to the machinery whilst on board a steamer in the course of the transit to C.:—*Held:* there was no concluded contract in writing between pltfs. & defts., & parol evidence was admissible to prove that defts. received the goods as wharfingers only, & acted in the carriage of the goods as agents only, & not as carriers, & they were not answerable for any damage after the goods were placed on board ship.—PONTIFEX & WOOD, LTD. *v.* HARTLEY & CO. (1893), 62 L. J. Q. B. 196; 9 T. L. R. 184; 4 R. 245, C. A.

30. Lighterman—Carriage for all persons indifferently.]—If a person holds himself out to carry goods for everyone as a business, & he thus carries from the wharves to the ships in harbour, he is a common carrier. The criterion is, whether he carries for particular persons only, or whether he carries for everyone. If he holds himself out to do it for everyone who asks him, he is a common carrier, but if he carries for particular persons only, that is matter of special contract.—INGATE *v.* CHRISTIE (1850), 3 Car. & Kir. 61, N. P.

Annotations:—**Distd.** Chattock *v.* Bellamy (1895), 64 L. J. Q. B. 250. **Refd.** Liver Alkali Co. *v.* Johnson (1874), L. R. 9 Exch. 338; Consolidated Tea & Lands Co. *v.* Oliver's Wharf, [1910] 2 K. B. 395; Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210.

31. —— —— No obligation.]—A person who

PART I. SECT. 4.

23 i. *Shipowner—Whether all shipowners.*]—Owners of ships which are engaged as general traders are common carriers, equally with those whose vessels only carry goods between certain places.—HEARLE *v.* ROSS (1857), 15 U. C. R. 259.—**CAN.**

n. —— *Carrying goods for hire—Application of common law.*]—KUMBER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD. (1913), I. L. R. 38 Mad. 941.—**IND.**

Sect. 4.—Carriers by water. Part II.]

exercises the ordinary employment of a lighterman by carrying goods in his flats for reward, although he may not be bound as a common carrier to receive the goods of all comers indifferently, nevertheless incurs the liability of a common carrier for the safety of goods carried by him.—LIVER ALKALI CO. *v.* JOHNSON (1874), L. R. 9 Exch. 338 ; 43 L. J. Ex. 216 ; 31 L. T. 95 ; 2 Asp. M. L. C. 332, Ex. Ch.

Annotations :—**Distd** Scaife *v.* Farrant (1875), L. R. 10 Exch. 358. **Consd.** Nugent *v.* Smith (1876), 1 C. P. D. 423. **Distd.** Chattock *v.* Bellamy (1895), 64 L. J. Q. B. 250. **Apld.** Hill *v.* Scott, [1895] 2 Q. B. 371. **Distd.** Consolidated Tea & Lands Co. *v.* Oliver's Wharf, [1910] 2 K. B. 395. **Consd.** Watkins *v.* Cottell, [1916] 1 K. B. 10. **Refd.** Kopitoff *v.* Wilson (1876), 1 Q. B. D. 377 ; Travers *v.* Cooper, [1915] 1 K. B. 73 ; Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210. **Mentd.** The West Cook (1911), 80 L. J. P. 97.

32. —— Absence of special contract.]—(1) Pltfs. agreed verbally with deft. that he should lighter pltfs.' goods from L. to steamers in the Thames, at a low rate of freight. No express contract was made as to the terms of carriage, but it was known to both parties that pltfs. intended to insure the goods, & they were in fact, insured by a policy expressed to be " without recourse to lightermen." It is a common practice for lightermen on the Thames to contract on the terms that they shall not be liable for any insurable risks, or that they shall only be liable for the negligence of themselves or their servants :—*Held :* the contract between the pltfs. & the deft. was subject to an implied condition that the deft. should not be liable for any damage to the goods caused by risks which could be insured against.

It cannot be doubted that, if there were no special contract between the lighterman & his employer, the lighterman took upon himself all the onerous liabilities of a common carrier (MATHEW, J.).

(2) A barge was left for the night properly moored at a private wharf in the Lea Cut, but without a watchman ; she was not leaking & was exposed to no obvious danger :—*Held :* the fact of the barge being left unattended did not constitute negligence.—THOMAS & CO. *v.* BROWN (1899), 4 Com. Cas. 186.

Annotation :—*As to* (1) **Refd.** Consolidated Tea & Lands Co. *v.* Oliver's Bonded Wharf & Proprietors (1910), 79 L. J. K. B. 810.

See, also, Nos. 26, 29, *ante ;* Nos. 80, 86, 230, 231, 265–267, *post.*

33. Ferryman.]—SOUTHCOTE'S CASE, No. 96, *post.*

34. ——.]—WALKER *v.* JACKSON, No. 130, *post.*

35. Hoyman.]—DALE *v.* HALL, No. 89, *post.*

See, also, No. 177, *post.*

Terminus beyond seas.]—*See* No. 6, *ante.*

See, also, No. 62, *post.*

Part II.—Private Carriers and Forwarding Agents.

36. Carrier for hire—Liable for non-performance.]—If a man undertake to carry the goods of another to a certain place for hire, & he neglect so to do, an action on the case lies against him, although he is not a common carrier.—ROGERS *v.* HEAD (1610), Cro. Jac. 262 ; 79 E. R. 226.

Annotations :—**Refd.** Boson *v.* Sandford (1689), 1 Show. 29, 101. **Mentd.** Courtenay *v.* Earle (1850), 10 C. B. 73.

37. —— Liable for negligence.]—A porter removing goods is not liable for accidents unless he has been guilty of negligence. He is not obliged to put a person at the head of his horse while he removes goods from his cart.—HAYMAN *v.* HEWITT (1798), Peake, Add. Cas. 170, N. P.

38. —— —— Of servants.]—BRIND *v.* DALE, No. 9, *ante.*

39. —— Liability for loss—Master of King's ship.]—The master of a store-ship in the King's service took in the bullion of a private merchant on freight from G. to W. :—*Held :* an action lay against him for the loss of the bullion.—HATCHWELL *v.* COOKE (1816), 6 Taunt. 577 ; 2 Marsh. 293 ; 128 E. R. 1159.

—— Right of action against employer—For damage to horses.]—*See* No. 1431, *post.*

40. Carrier not for hire—Liable for negligence.]—COGGS *v.* BERNARD, No. 85, *post.*

See, further, BAILMENT, Vol. III., p. 68.

41. ——.]—A coachman is not liable for the loss of goods for the carriage of which he is not paid, otherwise if he is paid.—UPSHARE *v.* AIDEE (1697), 1 Com. 25 ; 92 E. R. 940, N. P.

Annotation :—**Consd.** Cohen *v.* S. E. Ry. (1877), 2 Ex. D. 253.

42. —— Duty to take care—Liability for intermeddling.]—(1) The captain of a vessel who carries the goods of another, though not for hire, is bound to take prudent care of them. (2) If he intermeddle with the chest of a seaman who has been casually left behind, he is bound to restore it to its former state of security, particularly if the contents be valuable.—NELSON *v.* MACINTOSH (1816), 1 Stark. 237, N. P.

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33 i. *Ferryman.*]—The proprietor of a ferry boat is a common carrier.—ROBERT *v.* LAURIN (1882), 2 L. C. J. 378.—**CAN.**

PART II.

38 i. *Carrier for hire—Liable for negligence—Of servant.*]—Furniture was delivered to deft. for carriage by road in vans. A fire broke out in one of them, & its contents were destroyed. In an action to recover the value of the furniture destroyed :—*Held :* as deft. did not prove that the fire did not arise from want of due care on the part of the driver, pltf. was entitled to judgment.—FAIRBAIRN *v.* MILLER, [1918] V. L. R. 615.—**AUS.**

o. —— *Engaging to carry goods.*]—A person engaging to transport goods for hire is not, by virtue of such engagement merely, a common carrier.—BENEDICT *v.* ARTHUR (1849), 6 U. C. R. 204.—**CAN.**

p. —— *Whether liable as insurer.*]—A lumberman agreeing to carry lumber for hire at the request of the owner thereof, does not render himself bound to carry safe at all risks, the act of God or the Queen's enemies excepted.—*Re* COOMBE, COCKBURN & CAMPBELL (1877), 24 Gr. 519.—**CAN.**

q. —— *Measure of diligence.*]—Deft. owned a small ferry. He was engaged in other occupations, & his boat, which had no railing or other protection, made no regular trips ; but, whenever persons asked to be taken across, deft. left his other work, rowed them across, & charged for so doing. Pltf. was being rowed across, with two horses aboard, which he himself had embarked, under deft.'s instructions. In the middle of the stream one horse became frightened, jumped into the water & was drowned :—*Held :* deft. was under no obligation to provide a safer boat ; &, as pltf. had elected to take the risk & to remain in charge of his own animals while crossing, was not liable for negligence as a private carrier.—ROUSSEL *v.* AUMAIS (1901), 20 C. L. T. 445 ; Q. R. 18 S. C. 474.—**CAN.**

r. *Carrier not for hire — Measure of diligence.*]—Defts.' tug was hired by a steamship co. to land passengers & luggage from one of their vessels. At the request of the officer of the steamer the master of the tug received two cases of feathers, consigned to pltf., to take on shore with the passengers & luggage. One case was, through negligence of defts.' servants, dropped into the water & damaged :—*Held :* in accepting the feathers on board the tug defts. could not be regarded as common carriers, but they undertook a duty to use ordinary care & skill in the conveyance.—SCIAMA & CO. *v.* TABLE BAY HARBOUR BOARD (1900), 17 S. C. 121.—**S. AF.**

43. —— —— Liability to invitee.]—Pltf., a decorator & gardener in the service of deft., sued him for negligence in conveying him to perform for him certain work. Deft. drove, & while on the road the kingbolt of the carriage broke, the horses bolted, the carriage was overturned, & pltf. was injured. There was no evidence of gross neglect on the part of deft.:—*Held:* (1) in the absence of any evidence of gross negligence on the part of deft., pltf. was not entitled to recover damages; (2) the evidence did not disclose such negligence as to render deft., performing a gratuitous service for pltf., responsible.—MOFFATT *v.* BATEMAN (1869), L. R. 3 P. C. 115; 6 Moo. P. C. C. N. S. 369; 22 L. T. 140; 34 J. P. 275; 16 E. R. 765, P. C.

Annotation:—Generally **Distd.** Coughlin *v.* Gillison, [1899] 1 Q. B. 145.

44. —— —— Liability to licensee.]—Deft., a contractor for making a tunnel for a tube railway, had constructed, for the purpose of carrying out the work, a temporary line on which an electric engine ran. This engine was used to draw trucks containing the excavated material to a spot where it could be brought to the surface. It was not fitted for passengers, & deft. had directed that no one should be allowed to ride on it but the driver & a guard. It had, however, been used to carry officials in the employment of deft. and of the railway co., with the knowledge & concurrence of deft.'s representative. Pltf. was an inspector of works appointed by the engineer of the railway, & he accepted from deft.'s timekeeper, who was riding on the engine, an invitation to be conveyed by it to his destination. An accident happened while pltf. was on the engine, & he sustained injuries. In an action to recover damages from deft. in respect of these injuries, the jury found that pltf. was on the engine for his own convenience, but with the permission of deft.'s representative, & that the accident was due to the negligence of deft.'s servants:—*Held:* (1) deft. must be taken, through his representative, to have permitted pltf. to ride on the engine; (2) his liability was that of a person who undertakes the carriage of another gratuitously; (3) the duty in such a case is that the care exercised must be reasonable in the circumstances; (4) there was evidence of such a failure of due care on the part of deft.'s servants as would make him responsible for damages arising therefrom; & pltf. was entitled to judgment.—HARRIS *v.* PERRY & Co., [1903] 2 K. B. 219; 72 L. J. K. B. 725; 89 L. T. 174; 19 T. L. R. 537, C. A.

Annotations:—As to (1) **Refd.** Grand Trunk Ry. of Canada *v.* Barnett, [1911] A. C. 361. *As to* (3) **Consd.** Shrimpton *v.* Hertfordshire County Council (1910), 74 J. P. 305. **Foll.** Karavias *v.* Callinicos, [1917] W. N. 323. *Generally* **Refd.** Lyles *v.* Southend-on-Sea Corpn., [1905] 2 K. B. 1; Coldrick *v.* Partridge, Jones (1908), 24 T. L. R. 646.

See, further, NEGLIGENCE.

45. Forwarding agent—Whether liable for loss.]—Pltf. employed defts., shipping & forwarding agents, to forward certain goods from L. to a French port, & thence by passenger train to Y. It was part of the contract that defts. should have the goods insured. Defts. duly insured the goods, and duly shipped them to the port of C., where they were landed. Being subject to duty, the goods were discharged into the custody of the customs authorities at that port. While the goods were thus in the custody of the customs authorities, & before they were put on rail to be carried to their ultimate destination, two parcels of the goods were lost. The underwriters were not satisfied with the evidence of the loss, & refused to pay. Pltf. thereupon sued the forwarding agents for damages for negligence in not preventing the loss of the goods, & not securing an effective insurance on them:—*Held:* as defts. had made the usual & proper arrangements with steamships & railways for the carriage of the goods to their destination, & had also made proper arrangements with the underwriters for the insurance of the goods during transit, they were not liable for the loss of the goods in the circumstances.—JONES *v.* EUROPEAN & GENERAL EXPRESS CO. (1920), 90 L. J. K. B. 159; 124 L. T. 276; 15 Asp. M. L. C. 138; 25 Com. Cas. 296.

Annotation:—**Refd.** Troy *v.* Eastern Co. of Warehouses, Insce. & Transport of Goods of Petrograd (1921), 90 L. J. K. B. 565.

46. —— —— By pilferage—Custom of Port of London.] — Pltfs. employed defts., who were shipping & forwarding agents, in Oct. 1919, to collect & carry a quantity of goods, including tin, from certain wharves where they were lying to a ship on the Thames. Defts. were not lightermen, having wharves & barges of their own, & nothing was said about the terms on which the lighterage was to be done, except that defts. were to be paid a flat rate for their services. Defts. employed carters to cart the goods from the wharves where the goods were lying to a wharf in respect of which they had an arrangement to use, & which they described in their correspondence with pltfs. as "our wharf." They then employed a firm of lightermen to lighter the goods from the wharf to the ship in the river. Owing to the watchman's negligence a quantity of the tin was stolen. Pltfs. claimed to recover the value of the stolen goods. Defts. relied on a custom that all contracts for lightering goods in the Port of London were subject to the terms of the London lighterage clause, which exempted lightermen from liability for any loss in any circumstances whatever, howsoever, whensoever any such loss might be caused, & whether caused by negligence or the wrongful act or default of the servants or agents of the lightermen, or other persons for whose acts the lightermen would otherwise be liable. The transaction was of a casual nature, & defts. did not act strictly as shipping agents but were contractors to employ carriers at a rate which included

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45 i. *Forwarding agent—Whether liable for loss.*]—Defts. were accustomed to board steamers to secure contracts from passengers to carry their effects ashore, & thence, by themselves or by other persons on their behalf, to their destinations. Pltf. engaged defts. to take luggage ashore for him & to deliver it at an address given. Pltf. was not aware, nor did defts. inform him, that before they would be able to deliver the luggage, it would necessarily be handed to the Harbour Authorities. Pltf. therefore left the ship without taking steps to safeguard custody of the luggage. Portion of the goods was lost when defts. commenced delivery:—*Held:* (1) defts. were not liable as insurers; (2) they were, as bailees, liable for the loss of the goods owing to their negligence in having failed to warn pltf. of the practice as to landing goods.—O'NEILL *v.* MCCORMACK & CO. (1913), 15 W. A. L. R. 33.—**AUS.**

45 ii. —— ——.]—NEW ZEALAND EXPRESS CO., LTD. *v.* MINAHAN (1916), 35 N. Z. L. R. 816.—**N.Z.**

45 iii. —— —— *Arising from Act of God.*]—SMITH *v.* WHITING (1834), 3 O. S. 597.—**CAN.**

a. —— *Whether liable for negligent storage.*] — Deft. received cement in good order from a railway for consignment by road to pltf. Owing to pltf., the cement remained in deft.'s care some seven weeks, & finally arrived damaged owing to inadequate protection from the weather while in deft.'s custody. Deft. made no charge for storage, which was merely incidental to the business of forwarding:—*Held:* deft. was liable in damages.—LARTER *v.* DALY (1914), E. D. L. 23.—**S. AF.**

b. —— *Not following instructions.*] —It is no defence for a forwarder deviating from his instructions as to the route, that after the deviation he told pltf.'s agent he had done so, & no objection was made by the agent. *Aliter,* if he told the agent of his intention before the deviation, & could show that the agent had discretion in the matter.—FOWLER *v.* HOOKER (1847), 4 U. C. R. 18.—**CAN.**

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their own remuneration:—*Held:* no express terms with regard to lighterage having been arranged, defts. must be taken to have been employed on the usual terms, & they were exempt from liability for loss by pilferage, & pltfs. could not recover.—LYNCH BROTHERS, LTD. *v.* EDWARDS & FASE (1921), 90 L. J. K. B. 506; 125 L. T. 187; 37 T. L. R. 432.

See, also, Nos. 230, 231, *post.*

47. —— Whether liable to refund part of remuneration—On variation of contract by consignee.]—A consignor employed a firm of forwarding agents to arrange for the conveyance of goods from L. to P. *viâ* V., & he paid to the forwarding agents a lump sum in respect of the carriage for the whole distance & their services in procuring same. On the arrival of the goods at V. the consignee took delivery of the goods & abandoned the rest of the transit. The consignor claimed to recover a sum in respect of the abandoned part of the transit:—*Held:* the forwarding agents had been paid a lump sum out of which they were to pay the actual carriers & get their own remuneration, & they were not accountable for the sum saved by them by reason of full advantage not having been taken of the original arrangement. —TROY *v.* EASTERN CO. OF WAREHOUSES, INSURANCE & TRANSPORT OF GOODS & ADVANCES, LTD. (OF PETROGRAD) (1921), 125 L. T. 751; 37 T. L. R. 833; 26 Com. Cas. 340, C. A.

See, also, Nos. 4, 10, 11, 13, 15, 25, *ante,* Nos. 83, 233, 270, 1431, 1449, *post.*

Part III.—The Contract at Common Law.

SECT. 1.—DUTY TO RECEIVE AND CARRY.

48. According to profession—Goods.]—An action on the case lies against a common carrier for refusing to carry goods, if he has conveniency so to do.—JACKSON *v.* ROGERS (1683), 2 Show. 327; 89 E. R. 968.

Annotations:—**Consd.** Pickford *v.* Grand Junction Ry. (1841), 2 Ry. & Can. Cas. 592. **Refd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21; Johnson *v.* Mid. Ry. (1849), 4 Exch. 367; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327.

See, also, No. 1468, *post.*

49. —— Money.]—An action lies against a common carrier for refusing to carry money, if he do not assign a particular reason for it.—ANON. (1690), 12 Mod. Rep. 3; 88 E. R. 1126.

50. —— If space sufficient—Information as to nature.]—(1) A carrier is an insurer of the goods that he carries; (2) he is obliged, for a reasonable reward, to carry any goods that are offered him, to the place to which he professes to carry goods, if his carriage will hold them, & he is informed of their quality & value; (3) he is not obliged to take a package, the owner of which will not inform him of its contents or value; but, if he do not ask for this information, or if, when he asks & is not answered, he still takes the package, he is responsible for its value, whatever that may be; (4) he may, by notice, limit his responsibility as an insurer; but (5) a notice will not protect him against the consequences of a loss occasioned by gross negligence.

(6) In an action against coach-proprietors, for the loss of a parcel, defts. proved a notice, exposed in a booking-office at S., kept by a person named W., in the following terms: "Take notice. The proprietor of this office will not be accountable for any parcels or packages exceeding the value of £5, unless entered as such, & paid for accordingly." One W. was a deft. on the record; but no evidence was offered to show that he was the same W. who was the proprietor of the office:—*Held:* this was not a sufficient notice, & defts. were still subject to the unlimited responsibility of common carriers.

(7) *Qu.:* whether the entrusting valuable property to a servant, of whose character the carrier gave no account at the trial, was sufficient to authorise the jury to find that the carrier had been guilty of that degree of negligence which would deprive him of the protection of a proper notice.

(8) A carrier's agent telling the female servant of the owner of a parcel above the value of £5, that it ought to be insured:—*Held:* not a sufficient notice of the limitation of the carrier's liability.

(9) To give proper security to property, the law has added to that responsibility of a carrier which immediately arises out of the contract to carry for a reward, viz. that of taking all reasonable care of it, the responsibility of an insurer. From his liability as an insurer, the carrier is only to be relieved by two things, both so well known to all the country when they happen, that no person would be so rash as to attempt to prove that they had happened when they had not, viz. the act of God & of the King's enemies (BEST, C.J.).—MACKLIN *v.* WATERHOUSE (1828), 5 Bing. 212; 2 Moo. & P. 319; 7 L. J. O. S. C. P. 32; 130 E. R. 1042.

Annotations:—*As to* (1) **Refd.** Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412. *As to* (2) **Distd.** Pickford *v.* Grand Junction Ry. (1842), 3 Ry. & Can. Cas. 193. **Refd.** Nugent *v.* Smith (1875), 1 C. P. D. 19; Spillers & Bakers *v.* G. W. Ry., [1911] 1 K. B. 386. *As to* (3) **Consd.** Crouch *v.* L. & N. W. Ry. (1854), 14 C. B. 255. **Apld.** Horne *v.* Mid. Ry. (1873), L. R. 8 C. P. 131.

51. —— Effect of Railways Clauses Consolidation Act, 1845 (c. 20).]—Railways Clauses Consolidation Act, 1845, does not impose on a railway co., acting as carriers, any further liabilities than those which attach to common carriers. Therefore, although the co. carry coals & other goods for hire from one end of their line to the other, & carry goods other than coals from an intermediate station, they are not bound to carry coals from that station, unless they have publicly professed to do so; & even if they have held themselves out as carriers of coals from that station, no action for refusing to carry coals from it will lie, unless it be shown that the company have conveniences at the station for receiving & carrying the coals.—JOHNSON *v.* MIDLAND RY. CO. (1849), 4 Exch. 367; 6 Ry. & Can. Cas. 61; 18 L. J. Ex. 366; 13 L. T. O. S. 305; 154 E. R. 1254.

Annotations:—**Folld.** Oxlade *v.* N. E. Ry. (1864), 15 C. B. N. S. 680. **Refd.** Carr *v.* L. & Y. Ry. (1852), 7 Exch. 707; R. *v.* Gibbs (1854), Dears. C. C. 445; Hearn *v.* L. & S. W. Ry. (1855), 10 Exch. 793; Phillips *v.* Edwards (1858), 3 H. & N. 813; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Hales *v.* L. & N. W. Ry. (1863), 4 B. & S. 66;

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c. *According to profession — In general.*]—Carriers are liable to an action at common law for refusing to carry except upon conditions limiting their common law liability.—LEONARD *v.* AMERICAN EXPRESS CO. (1867), 26 U. C. R. 533.—CAN.

Alton *v.* Mid. Ry. (1865), 19 C. B. N. S. 213; West *v.* L. & N. W. Ry. (1870), L. R. 5 C. P. 622; Dickson *v.* G. N. Ry. (1886), 18 Q. B. D. 176. **Mentd.** Harrison *v.* L. B. & S. C. Ry. (1862), 31 L. J. Q. B. 113; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94.

See, now, Railways Clauses Consolidation Act, 1845 (c. 20), s. 98 (2), (Railways Act, 1921 (c. 55), s. 56, Sched. VI.).

52. —— Effect of Railway & Canal Traffic Act, 1854 (c. 31).]—There is no obligation on a railway co., whether at common law or under Railway Traffic Act, 1854, to carry goods otherwise than according to their profession. Therefore, it is competent to them to restrict their coal-traffic to the carriage of coals for colliery owners, from the pit's mouth to stations where such colliery owners have cells or depots appropriated to them for the reception & sale of their coals, & to decline to carry coals from station to station, or for coal merchants, such an arrangement being essential to the regulation of the large traffic in that article, & the co. not being common carriers of coal.—*Re* OXLADE *v.* NORTH EASTERN RY. CO. (1864), 15 C. B. N. S. 680; 143 E. R. 952.

Annotation:—**Refd.** Strick *v.* Swansea Canal Co. (1864), 16 C. B. N. S. 245.

53. —— Tramway.]—CLARKE *v.* WEST HAM CORPN., No. 14, *ante.*

54. —— Only on payment of full price.]—WYLD *v.* PICKFORD, No. 66, *post.*

55. —— On tender of proper charges.]—It is part of the liability of a railway co. as common carriers that they are bound to carry parcels tendered to them by all persons ready & willing to pay the proper charges; & their refusal to do so, in the absence of any legal or reasonable ground, will found an action.—CROUCH *v.* LONDON & NORTH WESTERN RY. CO., No. 6, *ante.*

56. —— ——.]—(1) Common carriers are bound to carry such goods as are tendered to them for the purpose of being carried, together with the proper charge for such carriage; they cannot insist upon the sender signing such conditions as are unreasonable.

(2) A condition that the co. should not be liable for the loss, detention or damage of any package insufficiently packed, is unreasonable, both at common law & under Railway & Canal Traffic Act, 1854 (c. 31), s. 7.

(3) *Semble:* a condition imposed by a railway co. carrying on business as common carriers for hire, that no claim for damage will be allowed unless made within three days after the delivery of the goods, nor for loss unless made within three days of the time that they should be delivered is unjust & unreasonable (COCKBURN, C.J.).

(4) Common carriers have no right to close their offices, & refuse to receive goods which are tendered to them with the proper amount for carriage, while at the same time they continue to receive goods, prepared, assorted and packed in the same manner, from a particular individual.

(5) By 6 Will. 4, c. xxxvi., the B. Railway Co. were incorporated, & the co. were empowered to charge for the carriage of parcels. By 8 & 9 Vict. c. clv., s. 91, amending 6 Will. 4, c. xxxvi., the co. were authorised to charge at so much per ton per mile:—*Held:* this provision overrides the provisions of 6 Will. 4, c. xxxvi., so far as concerned parcels exceeding 500 lbs. in weight, but not as to parcels below that weight.

(6) The co. obliged pltfs. to pay more than the maximum amount allowed by 8 & 9 Vict. c. clv., s. 19:—*Held:* the excess paid on all parcels exceeding 500 lbs. in weight might be recovered back.

(7) Common carriers cannot, in addition to the charges for the carriage of goods between the place where the goods are handed to them, & the place where they are ordered to be delivered, charge for collection & delivery, where they have not, in fact, collected or delivered the goods. Such charges, if imposed, & paid under protest, may be recovered back.

(8) Defts., being common carriers from B. to E., & also from B. to B., charged pltfs., who employed them to carry goods between those places, higher rates than were charged to other persons:—*Held:* the sums paid in excess of the sums charged to other people could not be recovered by pltfs., under a count for money had & received, on the ground simply that the charges made by the co. were unequal.

(9) Defts., being common carriers, were in the habit of charging certain rates upon the aggregate weight of parcels containing the same kind of goods, & brought at one time, by any one of the public, not being a common carrier; but when pltfs., who were common carriers, sent a number of such packages in one parcel addressed to pltfs., but each of such packages addressed separately to the person to whom it was to be sent, defts. insisted upon charging for each parcel separately:—*Held:* such a mode of charging was improper, & pltfs. might recover the amount so improperly charged to them.

(10) Defts., sometimes intentionally, & sometimes by mistake, charged pltfs. heavier rates than were set out in the bills published by them:—*Held:* pltfs. could recover back the excess paid.

(11) By 6 Will. 4, c. xxxvi., s. 188, the co. was to paint on boards an account of the several rates & tolls to be taken by them, & to affix such boards upon the toll-houses, &c.; and by s. 189, the co. were not to take any rates or tolls, &c., except during the time that the board should be so affixed:—*Held:* the omission to put up such boards did not prevent defts. from recovering such sums of money as they had a right to charge, & pltfs. could not, as a result of such omission, recover back such sums as they had been charged.

(12) *Semble:* the enactment in s. 188 did not apply at all to the tolls charged for the carriage of goods in the carriages of defts.—GARTON *v.* BRISTOL & EXETER RY. CO. (1861), 1 B. & S. 112; 30 L. J. Q. B. 273; 26 J. P. 54; 7 Jur. N. S. 1234; 9 W. R. 734; 121 E. R. 656.

Annotations:—*As to* (1) **Consd.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. **Apld.** Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858. *As to* (6) **Consd.** Stone *v.* Mid. Ry., [1903] 1 K. B. 741. *As to* (8) **Consd.** G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. *As to* (12) **Refd.** Hall *v.* L. B. & S. C. Ry. (1886), 5 Ry. & Can. Tr. Cas. 28. *Generally* **Mentd.** *Re* Baxendale *v.* L. & S. W. Ry. (1862), 12 C. B. N. S. 758; Brown *v.* G. W. Ry. (1882), 9 Q. B. D. 744; Hall *v.* L. B. & S. C. Ry. (1885), 15 Q. B. D. 505.

See, further, Sect. 2, *post.*

57. —— No sum agreed.]—SHELTON *v.* OSBORN, No. 79, *post.*

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55 i. —— *On tender of proper charges—Ownership of goods questioned.*]—Although, as a general rule, a carrier may be bound to carry goods, if tendered his fare, he is probably not so when a *bond fide* question as to ownership of the goods is raised, & he has received notice from a claimant not to carry.—SCOTT *v.* MIDLAND GREAT WESTERN RY. CO. (1852), 3 I. C. L. R. 59.—**IR.**

55 ii. —— —— *& goods to be carried.*]—LEONARD *v.* AMERICAN EXPRESS CO. (1867), 26 U. C. R. 533.—**CAN.**

d. *In disobedience to instructions.*]—A carrier was instructed to ship goods in a named ship; he shipped them in another vessel, which was lost:—*Held:* the carrier was liable for the loss which arose from violation of his orders.—GILMOUR & MOAR *v.* CLARK'S TRUSTEE (1853), 1 W. R. 277; 15 D. (Ct. of Sess.) 478.—**SCOT.**

Sect. 1.—Duty to receive and carry. Sect. 2.]

58. By usual route — Unnecessary deviation.]—Pltf. put on board deft.'s barge lime to be conveyed from M. to L. The master of the barge deviated unnecessarily from the usual course, & during the deviation a tempest wetted the lime, & the barge taking fire thereby, the whole was lost: —*Held:* (1) deft. was liable; the cause of the loss was sufficiently proximate to entitle pltf. to recover under a declaration alleging deft.'s duty to carry the lime without unnecessary deviation, & averring a loss by unnecessary deviation; (2) the law implies a duty on the owner of a vessel, whether a general ship or hired for the special purpose of the voyage, to proceed without unnecessary deviation in the usual course.—DAVIS *v.* GARRETT (1830), 6 Bing. 716; L. & Welsb. 276; 4 Moo. & P. 540; 8 L. J. O. S. C. P. 253; 130 E. R. 1456.

Annotations:—*As to* (1) **Consd.** Thompson *v.* Hopper (1856), 6 E. & B. 937. **Distd.** Morritt *v.* N. E. Ry. (1876), 1 Q. B. D. 302. **Consd.** Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515. **Foll.** Scaramanga *v.* Stamp (1880), 5 C. P. D. 295. **Apld.** Lilley *v.* Doubleday (1881), 7 Q. B. D. 510. **Refd.** Morrison *v.* Shaw, Savill & Albion Co., [1916] 1 K. B. 747. *As to* (2) **Consd.** McAndrew *v.* Adams (1834), 1 Bing. N. C. 29; Taylor *v.* G. N. Ry. (1866), L. R. 1 C. P. 385; Morrison *v.* Shaw, Savill & Albion Co., [1916] 2 K. B. 783. **Refd.** Thompson *v.* Hopper (1858), E. B. & E. 1038; Svensden *v.* Wallace (1885), 54 L. J. Q. B. 497; Elliott Steam Tug Co. *v.* Payne (1920), 90 L. J. K. B. 89; Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426. *Generally* **Refd.** Grill *v.* General Iron Screw Collier Co. (1866), L. R. 1 C. P. 600; Royal Exchange Shipping Co. *v.* Dixon (1886), 12 App. Cas. 11; Searle *v.* Lund (1903), 88 L. T. 863; Shaw *v.* Symmons, [1917] 1 K. B. 799. **Mentd.** The Norway (1864), Brown. & Lush. 377; The Cap Palos, [1921] P. 458.

59. ——.]—(1) In the absence of an express contract, the obligation of a carrier of goods is to carry them according to the usual route professed by him to the public & to deliver them within a reasonable time.

(2) On Wednesday, Aug. 7, defts., a railway co., received goods from pltf. to be carried from A. to B. near S. " by luggage train," pltf. having contracted to supply them on hire at B. on Saturday, Aug. 10. The ordinary practice of defts., if goods did not make a truck load, was to send them to N., which was farther from B. than S. is from N.; they might be sent either by railway to S., from which there is a carrier to B. daily, or direct to B. by a carrier on Tuesdays & Thursdays. Defts. sent the goods, which were not a truck load, to N., and kept them there from Friday till Tuesday, & then sent them by the carrier to B., where they arrived on Wednesday. Pltf. did not inform defts. that it was important that the goods should arrive at B. on Aug. 10, nor was it known to pltf. that the goods, if a truck load, would have been sent direct to S. In an action to recover the loss of the hire of his goods & for personal expenses in inquiring for them, the jury having found that the delay at N. was unreasonable:—*Held:* pltf. was entitled to the latter damages, but not to the former.

(3) *Qu.:* whether it was unreasonable to send the goods to S. by way of N.—HALES *v.* LONDON & NORTH WESTERN RY. CO. (1863), 4 B. & S. 66; 2 New Rep. 239; 32 L. J. Q. B. 292; 8 L. T. 421; 27 J. P. 692; 11 W. R. 856; 122 E. R. 384.

60. ——.]—A railway co., in carrying goods, took them past C. Junction to N. & back, & then on by other lines, & charged a mileage rate which included the mileage to & fro between those places; such route was reasonable, usual, & accustomed:—*Held:* they could so charge.—MYERS *v.* LONDON & SOUTH WESTERN RY. CO. (1869), L. R. 5 C. P. 1; *sub nom.* LONDON & SOUTH WESTERN RY. CO. *v.* MYERS, 39 L. J. C. P. 57; 21 L. T. 460; 18 W. R. 69.

61. Excuses for refusal—Goods delivered too soon.]—A common carrier may refuse to receive goods before he is ready to take his journey.—LANE *v.* COTTON (1701), 1 Com. 100; 1 Ld. Raym. 646; 12 Mod. Rep. 472; Carth. 487; 1 Salk. 17; 92 E. R. 981.

Annotations:—**Mentd.** Jones *v.* Hart (1698), 2 Salk. 441; R. *v.* Cotton (1751), Park. 112; Perkins *v.* Smith (1752), Say. 40; Whitfield *v.* Le Despencer (1778), 2 Cowp. 754; Nicholson *v.* Mouncey (1812), 15 East, 384; Laugher *v.* Pointer (1826), 5 B. & C. 547; Muspratt *v.* Gregory (1836), 1 M. & W. 633; Duncan *v.* Findlater (1839), 6 Cl. & Fin. 894; Johnson *v.* Mid. Ry. (1849), 4 Exch. 367; Woods *v.* Finnis (1852), 16 Jur. 936: Hearn *v.* L. & S. W. Ry. (1855), 24 L. J. Ex. 180; R. *v.* Gibbs (1855), Dears. C. C. 445; R. *v.* Kay (1857), 26 L. J. M. C. 119; Bennett *v.* Bayes (1860), 5 H. & N. 391; Mersey Docks Trustees *v.* Gibbs (1866), 11 H. L. Cas. 687; R. *v.* Treasury Lords Comrs. (1872), 41 L. J. Q. B. 178; Bainbridge *v.* Postmaster-General, [1906] 1 K. B. 178; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94.

See, further, Sect. 6, *post*.

62. —— Country in disturbed condition.]—Deft., a common carrier to & from B. through W. to R. employed distinct boats to carry to & from B. to R. & to & from B. to W. which passed on different days. Pltf. knowing this, & having corn at W. which was threatened to be seized by a mob, wrote to deft. at B. to send a private boat quickly on account of the state of the country, to take the corn to B., to which deft. not returning any answer, & pltf. fearing to wait till the day deft.'s boat would in the usual course of employment go from W. to B. stopped the boat passing by from R. to B., & without disclosing the circumstances to the boatman prevailed on him to take the corn on board, & then dispatched him forward in the night, having privately sent orders to open the lock at any time when he should pass. After a verdict for deft. negativing that the corn was delivered in the usual course of dealing as a common carrier:—*Held:* the verdict might be sustained, either on the general ground of fraud in pltf., or on the circumstances of the case, furnishing altogether evidence of a tacit stipulation on the part of deft. to do the best he could, but not to be answerable as a common carrier for the violence of the mob; or because it did not appear that the boatman, whose ordinary employment was between R. & B. had authority from deft. to accept the goods at W. for B., much less to accept them in that manner.—EDWARDS *v.* SHERRATT (1801), 1 East, 604; 102 E. R. 233.

63. —— Condition precedent—Default of other carrier.]—The G. Ry. Co. agreed with pltfs. to carry for them, at the rate of 170 tons a day, 30,000 tons of coal from a certain colliery to L., & to find waggons at the colliery, & haul them from Y. to L., the Y. Ry. Co. undertaking to haul the waggons from the colliery to Y.; it was further agreed, that the contract was founded on the basis that there should be no unreasonable detention of the waggons by the Y. Co.:—*Held:* it was a condition precedent to defts.' obligation to carry the coal, that there

e. Excuses for refusal—Route impracticable.]—Defts. advertised that they would convey goods from B. to S. on arrival of certain steamers; on discovering that the route was so difficult as to be impracticable, they instructed their agents at B. not to forward goods until further orders:—*Held:* there was no such unconditional offer as to render defts. liable for refusal to convey.—FRASER *v.* JOHNSON (FRANK) & Co. (1894), 11 S. C. 63.—S. AF.

f. —— Smuggled goods.]—The fact that goods prior to delivery to the carrier, had been forfeited to the Crown for non-payment of customs dues, is not a valid excuse for refusing to carry them.—WHITE *v.* CANADIAN PACIFIC RY. CO. (1889), 6 Man. L. R. 169.—CAN.

g. —— Intoxicating liquors — Prohibition laws.]—GOLD SEAL LTD. *v.* DOMINION EXPRESS CO. (1918), 37 D. L. R. 769; *affd.* 15 Alta. L. R. 377; *affd.* Oct. 21, 1921.—CAN.

h. —— ——.]—GRAHAM & STRANG *v.* DOMINION EXPRESS CO. (1920), 48 O. L. R. 83; 18 O. W. N. 355.—CAN.

should be no unreasonable delay by the Y. Co. in hauling the waggons.—JOHNASSOHN *v.* GREAT NORTHERN RY. CO. (1854), 10 Exch. 434; 156 E. R. 506; *sub nom.* JONASSOHN *v.* GREAT NORTHERN RY. CO., 24 L. J. Ex. 31; 24 L. T. O. S. 117; 3 W. R. 62; 3 C. L. R. 192.

64. —— Packed parcel.]—CROUCH *v.* LONDON & NORTH WESTERN RY. CO., No. 6, *ante*.

See, also, Nos. 67, 70, 72, *post*.

Passenger's luggage.]—*See* Part VI., Sect. 1, *post*.

SECT. 2.—CHARGE FOR CARRIAGE.

65. Must be reasonable—Charge for valuable goods.]—HARRIS *v.* PACKWOOD, No. 295, *post*.

66. —— According to value of goods.]—(1) A carrier is bound to convey goods only on payment of the full price, which depends on their value, for the carriage, & if not paid, it is competent to him to limit his liability by special contract.

(2) A carrier, who receives valuable goods, after notice to the bailor that he will not be responsible for loss or damage, unless a higher than the ordinary rate of insurance is paid for the carriage of such goods, does so on the terms of such notice; but a carrier is not exempted thereby from all responsibility; he is, notwithstanding his notice, bound to take ordinary care in the conveyance, & is liable not only for a total abandonment of his character or wilful negligence, but also for a conversion by mis-delivery, which has arisen from inadvertence or mistake, if such inadvertence or mistake might have been avoided by the exercise of ordinary care.

(3) *Semble:* in such case the burden of proof would lie on pltf.

Declaration in case. The first count stated a delivery to defts., at their request, of a case containing certain maps to be carried, &c., alleging a receipt thereof by defts., whereby it became their duty to take due & proper care thereof; breach, that defts. did not take due & proper care thereof, whereby the goods were lost. The second count was in trover. Plea, to the first count, that at the time of delivery of the case & its contents, defts. were common carriers for hire, & then gave notice to pltf., who then had notice & knowledge that defts. would not be responsible for the loss of or damage done to certain goods & chattels, delivered to them for the purpose of carriage, & amongst others, maps in packages or otherwise, unless the same were insured according to their value, & paid for at the time of delivery; that the case was the package in which the maps were contained; that they received the case & maps to be carried upon the terms & conditions of the notice, of which pltf. at the time of delivery had notice; & that the maps were not at the time of delivery insured according to their value, or paid for. To the count in trover, there was a similar plea, alleging the conversion to have been by a mis-delivery, through mistake & inadvertence. On special demurrer to both pleas:—*Held:* (4) the action being on a breach of duty arising *ex contractu*, the allegation in the pleas of a special contract, was sufficient; & as defts. accepted the goods only on the terms of the notice, a special averment of pltf.'s consent was unnecessary; the third plea was not an argumentative traverse of the facts in the declaration from which the breach of duty was implied; as the declaration might apply to any kind of negligence, it was not necessary to allege in the third plea, that the loss was occasioned by such negligence as defts. were not responsible for; & if defts. had committed negligence for which they were liable, notwithstanding their notice, pltf. should have new assigned it; (5) the case itself was not separable from the maps; (6) the plea to the count in trover could not be supported, inasmuch as it admitted a conversion by inadvertent delivery, & did not show that the inadvertence was such as was protected by the notice.—WYLD *v.* PICKFORD (1841), 8 M. & W. 443; 10 L. J. Ex. 382; 151 E. R. 1113.

Annotations:—*As to* (1) **Consd.** Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. *As to* (2) **Refd.** Hinton *v.* Dibbin (1842), 2 Q. B. 646; Butt *v.* G. W. Ry. (1851), 11 C. B. 140; Phillips *v.* Clark (1857), 2 C. B. N. S. 156; Beal *v.* South Devon Ry. (1864), 3 H. & C. 337; Blower *v.* G. W. Ry. (1872), L. R. 7 C. P. 655; Price *v.* Union Lighterage Co., [1903] 1 K. B. 750. *As to* (3) **Refd.** The Glendarrach, [1894] P. 226. *As to* (4) **Refd.** Austin *v.* M. S. & L. Ry. (1851), 16 Q. B. 600. *As to* (5) **Refd.** Treadwin *v.* G. E. Ry. (1868), L. R. 3 C. P. 308. *Generally* **Consd.** M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; **Refd.** Grill *v.* General Iron Screw Collier Co. (1866), L. R. 1 C. P. 600; M. S. & L. Ry. *v.* Brown (1883), 8 App. Cas. 703; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373; Chiesman *v.* Modena Steamship, The Modena (1911), 16 Com. Cas. 292. **Mentd.** Barnes *v.* Marshall (1852), 18 Q. B. 785; Van Toll *v.* S. E. Ry. (1862), 31 L. J. C. P. 241.

See, also, Nos. 55, 56, 60, *ante*.

67. —— Packed parcels.]—A railway co. by their Act of incorporation were empowered to fix the sum to be charged by them in respect of the carriage of small parcels, not exceeding 100 lbs. each, as to them should seem proper; but that provision did not extend to articles, matters, or things sent in large aggregate quantities, although made up of separate & distinct parcels, such as bags of sugar, coffee, meal, & the like, but only to single parcels unconnected with parcels of a like nature which might be sent upon the railway at the same time. A subsequent Act provided that the charges by that Act authorised to be made for the carriage of goods, &c., by the co., should be at all times charged equally to all persons, & after the same rate, in respect of all goods of a like description & conveyed on the same portion of the line; & that no reduction or advance should be made either directly or indirectly in favour of or against any particular co. or person:—*Held:* the co. were restricted to a reasonable charge, & were not justified in making an increased charge in respect of the conveyance of packed parcels, the jury having negatived that they incurred any additional risk or expense in the carriage thereof.—PIDDINGTON *v.* SOUTH EASTERN RY. CO. (1858), 5 C. B. N. S. 111; 27 L. J. C. P. 295; 4 Jur. N. S. 953; 141 E. R. 43.

Annotations:—**Consd.** G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. **Refd.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1.

See, also, No. 6, *ante*, Nos. 70, 72, *post*; Sect. 3, sub-sect. 2, D., *post*.

68. Whether tender necessary.] — Common carriers are bound to convey goods only on being paid for the carriage in ready money, but a strict legal tender is not necessary.

A declaration against a common carrier for refusing to convey goods, averred that pltf. was

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PART III. SECT. 2.

k. *Must be reasonable—No established rate or agreement.*]—The carrier is only entitled to a reasonable compensation in the absence of a special agreement or of a rate declared by law to be a proper rate.—GREENE *v.* ST. JOHN & MAINE RY. CO. (1882), 22 N. B. R. 252.—**CAN.**

l. *Rate dependant on distance—Interpretation of distance.*]—Pltf. contracted with deft. to carry goods from the railway station to any place within one mile thereof at 2*s.* 6*d.* per ton, & at an additional rate to places beyond that distance:—*Held:* distance must be measured along the road necessarily to be travelled & not as the crow flies.—HOLLAND *v.* CROWN LANDS & PUBLIC WORKS COMR. (1877), Buch. 105.—**S. AF.**

Sect. 2.—*Charge for carriage. Sect.* 3: *Sub-sect.* 1, *A.*]

ready & willing, & then offered to pay to deft. such sum of money as deft. was legally entitled to receive, for the receipt, carriage, & conveyance of the parcel. On special demurrer :—*Held :* sufficient ; it was unnecessary to aver a strict tender, in the form required by law.—PICKFORD *v.* GRAND JUNCTION RY. CO. (1841), 8 M. & W. 372 ; 2 Ry. & Can. Cas. 592 ; 9 Dowl. 766 ; 10 L. J. Ex. 342 ; 5 Jur. 731 ; 151 E. R. 1083 ; *subsequent proceedings* (1842), 10 M. & W. 399.

Annotations :—**Refd.** Behrens *v.* G. N. Ry. (1862), 8 Jur. N. S. 567. **Mentd.** Barnes *v.* Marshall (1852), 18 Q. B. 785 ; Barker *v.* Mid. Ry. (1856), 18 C. B. 46 ; M'Manus *v* L. & Y. Ry. (1859), 4 H. & N. 327 ; Cahill *v.* L. & N. W. Ry. (1861), 7 Jur. N. S. 1164.

69. ——.]—Defts., common carriers, refused to redeliver pltf.'s goods, which they had carried for him, except on payment of £5 5*s.* charges- He insisted that he was not liable to pay anything ; but, ultimately, defts. having said that they would take nothing less than the whole sum, he paid the whole to regain his goods, protesting that he was not liable to pay anything, & that, if he was liable, the charge was exorbitant. He had not tendered or named any smaller sum. Afterwards, without having demanded the return of any surplus, he brought assumpsit for money had & received, claiming by his particular the whole sum, as having been paid in order to obtain possession of his goods, under protest that he was not liable to pay the same or any part thereof, or, if he was liable to pay some part, that the sum was exorbitant. The jury found that the defendants were entitled to charge £1 10*s.* 6*d.* :—*Held :* pltf. was entitled to recover the difference, in this form of action ; it was not necessary to his right to recovery that he should have tendered any specific sum.—ASHMOLE *v.* WAINWRIGHT (1842), 2 Q. B. 837 ; 2 Gal. & Dav. 217 ; 11 L. J. Q. B. 79 ; 6 Jur. 729 ; 114 E. R. 325.

Annotations :—**Folld.** Parker *v.* Bristol & Exeter Ry. (1851), 6 Exch. 702. **Refd.** The Norway (1864), Brown & Lush. 377. **Mentd.** Wakefield *v.* Newbon (1844), 6 Q. B. 276 ; Gulliver *v.* Cozens (1845), 14 L. J. C. P. 215 ; Fernley *v.* Branson (1851), Cox, M. & H. 460 ; Green *v.* Duckett (1883), 11 Q. B. D. 275.

See also, Nos. 55, 56, 66, *ante*, No. 1208, *post.*

70. Equality to all customers.]—A railway co. were impowered by s. 175 of their act of incorporation (6 & 7 Will. 4, c. cvi.) to charge certain tonnage-rates or tolls for all articles, matters, & things carried or conveyed along the line, & by ss. 177, 179, to provide locomotive or other power for the carriage & conveyance of passengers, cattle, goods, &c., & to make reasonable charges for such carriage & conveyance, in addition to the tonnage-rates. By s. 182, the co. might from time to time make such orders for fixing, & by such orders fix, the sum to be charged by them in respect of small parcels, not exceeding 1 cwt. each, as to them should seem proper. By s. 186, the rates & tolls to be taken by virtue of the act were at all times to be charged equally & after the same rate per ton throughout the whole of the railway, in respect of the same description of articles, matters, or things, & no reduction or advance in the rates & tolls might either directly or indirectly be made partially or in favour of or against any particular person or co. Under s. 182, the co. framed a scale of charges for the carriage of parcels not exceeding 1 cwt. each, which were higher than the tonnage-rates warranted by s. 175, but included a reasonable charge for the use of their carriages & locomotive power under ss. 177, 179. Under this scale, where a number of separate parcels, each weighing less than 1 cwt., but exceeding 1 cwt. if taken in the aggregate, were brought to the railway by the same person, & containing the same article, & all directed to the same person at their place of destination, the co. charged the tonnage or lower rate by s. 175, but, if similar parcels were brought addressed to several different persons, they were charged the higher or parcels rate :—*Held :* (1) there was nothing to induce the ct., or which ought to induce a jury, to infer that the charges so made were unreasonable, regard being had to the additional trouble incurred by the co.

(2) *Semble :* s. 186 applied to small parcels.

(3) Though limited to a reasonable charge, there is no common-law obligation on a carrier to charge equal rates of carriage to all his customers.

(4) Railway & Canal Traffic Act, 1854 (c. 31), does not interfere with the right of a party aggrieved by over-charges, to maintain an action to recover back the sums paid in excess.—BAXENDALE *v.* EASTERN COUNTIES RY. CO. (1858), 4 C. B. N. S. 63 ; 27 L. J. C. P. 137 ; 30 L. T. O. S. 320 ; 140 E. R. 1004.

Annotations :—*As to* (1) **Distd.** Baxendale *v.* L. & S. W. Ry. (1866), 4 H. & C. 130. *As to* (3) **Refd.** G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. *As to* (4) **Refd.** Baxendale *v.* G. W. Ry. (1863), 32 L. J. C. P. 225.

See, also, Nos. 6, 67, *ante*, No. 72, *post.*

71. ——.]—GARTON *v.* BRISTOL & EXETER RY. CO., No. 56, *ante.*

72. —— **Package containing several parcels.**]—(1) A railway co. cannot legally charge a greater sum for the carriage of a package containing several parcels belonging to different persons than for a package containing several parcels all belonging to one person.

(2) A railway co. refused to carry, at the ordinary rate, packed parcels tendered by a carrier, whereby he was obliged to send them by a more circuitous route & at a greater expense :—*Held :* he was not entitled to recover damages for an alleged loss of business.

(3) *Semble :* Great Northern Ry. Co.'s Act, 13 & 14 Vict. c. lxi., s. 14, which provides that the co. may charge for the carriage of parcels not exceeding five cwt. any sum they may think fit, means any reasonable sum.—CROUCH *v.* GREAT NORTHERN RY. CO. (1856), 11 Exch. 742 ; 25 L. J. Ex. 137 ; 26 L. T. O. S. 293 ; 156 E. R. 1031.

Annotations :—*As to* (1) **Consd.** G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. **Refd.** Branley *v.* S. E. Ry. (1862), 12 C. B. N. S. 63 ; Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. *As to* (2) **Consd.** Sutton *v.* S. E. Ry. (1865), L. R. 1 Exch. 32. *As to* (3) **Consd.** Piddington *v.* S. E. Ry. (1858), 5 C. B. N. S. 111. *Generally* **Mentd.** Morritt *v.* N. E. Ry. (1876), 45 L. J. Q. B. 289.

See, also, Nos. 6, 67, 70, *ante ;* Part X., Sect. 3, sub-sect. 2, *post.*

73. As stated by clerk.]—If, before sending goods by a carrier, the sender applies at his wharf to know at what price certain goods will be carried, & is told by a clerk who is transacting the business there, 2*s.* 6*d.* per cwt., & on the faith of this he sends the goods, the carrier cannot charge more, although it be proved that the carrier had previously ordered his clerks to charge all goods according to a printed book of rates in which 3*s.* 6*d.* per cwt. was set down for goods of the sort in question.—

m. *As quoted—Duty to correct verbal information.*]—Pltf. sought from deft.'s agent information as to a rate, & was given a figure per ton. There was some dispute as to the rate quoted but no evidence of carelessness or recklessness shown in giving the information :—*Held :* (1) there is no duty cast upon a common carrier to give correct verbal information as to the rates ; (2) an action of deceit did not lie.—GILLIS SUPPLY CO., LTD. *v.* CHICAGO, MILWAUKEE & PUGET SOUND RY. CO. (No. 2) (1911), 16 B. C. R. 254.—**CAN.**

WINKFIELD *v.* PACKINGTON (1827), 2 C. & P. 599, N. P.

See, generally, AGENCY, Vol. I., pp. 295 *et seq.*

74. Limited to services performed.]—GARTON *v.* BRISTOL & EXETER RY. CO., No. 56, *ante.*

Right to freight or cost of conveyance.]—*See* Part XI., Sect. 1, sub-sect. 2, *post.*

SECT. 3.—LIABILITY FOR LOSS OR DAMAGE.

SUB-SECT 1.—GENERAL RULE—CARRIER GENERALLY LIABLE.

A. As an Insurer.

75. To carry & deliver safely—Robbery.]—In an account pltf. declared that he delivered goods to deft. to merchandise for him; the deft. said that the goods with divers other of his own proper goods were taken at sea where he was robbed of them. It was moved that this was no plea in bar of an account, but if it be any plea it shall be a plea before auditors in discharge:—*Held:* it was a good plea before auditors; there is a difference between carriers & other servants & factors: for carriers are paid for their carriage & take upon them safely to carry & deliver the things received.—ANON. (1597), Owen, 57; 74 E. R. 897.

Annotation:—**Refd.** Storr *v.* Crowley (1825), M'Cle & Yo. 129.

76. —— ——.]—A carrier is liable in respect of his reward.

The reason why robbery did not excuse him was because it might be by consent & combination carried on in such a manner that no proof could be had of it (HOLT, C.J.).—LANE *v.* COTTON (1701), 1 Salk. 17, 143; Holt, K. B. 582; Carth. 487; 5 Mod. Rep. 455; 11 Mod. Rep. 12; 12 Mod. Rep. 472; 1 Com. 100; 1 Ld. Raym. 646; 91 E. R. 17, 133.

Annotations:—**Refd.** Whitfield *v.* Le Despencer (1778), 2 Cowp. 754; Hearn *v.* L. & S. W. Ry. (1855), 24 L. J. Ex. 180; Bainbridge *v.* Postmaster-General, [1906] 1 K. B. 178; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858. **Mentd.** Jones *v.* Hart (1697), 2 Salk. 441; R. *v.* Cotton (1751), Park. 112; Perkins *v.* Smith (1752), Say. 40; Nicholson *v.* Mouncey (1812), 15 East, 384; Laugher *v.* Pointer (1826), 5 B. & C. 547; Muspratt *v.* Gregory (1836), 1 M. & W. 633; Duncan *v.* Findlater (1839), 6 Cl. & Fin. 894; Johnson *v.* Mid. Ry. (1849), 4 Exch. 367; Woods *v.* Finnis (1852), 16 Jur. 936; R. *v.* Gibbs (1855), Dears. C. C. 445; R. *v.* Kay (1857), 26 L. J. M. C. 119; Bennett *v.* Bayes (1860), 5 H. & N. 391; Mersey Docks Trustees *v.* Gibbs (1866), L. R. 1 H. L. 93; R. *v.* Treasury Comrs. (1872), 41 L. J. Q. B. 178; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94.

See, further, Sub-sect. 1, B., *post.*

77. —— **Goods lost.**]—A common carrier is liable for the loss of goods delivered to him to carry, although no particular sum is agreed on as the price of carriage.—BASTARD *v.* BASTARD (1679), 2 Show. 81; 89 E. R. 807.

78. —— ——.]—The master of a stage coach is not chargeable for goods lost by the driver, unless the master takes a price for the carriage of goods.—MIDDLETON *v.* FOWLER (1698), 1 Salk. 282; 91 E. R. 247, N. P.

Annotations:—**Consd.** Cavenagh *v.* Such (1815), 1 Price 328. **Refd.** Cohen *v.* S. E. Ry. (1877), 2 Ex. D. 253. **Mentd.** McManus *v.* Crickett (1800), 1 East, 106.

See, also, Nos. 81, 168, *post.*

79. —— ——.]—A common carrier is bound by the law of England to convey safely the things delivered to him; & therefore without laying a general custom, he must begin to carry, as well as perform safely the carriage of every thing he has in charge; & this without any express consideration.—SHELTON *v.* OSBORN (1729), 1 Barn. K. B. 260; 94 E. R. 178.

80. —— ——.]—On a declaration against a lighterman in the common form for negligence, pltf. cannot recover if it appear that the loss was not occasioned by a neglect of the common & ordinary duty of deft.—WHALLEY *v.* WRAY (1799), 3 Esp. 74, N. P.

81. —— ——.]—If a parcel delivered to the driver of a stage coach, to be carried is lost, the master & not the servant is responsible.—WILLIAMS *v.* CRANSTON (1817), 2 Stark. 82, N. P.

See, also, No. 77, *ante.*

82. —— ——.]—Carriers, on having a parcel given to them, signed a receipt of its acceptance, by which they undertook to carry it safely, fire & robbery excepted. The parcel was not delivered, but was not lost by fire or robbery. Pltfs. declared on the general common law liability of defts. to carry:—*Held:* the evidence was of a special contract to carry, & the ct. directed a nonsuit, for a variance between the evidence & declaration.—LATHAM *v.* RUTLEY (1823), 2 B. & C. 20; 3 Dow. & Ry. K. B. 211; 1 L. J. O. S. K. B. 225; 107 E. R. 290.

Annotations:—**Folld.** White *v.* G. W. Ry. (1857), 2 C. B. N. S.

n. —— *Undercharge by mistake — Liability for unpaid freight.*]—Goods were sent by rail from E. to B. at rates as per printed tariff, the exact amount not being specified beforehand, freight to be paid at destination. On arrival of the goods at B., the railway clerk, by mistake, made out an account at a rate lower than the tariff allowed on the class of goods carried. This account was paid by the consignee, & the goods were delivered to him. On the error being discovered, the balance of the correct amount was claimed. On the facts:—*Held:* the consignee was liable for the unpaid freight.—CAVE'S IMPERIAL BREWERY *v.* CAPE GOVERNMENT RYS. (1905), 2 Buch. A.C. 151.—**S. AF.**

o. —— —— ——.]—The consignor of goods by railway who has paid the freight which was less than the tariff rate demanded by the proper railway official, cannot, after the goods have been forwarded to their destination, be compelled to pay the difference, notwithstanding that the law prohibits a reduction of rates in favour of a person using the railway.—WIGGINS *v.* COLONIAL GOVERNMENT (1899), 16 S. C. 425.—**S. AF.**

p. —— *Evidence.*]—AUSTIN & NICHOLSON *v.* CANADA STEAMSHIP LINES, LTD. (1919), 15 O. W. N. 371.—**CAN.**

74 i. *Limited to services performed.*]—NICHOLLS CHEMICAL CO. *v.* R. (1905), 25 C. L. T. 82; 9 Exch. C. R. 272.—**CAN.**

q. *Goods misdescribed—Liable to higher freight tolls payable on goods of such description.*]—CANADIAN PACIFIC RY. CO. *v.* RYAN (1920), 51 D. L. R. 242; 25 Can. Ry. Cas. 178.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—A.

r. *To carry & deliver safely — General principle.*]—Liability of a common carrier as an insurer is governed by English common law, & such liability is an incident of the contract between him & the owner not inconsistent with Contract Act, 1872.—IRRAWADDY FLOTILLA CO. *v.* BUGWANDAS (1891), I. L. R. 18 Calc. 620; 18 L. R. Ind. App. 121.—**IND.**

s. —— ——.]—Pltfs. entrusted to common carriers goods which were lost in the course of carriage on defts.' steamer. Defts. took as much care of the goods as a man of ordinary prudence would, in like circumstances, take of similar goods of his own & the loss was not occasioned by the act of God or the Queen's enemies:—*Held:* defts. were liable.—MOTHOORA KANT SHAW *v.* INDIA GENERAL STEAM NAVIGATION CO. (1883), I. L. R. 10 Calc. 166; 13 C. L. R. 342.—**IND.**

t. —— ——.]—CHOGEMUL *v.* PORT OF CALCUTTA IMPROVEMENT COMRS. (1891), I. L. R. 18 Calc. 427.—**IND.**

77 i. —— *Goods lost.*]—Apart from a special contract, common carriers are responsible for goods committed to them for carriage, & are liable in damages for their loss, unless they prove that such failure has not been due to their fault or neglect.—HERMAN *v.* NETHERLANDS SOUTH AFRICAN RY. CO., LTD. (1897), 4 O. R. 241.—**S. AF.**

77 ii. —— —— *Negligence presumed.*]—Where goods are delivered to a carrier & a portion thereof is lost, the maxim *res ipsa loquitur* is applicable & negligence is presumed against the carrier.—RANDALL *v.* C. N. Ry. Co. (1915), 8 W. W. R. 413; 25 Man. L. R. 293.—**CAN.**

77 iii. —— —— —— *In absence of explanation.*]—SCANLIN *v.* CANADIAN PACIFIC RY. CO., [1918] 3 W. W. R. 984.—**CAN.**

77 iv. —— —— —— *No negligence proved —Carrier not liable.*]—SPARKS *v.* CANADIAN PACIFIC RY. CO., CANADIAN PACIFIC RY. CO. *v.* SPARKS (1920), 17 O. W. N. 336.—**CAN.**

Sect. 3.—Liability for loss or damage: Sub-sect. 1, A. & B.]

7. **Refd.** Crouch *v.* L. & N. W. Ry. (1854), 2 C. L. R. 188. **Mentd.** Smart *v.* Hyde (1841), 8 M. & W. 723; Munro, Brice *v.* War Risks Assocn., [1918] 2 K. B. 78.

83. —— ——.]—A person, who contracts to carry goods, is none the less liable for their loss, although the goods were of such a nature that a carrier at common law would not have been bound to carry them.—BRAMALL *v.* SMITH (1874), cited in 44 L. J. Ex. at p. 39.

Annotation :—**Distd.** Scaife *v.* Tarrant (1875), 44 L. J. Ex. 36.

See, also, No. 1460, *post.*

84. —— **Conversion by mis-delivery.**]—WYLD *v.* PICKFORD, No. 66, *ante.*

See, also, Nos. 192, 204, *post.*

85. —— **Goods damaged.**]—If a man undertakes to carry goods safely & securely, he is responsible for any damage they may sustain in the carriage through his neglect though he was not a common carrier & was to have nothing for the carriage.—COGGS *v.* BERNARD (1703), 2 Ld. Raym. 909; 1 Com. 133; Holt, K. B. 13, 131; 1 Salk. 26; 3 Salk. 11; 92 E. R. 107.

Annotations :—**Distd.** G. N. R. *v.* Shepherd (1852), 8 Exch. 30. **Consd.** Nugent *v.* Smith (1875), 1 C. P. D. 19; Bergheim *v.* G. E. R. (1878), 3 C. P. D. 221. **Refd.** Shelton *v.* Osborn (1729), 1 Barn. K. B. 260; Boucher *v.* Lawson (1736), Lee *temp.* Hard. 194; Gibson *v.* Inglis (1814), 4 Camp. 72; Cavenagh *v.* Such (1815), 1 Price, 328; Shepherd *v.* G. N. Ry. (1852), 19 L. T. O. S. 324; Crouch *v.* L. & N. W. Ry. (1854), 14 C. B. 255; Blakemore *v.* Bristol & Exeter Ry. (1858), 8 E. & B. 1035; P. & O. Steam Navigation Co. *v.* Shand (1865), 3 Moo. P. C. C. N. S. 272; Liver Alkali Co. *v.* Johnson (1874), L. R. 9 Exch. 338; Foulkes *v.* Met. Dist. Ry. (1880), 28 W. R. 526; Cutler *v.* North London Ry. (1887), 56 L. T. 639; Harris *v.* Perry, [1903] 2 K. B. 219; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858. **Mentd.** Buckmyr *v.* Darnall (1704), 2 Ld. Raym. 1085; Grand Opinion for the prerogative concerning the Royal Family (1717), Fortes. Rep. 401; Robinson *v.* Green (1723), 1 Stra. 574; Kettle *v.* Bromsall (1738), Willes, 118; Charitable Corpn. *v.* Sutton (1742), 9 Mod. Rep. 349; Hartop *v.* Hoare (1743), 3 Atk. 44; Ryall *v.* Rowles (1750), 1 Ves. Sen. 348; Pasley *v.* Freeman (1789), 3 Term Rep. 51; Mason *v.* Lickbarrow (1790), 1 Hy. Bl. 357; Elsee *v.* Gatward (1793), 5 Term Rep. 143; Guilliam *v.* Barnett (1804), 2 Smith, K. B. 155; Pippin *v.* Sheppard (1822), 11 Price, 400; Storr *v.* Crowley (1825), M'Cle. & Yo. 129; Whitehead *v.* Greetham (1825), 2 Bing. 464; Corbett *v.* Packington (1827), 6 B. & C. 268; Gledstane *v.* Hewitt (1831), 1 Tyr. 445; *Ex p.* Cording (1832), 4 B. & Ad. 198; R. *v.* Cording (1832), 1 Nev. & M. K. B. 35; M'Kenzie *v.* M'Leod (1834), 10 Bing. 385; Vaughan *v.* Menlove (1837), 3 Bing. N. C. 468; Boorman *v.* Brown (1842), 3 Q. B. 511; Ross *v.* Hill (1846), 2 C. B. 877; Balfe *v.* West (1853), 13 C. B. 466; Dansey *v.* Richardson (1854), 3 E. & B. 144; Syred *v.* Carruthers (1858), E. B. & E. 469; Belfast & Ballymena Ry. *v.* Keys (1861), 9 H. L. Cas. 556; MacCarthy *v.* Young (1861), 6 H. & N. 329; Marriott *v.* Anchor Reversionary Co. (1861), 3 De G. F. & J. 177; Taylor *v.* Caldwell (1863), 3 B. & S. 826; Donald *v.* Suckling (1866), L. R. 1 Q. B. 585; R. *v.* Mid. Ry. (1867), 31 J. P. 661; Skelton *v.* L. & N. W. Ry. (1867), L. R. 2 C. P. 631; Giblin *v.* McMullen (1868), L. R. 2 P. C. 317; Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379; Searle *v.* Laverick (1874), L. R. 9 Q. B. 122; Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515; The Moorcock (1889), 14 P. D. 64; The Winkfield, [1902] P. 42; Cheshire *v.* Bailey, [1905] 1 K. B. 237; Shrimpton *v.* Hertfordshire County Council (1910), 74 J. P. 305; Attenborough *v.* Solomon, [1913] A. C. 76; Hatton *v.* Car Maintenance Co. (1914), 110 L. T. 765; Banbury *v.* Bank of Montreal, [1918] A. C. 626; Coldman *v.* Hill, [1919] 1 K. B. 443.

See, further, Part II., *ante.*

86. —— ——.]—The carrier of goods by water is liable for damage occasioned by running against an anchor to which no buoy appeared to be fastened.—TRENT & MERSEY NAVIGATION *v.* WOOD (1785), 4 Doug. K. B. 286; 3 Esp. 127; 99 E. R. 884.

87. —— —— **Damage partly due to bad packing.**]—(1) In an action against carriers for damage to the goods carried, it is enough for pltf. to prove the condition & value of the goods when delivered to them & when received by him, & if damaged in their hands he is entitled to recover; (2) the fact that the damage was partly caused by bad packing goes only to the amount of damage.—HIGGINBOTHAM *v.* GREAT NORTHERN RY. CO. (1861), 2 F. & F. 796; N. P.; *subsequent proceedings* (1862), 10 W. R. 358.

Annotation :—*As to* (2) **Refd.** Barbour *v.* S. E. Ry. (1876), 34 L. T. 67.

See, further, Sub-sect. 2, *post.*

88. —— —— **Events excepted.**]—(1) Deft., a common carrier by sea from L. to A., received from pltf. a mare to be carried to A. for hire. In the course of the voyage the ship encountered rough weather, & the mare received such injuries that she died. The jury found that the injuries were caused partly by more than ordinary bad weather, & partly by the conduct of the mare herself by reason of fright & consequent struggling, without any negligence of deft.'s servants :—*Held :* deft. was not liable for the death of the mare.

The carrier does not insure against the irresistible act of nature, nor against defects in the thing carried itself; if he can show that either the act of nature or the defect of the thing itself, or both taken together, formed the sole direct & irresistible cause of the loss, he is discharged. In order to show that the cause of the loss was irresistible it is not necessary to prove that it was absolutely impossible for the carrier to prevent it, but it is sufficient to prove that by no reasonable precaution under the circumstances could it have been prevented.

(2) A shipowner, who is not a common carrier, is not subject to the liability of a common carrier; that is, he does not insure the goods bailed to him for carriage (COCKBURN, C.J.).

(3) A loss is a loss by the act of God if it is occasioned by the elementary forces of nature unconnected with the agency of man or other cause; & a common carrier is entitled to immunity in respect of loss so occasioned if he can show that it could not have been prevented by any amount of foresight, pains & care reasonably to be required of him.—NUGENT *v.* SMITH (1876), 1 C. P. D. 423; 45 L. J. Q. B. 697; 34 L. T. 827; 41 J. P. 4; 25 W. R. 117; 3 Asp. M. L. C. 198, C. A. *Revsg.* (1875), 1 C. P. D. 19.

Annotations :—*As to* (1) **Refd.** Lister *v.* L. & Y. Ry. (1903), 88 L. T. 561. *As to* (2) **Consd.** Watkins *v.* Cottell, [1916] 1 K. B. 10. **Refd.** Kopitoff *v.* Wilson (1876), 1 Q. B. D. 377. *As to* (3) **Refd.** Woodley *v.* Michell (1883), 11 Q. B. D. 47. *Generally* **Mentd.** Nicols *v.* Marsland (1876), 2 Ex. D. 1; Box *v.* Jubb (1879), 48 L. J. Q. B. 417; The West Cook (1911), 80 L. J. P. 97.

89. —— —— ——.]—A hoyman who undertakes to carry goods, must deliver them safe at all events, except damaged by the act of God, or by the King's enemies.—DALE *v.* HALL (1750), 1 Wils. 281; 95 E. R. 619.

Annotations :—**Folld.** Laveroni *v.* Drury (1852), 8 Exch. 166. **Consd.** Pandorf *v.* Hamilton (1886), 17 Q. B. D. 670. **Refd.** Buddle *v.* Willson (1795), 6 Term Rep. 369; Ansell *v.* Waterhouse (1817), 6 M. & S. 385; Phillips *v.* Clark (1857), 2 C. B. N. S. 156; Hutchinson *v.* Guion (1858), 5 C. B. N. S. 149; Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412; Liver Alkali Works Co. *v.* Johnson (1874), 31 L. T. 95; Nugent *v.* Smith (1876), 1 C. P. D. 423. **Mentd.** Powell *v.* Layton (1806), 2 Bos. & P. N. R. 365; R. *v.* Mid. Ry. (1867), 31 J. P. 661.

See, also, No. 50, *ante,* No. 91, *post;* Sub-sect. 2, *post.*

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85 i. —— *Goods damaged—Measure of care.*]—Carriers, whether by land or by water, are not insurers, but will be liable in respect of goods entrusted to them for injury due to negligence of themselves or servants. They are not liable so long as they take reasonable care in the performance of their duties. —STEPHEN, FRAZER & CO. *v.* PORT ELIZABETH HARBOUR BOARD (1900), 17 S. C. 231.—**S. AF.**

85 ii. *S. P.* FUMBA *v.* DICKERSON (1906), 23 S. C. 180.—**S. AF.**

90. —— —— Duty to protect during transit.]—Pltfs., purchasers of calico goods lying at K.'s works in B., requested K. to forward the goods to them at M. In 1903 K. who had private sidings connecting with the L. Railway, entered into an agreement with the railway co. in accordance with Schedule of Maximum Rates & Charges, s. 4, to their Confirmation Act, whereby K. performed for himself the services of loading & sheeting goods consigned in separate trucks from his sidings to the railway co. for carriage, the co. supplying the trucks & the sheets, & was allowed by the co. a rebate off the charge for carriage in respect of these services. By a consignment note of 1917, K. consigned calico goods, ready loaded & sheeted, in a truck to the co. for carriage & delivery to pltfs. at M., pltfs. to pay carriage, & the co. signed an acknowledgment on the consignment note that the goods were received in good condition. On delivery the co. charged pltfs. at a rate which included the loading & sheeting. The goods were damaged by water during the transit owing to defects in the sheet by which they were covered. Pltfs., who had no knowledge of the agreement of 1903, sued the co. for damages:—*Held:* the co. were liable to pltfs. for the damage caused by the defective sheeting, either as common carriers or under the contract contained in the consignment note, irrespectively of the private agreement between the co. & K. as to terminal services.—LONDON & NORTH WESTERN RY. CO. *v.* HUDSON (RICHARD) & SONS, LTD., [1920] A. C. 324; 89 L. J. K. B. 323; 122 L. T. 530, H. L.

91. —— Goods destroyed—Events excepted.]—A carrier who undertakes for hire to carry goods, is bound to deliver them at all events, except damaged or destroyed by the act of God or the King's enemies, even though the jury expressly find that they were destroyed without any actual negligence in deft. A carrier is in the nature of an insurer.—FORWARD *v.* PITTARD (1785), 1 Term Rep. 27; 99 E. R. 953.

Annotations:—**Distd.** *Re* Webb (1818), 2 Moore, C. P. 500. **Consd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324. **Reid.** Smith *v.* Horne (1818), 8 Taunt. 144; Duff *v.* Budd (1822), 6 Moore, C. P. 469; Siordet *v.* Hall (1828), 1 Moo. & P. 561; Cairns *v.* Robins (1841), 10 L. J. Ex. 452; Richards *v.* L. B. & S. C. Ry. (1849), 7 C. B. 839; Liver Alkali Co. *v.* Johnson (1874), L. R. 9 Exch. 338; Nugent *v.* Smith (1876), 1 C. P. D. 423; Hill *v.* Scott (1895), 64 L. J. Q. B. 635.

92. —— ——.]—Common carriers from A. to B. charge & receive for cartage of goods to the consignee's house at B. from a warehouse there, where they usually unloaded, but which did not belong to them; they must answer for the goods if destroyed in the warehouse by an accidental fire, though they allow all the profits of the cartage to another person, & that circumstance were known to the consignee.—HYDE *v.* TRENT & MERSEY NAVIGATION CO. (1793), 5 Term Rep. 389; 101 E. R. 218.

Annotations:—**Distd.** *Re* Webb (1818), 2 Moore, C. P. 500. **Folld.** Gatliffe *v.* Bourne (1838), 4 Bing. N. C. 314. **Reid.** Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210. **Mentd.** Storr *v.* Crowley (1825), M'Cle. & Yo. 129; The Norway (1864), Brown. & Lush. 377.

93. —— Events excepted.]—MACKLIN *v.* WATERHOUSE, No. 50, *ante*.

See, further, Nos. 88, 89, 91, *ante*; Sub-sect. 2, *post*.

94. —— Special directions assented to.]—A count of a declaration in *assumpsit* against a carrier by water, alleged that in consideration that pltf., at the request of deft., had caused to be shipped on board deft.'s vessel a quantity of wheat, to be carried to a certain place for freight to be paid to deft., he undertook to carry the wheat safely, & deliver it for pltf. on a given day; deft.'s undertaking to carry was made before the whole of the wheat had been shipped on board his vessel:—*Held:* the count might be supported, although it was objected that the consideration for the promise was executory, on the ground that where an order is given to a carrier, antecedently to the delivery of goods, who assents to deal with them when delivered in a particular manner, a duty is imposed on him on the receipt of the goods to deal with them according to the order previously given; & the law implies a promise by him to perform such duty.—STREETER *v.* HORLOCK (1822), 1 Bing. 34; 7 Moore, C. P. 283; 130 E. R. 15.

95. —— Liability in tort.]—A declaration in case against two, alleged that pltf. caused a package to be delivered to defts., & they received the same, to be taken care of, carried, & conveyed by defts. from L. to B., for reasonable reward; & thereupon it became their duty to take care of it while they had the charge of it, & to use reasonable care & diligence in the conveyance; but that, not regarding their duty, they suffered the package to be injured:—*Held:* after verdict, this declaration was to be taken as against common carriers, & not as alleging a specific contract, & one of defts. might be acquitted, & a verdict be sustained against the other.—POZZI *v.* SHIPTON (1838), 8 Ad. & El. 963; 1 Per. & Dav. 4; 1 Will. Woll. & H. 624; 8 L. J. Q. B. 1; 112 E. R. 1106.

Annotations:—**Consd.** Wyld *v.* Pickford (1841), 8 M. & W. 443. **Reid.** Marshall *v.* York, Newcastle & Berwick Ry. (1851), 11 C. B. 655; Tattan *v.* G. W. Ry. (1860), 2 E. & E. 844; Foulkes *v.* Met. Dist. Ry. (1879), 4 C. P. D. 267.

—— Limitation of liability by public notice or special contract.]—*See* Part IV., Sect. 1, sub-sects. 1–3, *post*.

—— Liability as warehouseman.]—*See* Sect. 8, *post*.

B. For Theft or Robbery.

96. After delivery to carrier.]—A ferryman, common innkeeper, or carrier, shall not be discharged if the goods are stolen.—SOUTHCOTE'S CASE (1601), 4 Co. Rep. 83 b; 76 E. R. 1061; *sub nom.* SOUTHCOT *v.* BENNET, Cro. Eliz. 815.

Annotations:—**Reid.** Lane *v.* Cotton (1701), 1 Com. 100; Kettle *v.* Bromsall (1738), Willes, 118; Coldman *v.* Hill, [1919] 1 K. B. 443. **Mentd.** Symons *v.* Darknoll (1628), Palm. 523; Paradine *v.* Jane (1647), Aleyn. 26; Nicholls *v.* More (1661), 1 Sid. 36; Boson *v.* Sandford (1690), 1 Show. 101; Coggs *v.* Barnard (1703), 1 Com. 133; Hartop *v.* Hoare (1743), 3 Atk. 44; Austin *v.* M. S. & L. Ry. (1852), 10 C. B. 454; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Donald *v.* Suckling (1866), L. R. 1 Q. B. 585; Harris *v.* Perry, [1903] 2 K. B. 219; Shrimpton *v.* Hertfordshire County Council (1910), 74 J. P. 305.

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90 i. —— —— *Duty to protect during transit.*]—A carrier left on his wharf during the night sugar covered with a tarpaulin; rain occurred during the night &, when delivery was taken, the sugar was found damaged:—*Held:* carrier liable.—BASTON *v.* DALGETY & CO., LTD. (1905), 7 W. A. L. R. 195.—AUS.

90 ii. —— —— —— *Failure to heat car.*]—A shipment of fruit was delivered to defts. on Dec. 24, to be forwarded to F., which was not reached until Jan. 19, 1910, when the fruit was found to be frozen:—*Held:* defts. were liable.—ALBO *v.* GREAT NORTHERN RY. CO. & CROW'S NEST SOUTHERN RY. CO. (1912), 17 B. C. R. 226.—CAN.

90 iii. —— —— —— *Failure to ice car.*]—ATLANTIC FRUIT CO. *v.* OKE (1919), 16 O. W. N. 121.—CAN.

PART III. SECT. 3, SUB-SECT. 1.—B.

96 i. *After delivery to carrier.*]—When goods have been accepted for carriage, robbery of the goods on the road is no defence.—ORIENTAL BANK CORPN. *v.* R. (1867), 6 N. S. W. S. C. R. 122.—AUS.

96 ii. —— *By porter—Liability of carrier.*]—ARMSTRONG *v.* EDINBURGH & LEITH SHIPPING CO. (1825), 21 Fac. Coll. 687; 3 Sh. (Ct. of Sess.) 464.—SCOT.

a. —— *Liability discharged—Consignee's laches.*]—Applts., lightermen, landed from a steamer &, according

Sect. 3.—*Liability for loss or damage: Sub-sect.* 1, *B., C. & D.; sub-sect.* 2, *A. & B.*]

97. ——.]—A master of a ship is liable in an action in the case for loss of goods on board stolen by means of a trick.—MORS *v.* SLEW (1672), 2 Keb. 866; 3 Keb. 72, 112, 135; 2 Lev. 69; 1 Mod. Rep. 85; T. Raym. 220; 1 Vent. 190, 238; 84 E. R. 548, 601, 624, 638.

Annotations:—**Consd.** Lane *v.* Cotton (1701), 1 Com. 100; Gibbon *v.* Paynton (1769), 4 Burr. 2298. **Expld.** Crouch *v.* L. & N. W. Ry. (1854), 14 C. B. 255; Blaikie *v.* Stenbridge (1859), 6 C. B. N. S. 894. **Consd.** Liver Alkali Co. *v.* Johnson (1874), L. R. 9 Exch. 338. **Expld.** Nugent *v.* Smith (1875), 24 W. R. 237. **Refd.** Barton *v.* Wolliford (1687), Comb. 56; Coggs *v.* Bernard (1703), 2 Ld. Raym. 909; Drinkwater *v.* Quenell (1738), 7 Mod. Rep. 248; Mitchell *v.* Torup (1766), Park. 227; Bodenham *v.* Bennett (1817), 4 Price, 31; Phillips *v.* Clark (1857), 2 C. B. N. S. 156: Redhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379. **Mentd.** Boson *v.* Sandford (1688), 3 Lev. 258; Ashby *v.* White (1703), 2 Ld. Raym. 938; Boucher *v.* Lawson (1736), Lee *temp.* Hard. 194; Austin *v.* M. S. & L. Ry. (1852), 10 C. B. 454; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Pandorf *v.* Hamilton (1886), 17 Q. B. D. 670.

98. ——.]—A common carrier must make good a loss though even robbed.—GIBBON *v.* PAYNTON (1769), 4 Burr. 2298; 98 E. R. 199.

Annotations:—**Consd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21. **Mentd.** Mecklin *v.* Waterhouse, Riley *v.* Horne (1828), 7 L. J. O. S. C. P. 32; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473.

99. ——.]—The master of a general ship, on board of which goods have been laden in the Thames for a foreign port, is liable for the loss of the goods occasioned by a forcible robbery while the ship is lying in the river.—BARCLAY *v.* CUCULLA Y GANA (1784), 3 Doug. K. B. 389; 99 E. R. 711.

Annotations:—**Consd.** Nugent *v.* Smith (1876), 1 C. P. D. 423. **Mentd.** Wardle *v.* Bethune (1871), L. R. 4 P. C. 33.

100. —— **Goods stolen in inn.**]—If a common carrier take a pack of stuff of a man to carry to D., & in an inn the pack is stolen, the owner, & not the carrier, has for this an action against the innkeeper, because they are not the carrier's goods, nor is he to be charged with them because he is by law compelled to carry them.—ANON. (1554), Ben. & D. 8; 123 E. R. 231.

101. —— **By distributing agent's servants—Liability of carrier.**]—MACHU *v.* LONDON & SOUTH WESTERN RY. CO., No. 352, *post.*

102. Before delivery to carrier—Prosecution in carrier's name—Ratification.]—Where a person obtains delivery to himself of goods from a consignor for intended carriage on the false representation that he is a servant of the carrier authorised to take delivery of the goods & he is afterwards prosecuted to conviction for larceny by the carrier, although the property or possession, for the purposes of the prosecution, is laid in the carrier, this is not a ratification of a contract of carriage by the carrier so as to make him liable to the consignor for the loss of the goods.—HARRISON *v.* LONDON & NORTH WESTERN RY. CO. (1917), 86 L. J. K. B. 1461; 61 Sol. Jo. 647.

See, also, Nos. 75, 76, *ante*, Nos. 126, 133, 810, *post.*

C. Wrongful Seizure.

103. By officers of the Crown—Remedy of owner.]—If goods put on board a ship to be carried from one place to another, are wrongfully seized by the officers of govt., so that they cannot be delivered to the consignee, the owner of the goods has an action for the non-delivery, against the owner of the ship, who must seek his remedy over against the officers of govt.—GOSLING *v.* HIGGINS (1808), 1 Camp. 451, N. P.

Annotations:—**Consd.** Spence *v.* Chodwick (1847), 10 Q. B. 517; The Newport (1858), Sw. 333; The Onrust (1867), 17 L. T. 415.

104. —— **Whether authorised.**]—To a declaration upon a contract to carry goods from L. to C., & there to deliver them, all & every dangers & accidents of the seas & navigation of whatever nature or kind soever excepted, to pltfs.' agents, defts. pleaded that the ship with the goods on board, arrived near to the port of C.; that certain officers then exercising the powers of H.M.'s Govt. there, E., chief superintendent of the trade of H.M.'s subjects with China, according to the form of the statute in that case made & provided (3 & 4 Will. 4, c. 93), & S., the commanding officer of H.M.'s naval forces there, did, for divers good & sufficient & lawful causes & reasons them in that behalf moving, & not for any wrongful, negligent, unlawful, or improper act or behaviour of defts., their master or mariners, forcibly interrupted the ship, & all other British ships, from further proceeding to C., & thereby prevented defts. from delivering the goods at C.:—*Held:* bad on special demurrer, for not sufficiently disclosing that E. & S., as chief superintendent, & commander of the naval forces in the Chinese seas, respectively, had legal authority by statute or otherwise to act in the manner alleged.—EVANS *v.* HUTTON (1842), 4 Man. & G. 954; 5 Scott, N. R. 670; 2 Dowl. N. S. 600; 12 L. J. C. P. 17; 6 Jur. 1042; 134 E. R. 391.

Annotation:—**Mentd.** The Matilda A. Lewis (1867), 17 L. T. 451.

By distress.]—*See* No. 5, *ante.*

D. Contract Illegal.

105. Illegality as defence.]—DOOLAN *v.* MIDLAND RY. CO., No. 370, *post.*

106. Onus of proof.]—In case against carriers for the loss of goods delivered to them in I., to be conveyed to E., the question was whether the importation of the goods was illegal, unless they

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to custom, stored in the Harbour Board's shed at G. at 11 a.m. May 31, tobacco that had been consigned to resp. He was notified at 10 a.m. of the arrival & before noon the same day paid all freight & harbour dues, & received from the Harbour Board an order for the delivery. The keys of the shed were in possession of appits., & it was resp.'s duty to apply to them for delivery. At 4 p.m. on the same day resp. removed some other goods from the Harbour Board's premises, but not the tobacco. The following day was a partial holiday in G., & resp.'s shop was closed, but the Harbour Board's sheds were open all day for delivery of goods. June 2 was wet, but the sheds were open again all day, & goods were delivered from them. Appits. requested resp. by telephone message on that day to take away the tobacco, but he did not do so, & that night it was stolen:—*Held:* in the circumstances, resp.'s delay in coming to take delivery was so unreasonable that the liability of appits. as common carriers had been discharged.—KENNEDY *v.* MCKEE (1906), 26 N. Z. L. R. 375.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 1.—C.

104 i. *By officers of the Crown—Whether authorised.*] Defts. undertook to carry & deliver to pltfs. goods, which were stopped & bonded by a custom house officer:—*Held:* defts. were bound to carry out their contract, or show some stoppage by duly authorised officer.—ROBSON *v.* BUFFALO & LAKE HURON RY. CO. (1859), 9 C. P. 183.—**CAN.**

104 ii. —— —— *Pleading.*]—A. delivered to a ry. co. at P. a box for carriage to a consignee in E. At E. the box, while in the custody of the co., was opened by a fishery officer, who took possession of a salmon contained in it. Thereafter a criminal prosecution was raised against A. for having in her possession a salmon known by her to have been taken in close time. A. was tried & acquitted. A. then raised an action of damages against the co. for her expenses in defending the action, averring that the damage had been caused by the fault of defenders in allowing the box to be opened & the salmon removed without a legal warrant, & by their breach of the contract of carriage:—*Held:* there was no relevant averment of fault on part of defenders in the way of breach of contract or otherwise to support a claim for damages.—BOSWELL *v.* NORTH BRITISH RY. CO. (1902), 4 F. (Ct. of Sess.) 500.—**SCOT.**

had been entered at the custom-house :—*Held :* as illegality can never be presumed, it lay upon the carriers, who raised the question, to prove that the goods had not been entered.—SISSONS *v.* DIXON (1826), 5 B. & C. 758 ; 8 Dow. & Ry. K. B. 526 ; 4 L. J. O. S. K. B. 299 ; 108 E. R. 282.

See, also, No. 149, *post.*

SUB-SECT. 2.—EXCEPTIONS TO RULE.

A. Act of God.

107. Carrier not liable—Storm—Goods thrown overboard to lighten vessel.]—Where goods are thrown overboard from a barge in a storm to lighten his barge, the loss is due to the act of God, & the bargeman is not liable.—MOUSE'S CASE (1608), 12 Co. Rep. 63 ; 77 E. R. 1341 ; *sub nom.* GRAVESEND BARGE CASE, 1 Roll. Rep. 79.

Annotations :—**Consd.** Bird *v.* Astcock (1614), 2 Bulst. 280. **Expld.** Cope *v.* Sharpe, [1912] 1 K. B. 496. **Refd.** Leuw *v.* Dudgeon (1867), 16 W. R. 80 ; Scaramanga *v.* Stamp (1880), 5 C. P. D. 295. **Mentd.** Holmes *v.* Mather (1875), L. R. 10 Exch. 261 ; Kirby *v.* Chessum (1913), 30 T. L. R. 15.

108. —— ——.]—A carrier is not answerable for goods lost by tempest.—AMIES *v.* STEVENS (1718), 1 Stra. 127 ; 93 E. R. 428.

Annotations :—**Refd.** R. *v.* Gill (1719), 1 Stra. 190. **Mentd.** Blower *v.* G. W. Ry. (1872), L. R. 7 C. P. 655.

See, also, Nos. 50, 88, 89, 91, *ante.*

109. —— **Agencies of Nature.**]—COHEN *v.* GAUDET, No. 153, *post.*

110. What amounts to—Harbour bank damaged by flood—Accident of navigation.]—SMITH *v.* SHEPHERD (1795), Abbott on Shipping, 14th ed. 578.

Annotations :—**Consd.** Richardson *v.* Sewell (1805), 2 Smith, K. B. 205. **Mentd.** Johnston *v.* Benson (1819), 1 Brod. & Bing. 454; Akt. General Gordon *v.* Cape Copper Co. (1921), 26 Com. Cas. 289.

111. —— **Pipe cracked by frost.**]—Damage was done to a cargo by water escaping through the pipe of a steam boiler, in consequence of the pipe having been cracked by frost :—*Held :* this was not an act of God, but negligence in the captain, in filling his boiler before the time for heating it, although it was the practice to fill overnight when the vessel started in the morning. —SIORDET *v.* HALL (1828), 4 Bing. 607 ; 1 Moo. & P. 561 ; 6 L. J. O. S. C. P. 137 ; 130 E. R. 902.

Annotations :—**Refd.** The Norway (1864), Brown. & Lush. 377 ; Fenton *v.* Thorley, [1903] A. C. 443.

112. —— **Violent & irresistible act of Nature.**]—NUGENT *v.* SMITH, No. 88, *ante.*

113. —— **Accident in navigation—Damage to tow boat.**]—Defts., who were common carriers, contracted with pltf. to carry his goods between G. & R. The goods were put in a boat, & towed by a steam vessel of defts.', which proceeded to P. pier to take in passengers. There was another vessel of defts.' alongside the pier, & it was the usual & most safe course for the steam-boat so approaching to stop until the other vessel had left. On this occasion the steam-boat with the boat in tow was twice stopped, in consequence of the stopping of the other vessel, & on the second time of stopping the tide lifted up the tow-boat & pitched it on the rudder of the steam-boat, whereby the tow-boat sprung a leak, & pltf.'s goods were damaged. There was no negligence on the part of the captains of either vessel :—*Held :* the damage was not caused by the act of God ; & defts. were liable.

The act of God means something overwhelming, & not merely an accidental circumstance (MARTIN, B.).—OAKLEY *v.* PORTSMOUTH & RYDE STEAM PACKET CO. (1856), 11 Exch. 618 ; 25 L. J. Ex. 99 ; 26 L. T. O. S. 204 ; 20 J. P. 230 ; 4 W. R. 236 ; 156 E. R. 977.

See, also, No. 235, *post.*

B. King's Enemies.

114. Exception—Unjustifiable deviation—Breach of special contract.]—Pltfs. were holders for value of two bills of lading for a quantity of wool shipped in N. Z. for L., by a vessel belonging to defts. The bills of lading had in the margin the following words : "Direct Service between N. Z. & L." They were headed "Steam from N. Z. to L.," & proceeded in the following terms : "Shipped in good order & condition by . . . . on board the SS. T. . . . now lying in N., N. Z. & bound for L. . . ., with liberty to proceed to & stay at any port or ports . . . in N. Z. . . . & bound . . . on finally leaving N. Z. for L., & with liberty on the way to London to call & stay at any intermediate port or ports to discharge or take on board passengers, cargo, coal or other supplies, with permission, if desired, for the vessel to call at R. &/or M. &/or P. for the purpose of taking on board coal, supplies &/or cargo &/or live stock, & to sail with or without pilots, & to tow & assist vessels in all situations, the following goods" (goods described) "to be delivered subject to all the above liberties to deviate & to the exceptions & conditions at foot hereof, in like good order & condition, at L." Clause 1 of the exceptions & conditions excepted (*inter alia*) the King's enemies. After pltfs.' goods had been shipped, defts. took on board a parcel of frozen meat for H., which was not one of their usual ports of call. When the vessel was about seven miles from H. she was torpedoed by a German submarine, & sank with her cargo. By going to H. the length of the voyage to L. was increased by fifty-four miles, & no ship belonging to defts. had ever gone there before. In an action by pltfs. to recover from defts. the value of the wool :—*Held :* (1) inasmuch as the usual ports of call for defts.' line had become well known, & did not include H., that port was not an intermediate port within the meaning of the liberty reserved in the bills of lading ; there had been an unjustifiable deviation, & defts. could not rely on the exception of the King's enemies contained in the bills of lading ; (2) as defts., in deviating were committing a breach of their contract as carriers when the loss occurred, they could not rely on the implied common law exception of the King's, enemies, & were therefore liable to pltfs. for the loss of the goods.—MORRISON (JAMES) & CO. LTD. *v.* SHAW, SAVILL & ALBION CO. LTD., [1916] 2 K. B. 783 ; 86 L. J. K. B. 97 ; 115 L. T. 508 ; 32 T. L. R. 712 ; 61 Sol. Jo. 9 ; 13 Asp. M. L. C. 504, C. A.

Annotations :—*As to* (1) **Refd.** Smith *v.* R. (1917), 86 L. J. K. B. 1147. *As to* (2) **Folld.** Shaw *v.* Symmons, [1917] 1 K. B. 799. **Refd.** The Cap Palos, [1921] P. 458 ; The Oscar II. ; The Bernisse ; The Elve, [1921] P. 173. **Mentd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426.

See, also, Nos. 50, 89, 91, *ante.*

PART III. SECT. 3, SUB-SECT. 2.—A.

113 i. *What amounts to—Accident in navigation—Damage to goods.*]—Deft. received sugar on board his vessel in good order, for delivery to pltf., at his store, on the banks of a river. The vessel arrived in the river opposite to pltf.'s place, in due course. In hauling alongside a jetty of pltf., the tide canted the vessel on to a known & visible snag, & pltf.'s sugar was thereby damaged :—*Held :* the facts would not support a plea that the damage complained of was occasioned by act of God.—BEGG *v.* COSTA, Mac. 60.—N.Z.

b. *As defence—Necessary allegations.*]—A defence alleging the "act of God" should specify the particular act relied on.—M'MAHON *v.* DUNDALK STEAM PACKET CO. (1861), 6 Ir. Jur. 137.—IR.

Sect. 3.—Liability for loss or damage: Sub-sect. 2, C., D., E. & F.]

C. Inherent Defects.

115. General rule.]—A common carrier is not liable for an injury to goods caused by an inherent latent defect in the goods themselves, the existence of which was unknown both to the sender and the carrier.

Defts. contracted with pltf. as common carriers to carry for him an engine from his yard to a neighbouring town on defts.' railway. The engine was on wheels & fitted with shafts to allow of its being drawn by horses. While defts. were drawing the engine with their horses to the railway station one of the shafts, owing to its being rotten, broke; the horses took fright & upset the engine, which was damaged. The defective condition of the shaft was not known to either pltf. or defts., & could not have been discovered by any ordinary examination:—*Held:* as the engine was not in fact fit to be carried in the way in which it was intended to be carried, & the damage resulted in consequence of that unfitness, defts. were excused. —LISTER *v.* LANCASHIRE & YORKSHIRE RY. CO., [1903] 1 K. B. 878; 72 L. J. K. B. 385; 88 L. T. 561; 52 W. R. 12, D. C.

Annotation:—**Refd.** L. & N. W. Ry. *v.* Hudson (1920), 89 L. J. K. B. 323.

116. Wine in ferment.]—In an action against a carrier for negligently driving his cart & causing a pipe of wine to burst, deft. contended that the wine was upon the ferment & when the pipe burst he was driving gently:—*Held:* a good defence.—FARRAR *v.* ADAMS (1711), Bull. N. P. 69 c, N. P.

117. Developed by carriage—Hauling locomotive.]—JOHNSON *v.* NORTH EASTERN RY. CO. (1888), 5 T. L. R. 68, C. A.

118. —— Breakage of shaft.]—LISTER *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 115, *ante*.

119. Onus of proof—Deficiency in weight.]—If a cargo weighing a certain weight be delivered to a carrier to be carried, & when the cargo arrives at its destination, the weight be deficient, this is evidence from which a jury may infer negligence in the carrier; & if the deficiency did not arise from the negligence of the carrier, but from the nature of the cargo & its condition when loaded, it is incumbent on him to show that.—HAWKES *v.* SMITH (1842), Car. & M. 72, N. P.

See, also, No. 88, *ante*, No. 120, *post*.

D. Improper Packing.

120. Knowledge of carrier—Question of fact.]—In an action against carriers for injury to casks of oil, alleged by them to have arisen from defects in the casks, it was left to the jury whether it arose from such defects, & whether, even if it did, defts. knew or ought to have known thereof, & had acted negligently in sending them on in that state.

The questions left to the jury were (1) did the damage occur while in defts.' possession from any inherent defects in the casks themselves; (2) if there were defects in the casks, had defts. knowledge, or reasonable means of knowledge, of such defects, & did the damage arise from such defects; (3) in the event of their opinion on the other two being adverse to pltfs., *i.e.* if defts. had not notice of any defects in the casks at the time of loading, but had such notice when they arrived at the goods' station, were they guilty of negligence, in fact, in forwarding them in their then state.—COX *v.* LONDON & NORTH WESTERN RY. CO. (1862), 3 F. & F. 77, N. P.

Annotation:—**Refd.** L. & N. W. Ry. *v.* Hudson (1902), 89 L. J. K. B. 323.

121. —— Carrier not informed — Nominal damages.]—On Dec. 19, 1881, eighteen bales marked "Rags" were delivered by pltfs. in L. to defts. for conveyance to W., where in the ordinary course they should have been delivered within twenty-four hours. By mistake they were forwarded to another place, & did not reach W. until Jan. 4, 1882, when, finding them to have become heated, through being packed in a damp state, & therefore unfit for the manufacture of paper, the consignees rejected them; ultimately the rags were found useless for any purpose, & were destroyed. There was an admitted breach of duty on the part of defts., & it was conceded that the rags would have sustained no injury if they had been packed dry:—*Held:* pltfs. were entitled to a verdict but for nominal damages only, on the ground that the loss was attributable to pltfs.' own act in packing the rags in a damp state, without informing defts. that special care was necessary.—BALDWIN *v.* LONDON, CHATHAM & DOVER RY. CO. (1882), 9 Q. B. D. 582, D. C.

122. —— Immaterial.]—Where goods are delivered to a common carrier for carriage insufficiently packed, & are damaged in the course of the transit, the carrier's knowledge of their condition at the time of their receipt will not preclude him from setting up as a defence that the damage was due to the insufficient packing.—GOULD *v.* SOUTH EASTERN & CHATHAM RY. CO., [1920] 2 K. B. 186; 89 L. J. K. B. 700; 123 L. T. 256, D. C.

See, also, Nos. 87, 88, 90, *ante*, No. 196, *post*.

123. Neglect of consignor—Carriers not liable.]—Pltf. intending to send furniture by defts.' railway to D. wrote for rates, & subsequently, whether the rates included packing & unpacking; the rates were forwarded with an extract of the notice & conditions relating to the terms on which goods could be forwarded, one of which was that the co. would not be responsible for improper packing. There was also a notice that no officer of the co. had power to dispense with the conditions. Defts. declined the packing & unpacking. When their carman, in pursuance of instructions from pltf., arrived to fetch away the furniture it was found not to be packed, although there were materials at hand for the purpose; & as the carman declined to undertake the packing himself, it was conveyed away unprotected, & suffered damage during transit to D. It was found as a fact that the damage was occasioned by improper packing:—*Held:* it was pltf.'s duty to pack the furniture, & as the damage was occasioned by his neglect to do so, he was not entitled to recover compensation from defts.—BARBOUR *v.* SOUTH EASTERN RY. (1876), 34 L. T. 67, D. C.

Annotations:—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Refd.** Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478; L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

124. —— Partial cause of damage.]—HIGGINBOTHAM *v.* GREAT NORTHERN RY. CO., No. 87, *ante*.

See, also, No. 120, *ante*.

E. Insufficient Address.

125. Duty of consignor.]—Where goods are transmitted through a common carrier, it is

c. Wheat heated.]—The abnormal moisture of the year whereby wheat in course of carriage becomes heated & is seriously damaged does not relieve the carrier from responsibility when he has full knowledge of the conditions. —CENTRAL GRAIN CO. *v.* CANADIAN PACIFIC RY. CO. (1916), 34 W. L. R. 899.—**CAN.**

125 i. Duty of consignor.]—Pltf. consigned to defts. goods addressed to "I. C. Co." simply. He knew that the co. had not been incorporated; he

incumbent upon the consignor to take reasonable precautions to insure their safe delivery to the consignee; & whether the precautions taken were reasonable or not depends upon whether they were such as to have rendered the carrier liable to the consignee in respect of the goods in case of their loss during the transit.

Twelve cases were delivered together to carriers by the consignor for transmission to the consignee; one was addressed to the consignee, but the other eleven were only marked with the consignor's initials:—*Held:* the consignee had not taken reasonable precautions to insure their safe delivery. —POINTIN *v.* PORRIER (1885), 49 J. P. 199, D. C.

F. Misconduct or Default of Consignor.

126. Duty to disclose contents or value—Disclosure as to part.]—(1) If a box with money be delivered to a carrier, he is bound to answer for it, if he be robbed, though it was not told him what was in it. It is immaterial that the sender told the carrier of some things in the box and not all, for he need not tell the carrier all the particulars in the box. It is for the carrier to show a special contract.

(2) The jury may, however, in measuring the damages take into account the intended cheat to the carrier.—KENRIG *v.* EGGLESTON (1648), Aleyn, 93; 82 E. R. 932.

Annotations:—As to (1) **Apld.** Drinkwater *v.* Quenell (1738), 7 Mod. Rep. 248. **Consd.** Gibbon *v.* Paynton (1769), 4 Burr. 2298; Riley *v.* Horne. (1828), 5 Bing 217. **Refd.** Titchburne *v.* White (1719), 1 Stra. 145.

127. ——— ———.]—If A. inclose money in a parcel of goods belonging to B. & B. send the parcel to C. a common carrier, & the parcel is lost, A. may maintain an action against C. for the money, although he did not tell the carrier that money was contained in the parcel, & although he only received the rate of carriage for goods.—DRINKWATER *v.* QUENELL (1738), 7 Mod. Rep. 248; 87 E. R. 1220.

128. ———.]—If a box is delivered generally to a carrier, & he accepts it, he is answerable, though the party did not tell him there is money in it. But if the carrier asks, & the other says no, or if he accepts it conditionally, provided there is no money in it, in either of these cases the carrier is not liable.—TITCHBURNE *v.* WHITE (1719), 1 Stra. 145; 93 E. R. 438.

Annotation:—**Consd.** Riley *v.* Horne (1828), 5 Bing. 217.

129. ———.]—MACKLIN *v.* WATERHOUSE, No. 50, *ante*.

130. ———.]—Declaration in case against the owners of a ferry stated, that defts. were possessed of a ferry across the river M., from W. to L., & that pltfs. delivered to them a phaeton, & certain jewellery & watches contained in it, to be by defts., for reward taken care of & carried in a steam-boat from W. to L., & there landed for pltfs.; that defts. accepted & received the carriage containing the jewellery & watches from pltfs., & it became their duty to take proper care of them while they remained in their custody, & in the carriage, conveyance, & landing of them. Breach, that defts. took such bad care of the carriage, jewellery, & watches, & so negligently conducted themselves that they were injured. Plea, that pltfs. did not deliver to defts., nor did they accept & receive from pltfs., the goods in the declaration mentioned:—*Held:* (1) a contract to carry & land the carriage & jewellery, as stated in the declaration, could not be implied from the mere character of defts. as owners of the ferry; it was a question for the jury, whether there was in fact a contract between the parties, either express or implied from usage, to receive the carriage on board, & to land it again at the end of the transit across the river.

Pltf. had gone on board deft's. steam-boat, with his horse & carriage, paying defts.' charge for a "light four-wheeled phaeton;" the jewellery & watches, which much increased its weight, were contained in a box under the seat, & he made no communication of that fact to defts. The carriage was taken safely across the river, & on the arrival of the boat at the pier head at L., two of defts.' servants put the carriage out upon the slip, & commenced drawing it up the slip towards the quay, but in doing so were overpowered by its weight, & it ran down into the river, whereby the jewellery & watches were injured:—*Held:* (2) pltf.'s right of action for this injury was not affected by his not having communicated the fact of the jewellery & watches being contained in the carriage; (3) it was a question for the jury, supposing a contract to land were established, whether the landing was complete in the above circumstances; (4) to rebut evidence of a usage to take on board & land the carriages of passengers, a notice stuck up at the door of entrance for foot passengers to the slip at W., but not visible to those who came with carriages, nor shown to have been known to pltf., that defts. did not undertake to load or discharge horses or carriages, & would not be responsible for loss or damage thereto, was not admissible.—WALKER *v.* JACKSON (1842), 10 M. & W. 161; 12 L. J. Ex. 165; 11 L. J. Ex. 346; 152 E. R. 424.

Annotations:—As to (2) **Distd.** Cahill *v.* L. & N. W. Ry. (1861), 10 C. B. N. S. 154. **Foll.** Lebeau *v.* General Steam Navigation Co. (1872), L. R. 8 C. P. 88. **Consd.** Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94. **Foll.** Long *v.* District Messenger & Theatre Ticket Co. (1916), 32 T. L. R. 596. **Refd.** G. N. Ry. *v.* Shepherd (1852), 8 Exch. 30; Phillips *v.* Clark (1857), 2 C. B. N. S. 156;

also knew that defts.' practice was sometimes to deliver goods, when not consigned, "to order," without production of the shipping bill. Defts. delivered the goods to a person carrying on business under the name of I. C. Co., & at its ostensible office:—*Held:* pltf. was to blame for such delivery, & defts. were not liable.—CONLEY *v.* CANADIAN PACIFIC RY. CO. (1900), 32 O. R. 258; 1 O. L. R. 345.—**CAN.**

125 ii. ———.]—W. delivered a box to S. for carriage to L., at the same time sending the consignee an invoice of the goods & advising him of the name of the carrier. The box was not fully addressed but merely marked; nor was any part of the carriage prepaid. The box did not come to hand, having been misdelivered to another firm with the same initials as the proper consignee. When properly delivered it was so damaged that delivery was refused. In an action by W. against the carrier:—*Held:* on the ground of the want of a full address on the box, the carrier was not liable.—WILSON (WILLIAM) & CO. *v.* SCOTT (1797), Hume, 302.—**SCOT.**

125 iii. ———.]—Goods delivered to a railway agent in G., addressed to "W., S.," were sent to S. in D., not to S. in S., for which they were intended, & it was 36 days after despatch that they were delivered to the consignee who refused them:—*Held:* the cause of the goods being mis-sent being the imperfect address, the ry. co. were not liable for damage resulting from the delay.—CALEDONIAN RY. CO. *v.* HUNTER (W.) & CO. (1858), 20 Dunl. (Ct. of Sess.) 1097.—**SCOT.**

d. *Difference between address on package & on freight bill.*]—Packages were sent from N. Y. by the C. & N. Ry., addressed to pltf. at H., to go on by G. W. Ry. Co. A bill of freight & charges due the C. & N. Ry. Co. was made out to the G. W. Ry. Co. In consequence of a telegraphic communication, of which deft. knew nothing, the address to H. entered on this bill was struck out, & T. substituted, & G. W. Ry. Co. was also struck out, & E. & O. R. R. put in its place, but the address on the packages was left unchanged. They were brought by E. & O. Ry. Co. to L. & thence shipped to T., where deft. received them, with an abstract in which they were described as addressed to pltf. at T.: deft., relying on the address to H. which still remained on the case, shipped them to that place, & they were burned on the passage:—*Held:* it was properly left to the jury to say whether deft. was guilty of negligence in going by the address on the packages.—HUNTER *v.* BORST (1856), 13 U. C. R. 141.—**CAN.**

Sect. 3.—Liability for loss or damage: Sub-sect. 2, F. & G. Sect. 4.]

Price *v.* Union Lighterage Co., [1903] 1 K. B. 750; Chiesman *v.* Modena Steamship, The Modena (1911), 16 Com. Cas. 292. *Generally* **Mentd.** Cahill *v.* L. & N. W. Ry. (1862), 8 Jur. N. S. 1063.

131. ——.]—CROUCH *v.* LONDON & NORTH WESTERN RY. CO., No. 6, *ante*.

132. ——.]—Pltf. engaged a servant of defts., a messenger co., to take a letter to a bank & bring back a reply. One of defts.' usual conditions was that they would not be responsible for articles unless the value was previously declared, & in no event would they be liable for more than £20. At the bank defts.' messenger was given a sealed envelope to take to pltf. The envelope contained £140 in bank-notes, & the messenger lost it on the way. In an action by pltf. against defts. for breach of contract or negligence, the jury found that the loss was caused by negligence, that defts. did not give pltf. reasonable notice of their conditions, that pltf. was content to employ defts. without asking their terms, & that pltf.'s request that the messenger should bring a reply from the bank was not sufficient notice to defts. that the messenger would have to bring a considerable sum of money from the bank:—*Held:* though the condition was reasonable, yet the mere fact that pltf. asked defts. to undertake certain work did not amount to asking them to undertake it on their usual terms, & though defts. had no notice that their messenger would have to carry a large sum of money, yet if a carrier took delivery of a parcel & asked no question he was bound to carry it as it was, & therefore defts. were liable to pltf. for the value of the notes.—LONG *v.* DISTRICT MESSENGER & THEATRE TICKET CO., LTD. (1916), 32 T. L. R. 596.

133. Misrepresentation—As to value.]—A bag sealed up, was delivered to a carrier, & said to contain £200 when there was £450; the carrier was robbed:—*Held:* he was answerable only for £200.—TYLY *v.* MORRICE (1699), Carth. 485; Holt, K. B. 9; 90 E. R. 879.

Annotations:—**Consd.** Gibbon *v.* Paynton (1769), 4 Burr. 2298; Riley *v.* Horne (1828), 5 Bing. 217.

134. —— ——.]—The first count of a declaration alleged that pltf. employed defts., a railway co., to provide trucks for the carriage of horses of pltf. for reward, in consideration whereof defts. promised that the trucks should be reasonably fit & proper for the carriage of the pltf.'s horses; breach by defts. in not providing proper trucks, whereby pltf.'s horses were injured. Second count:—that the defts. as a railway co., having received from the pltf. certain horses to be conveyed by them on their said railway for hire, in consequence of the defective state of the trucks provided by defts. & their negligence & want of care pltf.'s horses were injured. Defts. paid £25 into court, & pltf. claimed damages *ultra*. At the trial it appeared that before defts. would furnish the trucks, pltf. was requested by them to sign & did sign, a declaration that the value of each horse did not exceed £10, &, in consequence of the rate charged for conveyance, that he agreed they were to be carried entirely at the owner's risk. Evidence was given for pltf. that the horses were worth more than £10 each, & it was admitted that if taken at their real value, £40 was the amount of compensation pltf. would be entitled to, but if £10 each then £25 was the right amount:—*Held:* (1) the declaration as to the value of the horses, signed by pltf. was no part of the contract; that even if it were it did not vary or qualify in substance the contract declared upon; (2) the ct., as a jury, taking into consideration the evidence & admitted facts, might treat it as a declaration untrue to pltf.'s knowledge, made by him for the purpose of inducing & by which he did induce defts. to contract to carry on terms involving the assumption of its truth; and that therefore the pltf. ought not to recover more than the £25 paid into ct.; (3) the latter part of the declaration signed by pltf., namely, that the horses were to be carried entirely at the owner's risk, was a condition unreasonable & void within Railway & Land Traffic Act, 1854 (s. 31), but (4) the former part, that the value of the seven horses did not exceed £10 per horse, was not thereby vitiated, & might be relied on by defts.—M'CANCE *v.* LONDON & NORTH WESTERN RY. CO. (1864), 3 H. & C. 343; 4 New Rep. 467; 34 L. J. Ex. 39; 11 L. T. 426; 29 J. P. 148; 10 Jur. N. S. 1058; 12 W. R. 1086; 159 E. R. 563, Ex. Ch.

Annotation:—*As to* (2) **Refd.** Lebeau *v.* General Steam Navigation Co. (1872), L. R. 8 C. P. 88.

135. —— As to contents.]—MAYHEW *v.* EAMES, No. 227, *post*.

136. —— —— Accepted as "Contents unknown."]—Pltfs. delivered to defts., for carriage on board the defts.' ship, a closed case containing silk goods. The bill of lading, as tendered by pltfs. for signature, described the contents of the case as linen goods; but before signing the captain impressed upon it with a stamp the words "weight, value, & contents unknown." The freight charged for silk was higher than that charged for linen goods, & the freight for the goods so delivered was that for linen goods; but pltfs. represented the goods to be linen inadvertently & without fraudulent intention. On the ship's arrival at her destination it was found that two pieces of silk had been abstracted from the case. In an action by pltfs. against defts. as common carriers for non-delivery of the silk goods so lost:—*Held:* the result of the addition of the words "weight, value, & contents unknown" to the bill of lading was completely to do away with the effect of the description of the goods as linen, & defts.' contract was to carry the case & its contents, whatever they might be, & pltfs. were entitled to maintain the action.

Qu.:—whether, even without the additional words, the misrepresentation, having been made without fraud, could have had the effect of avoiding the contract for carriage of the goods by defts. as common carriers.—LEBEAU *v.* GENERAL STEAM NAVIGATION CO. (1872), L. R. 8 C. P. 88; 42 L. J. C. P. 1; 27 L. T. 447; 21 W. R. 146; 1 Asp. M. L. C. 435; *subsequent proceedings* (1873), L. R. 8 C. P. 129.

Annotation:—**Refd.** New Chinese Antimony Co. *v.* Ocean S.S. Co., [1917] 2 K. B. 664.

137. —— As to weight—No defence.]—In an action for damage to goods, against a carrier for hire, deft. cannot, under the plea of not guilty show that the statement of pltf., as to the weight of the goods, at the time of hiring the van in which

PART III. SECT. 3, SUB-SECT. 2.—F.

133 i. *Misrepresentation—As to value.]*—The fact that the shipper knowingly undervalued goods at shipment does not entitle the carrier to succeed on the defence of fraud, where the carrier was not induced to accept the shipment by reason of the wrong declaration as to value, & the risk of loss or damage was not increased, nor his diligence relaxed because of such declaration.—SPANER BROTHERS *v.* CENTRAL CANADA EXPRESS CO., [1918] 3 W. W. R. 140; 43 D. L. R. 400.—**CAN.**

135 i. —— *As to nature of goods.]*—Misdescription of the nature of goods disentitles the shipper to recover for their loss, although the goods would not be subject to extra rates if properly described.—ROHEKMALLA *v.* PALMER (1864), Cor. 133.—**IND.**

they were conveyed, induced him, deft., to send a van unequal to carry them, such defence admitting that the insufficiency of the van caused the accident.—WEBB *v.* PAGE (1843), 6 Man. & G. 196; 6 Scott, N. R. 951; 1 Dow. & L. 531; 12 L. J. C. P. 327; 134 E. R. 863.

Annotation :—**Refd.** Higginbotham *v.* G. N. Ry. (1862), 10 W. R. 358.

See, also, Part IV., Sect. 1, sub-sects. 5 & 7, *post.*

G. Goods accompanied by Owner or his Agent.

138. Under owner's control.]—If I send my servant with the goods, the carrier is not liable.—EAST INDIA CO. *v.* PULLEN (1726), 2 Stra. 690; 93 E. R. 786.

Annotation :—**Distd.** Robinson *v.* Dunmore (1801), 2 Bos. & P. 416.

139. ——.]—ROBINSON *v.* DUNMORE, No. 2, *ante.*

140. ——.]—BRIND *v.* DALE, No. 9, *ante.*

See, further, Part VI., Sect. 3, sub-sects. 2 & 3, *post.*

SECT. 4.—LIABILITY FOR DELAY.

141. General rule.]—In case against a carrier, where the duty is alleged to be, safely to carry & deliver, the grievance may be stated to be non-delivery within a reasonable time.

A declaration alleged a contract to carry for hire, & stated defts.' duty to be to carry safely & deliver, & the breach assigned was that a reasonable time for the delivery had elapsed, but that defts. had not delivered the goods :—*Held :* pltf. was entitled to recover upon proof of non-delivery within a reasonable time.—RAPHAEL *v.* PICKFORD (1843), 5 Man. & G. 551; 6 Scott, N. R. 478; 2 Dowl. N. S. 916; 12 L. J. C. P. 176; 7 Jur. 815; 134 E. R. 680.

Annotation :—**Refd.** Taylor *v.* G. N. Ry. (1866), L. R. 1 C. P. 385.

142. ——.]—Carriers are bound to convey with reasonable expedition, & if their course of business is inconsistent with that, it is no answer to an action against them for damages arising from delay, that they carried at the ordinary rate of speed in which they conducted their business.—BLAKEMORE *v.* LANCASHIRE & YORKSHIRE RY. CO. (1858), 1 F. & F. 76, N. P.

143. ——.]—HALES *v.* LONDON & NORTH WESTERN RY. CO., No. 59, *ante.*

144. ——.]—A common carrier of goods is not, in the absence of a special contract, bound to carry within any given time, but only within a time which is reasonable, looking at all the circumstances of the case; & he is not responsible for the consequences of delay arising from causes beyond his control.

Defts., a railway co., were prevented, by an unavoidable obstruction on their line, from carrying pltf.'s goods within the usual, a reasonable, time. The obstruction was caused by an accident resulting solely from the negligence of another co. who had, under an agreement with defts., sanctioned by act of parliament, running powers over their line :—*Held :* defts. were not liable to pltf. for damage to his goods caused by the delay.—TAYLOR *v.* GREAT NORTHERN RY. CO. (1866), L. R. 1 C. P. 385; *sub nom.* GREAT NORTHERN RY. CO. *v.* TAYLOR, Har. & Ruth 471; 35 L. J. C. P. 210; 14 L. T. 363; 12 Jur. N. S. 372; 14 W. R. 639.

Annotations :—**Distd.** Donohoe *v.* L. & N. W. Ry. (1867), 15 W. R. 792. **Consd.** Hick *v.* Rodocanachi, [1891] 2 Q. B. 626. **Refd.** Postlethwaite *v.* Freeland (1880), 5 App. Cas. 599; Hick *v.* Raymond & Reid, [1893] A. C. 22; A.-G. *v.* Manchester Corpn., [1906] 1 Ch. 643.

145. Excuses for delay—Extraordinary circumstances—Act of God.]—A carrier of goods or cattle is only bound to carry in a reasonable time in ordinary circumstances, & is not bound to use extraordinary efforts or incur extra expenses in order to surmount obstructions caused by the Act of God as, a fall of snow.—BRIDDON *v.* GREAT NORTHERN RY. CO. (1858), 28 L. J. Ex. 51; 32 L. T. O. S. 94.

Annotation :—**Refd.** Hick *v.* Rodocanachi, [1891] 2 Q. B. 626.

See, also, No. 876, *post.*

146. —— Unusual course of business adopted—Truck not forwarded.]—The course of conveyance of fish from Y. to H. was, for a fish train to leave Y. for C., where the H. truck was detached, & afterwards attached to a passenger train for H. which arrived at H. at 8 a.m., in time for market. The railway co. only charged goods fares for the carriage of fish, & gave a "fish consignment note," which only stipulated for the conveyance within a reasonable time. Pltf. had dealt with the co. many times previously on the above footing, & invariably received his consignments of fish at 8 a.m. in the morning by a passenger train. On the occasion in question the H. truck was detached as usual at C., but not forwarded by the usual passenger train to H., & did not in fact arrive at H. until 11 a.m., when it was too late for market. Pltf. refused to accept the fish, or the proceeds of the sale, & the co. sold them :—*Held :* the co. was liable to pltf. for the delay in delivering the fish.—WREN *v.* EASTERN COUNTIES RY. (1859), 1 L. T. 5.

147. —— Unreasonable course of business—Waybill marked "Forward immediately"—Goods received late in the day.]—Defts. received from

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PART III. SECT. 4.

141 i. *General rule—What is reasonable time.*]—Although a carrier may not be bound to deliver goods on any specific day or within any specific time, he is bound to deliver them within reasonable time, & what constitutes reasonable time must be determined upon the consideration of all the circumstances of the case.—BULDEO DASS *v.* NATHOO MULL (1867), 2 Agra, 132.—**IND.**

141 ii. —— ——.]—When no time for delivery of goods has been specified, the carrier is bound to deliver within a reasonable time. The usual course of delivery is in most cases *primâ facie* evidence of what is a reasonable time.—HESS *v.* UNION S.S. CO. (1875), N. L. R. 15.—**S. AF.**

146 i. *Excuses for delay—Unusual course of business adopted—Truck not forwarded.*]—Pltf., Sept. 10, delivered machinery to defts. at D., addressed to & to be delivered at the agricultural show yard at W. where an agricultural show was then being held. In the ordinary course of traffic the machinery would have reached W. Sept. 11. The machinery was sent from D. in due course, but when it arrived at B. the rails were in a slippery condition, & a great increase of traffic had taken place. Defts.' servants therefore uncoupled the trucks containing the machinery, & substituted trucks which had been left behind by a previous train. The machinery was delayed till a late train, & arrived too late for the show. Defts. had taken no precaution to provide for the additional traffic, though they might have anticipated it :—*Held :* the machinery had not been delivered within a reasonable time & defts. were liable.—WALLACE *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND (1869), 17 W. R. 464.—**IR.**

146 ii. —— —— —— *Perishable goods.*]—Goods marked perishable were delivered to a ry. co., whose custom it was to forward those so marked in preference to others. The truck in which they were was not marked perishable, & was taken off the train along with others in order to lighten it, while goods not of a perishable nature were forwarded :—*Held :* the co. had failed to forward the goods with reasonable expedition, & were liable for the damage caused by the delay.—MACDONALD & CO. *v.* HIGHLAND RY. CO. (1873), 11 Macph. (Ct. of Sess.) 614.—**SCOT.**

e. —— *Press of business—Congestion of traffic.*]—A defence of unusual press of business & congestion of traffic must be strictly proved.—CENTRAL GRAIN CO. *v.* CANADIAN PACIFIC RY. (1916), 34 W. L. R. 899.—**CAN.**

Sect. 4.—Liability for delay. Sect. 5.]

pltf. at their station at W. a quantity of fruit for transit by railway from W. to C., & dispatched it from W. by a goods train which arrived, in due course, at 5.45 p.m. on Friday at their station at L., where their line of railway ends, & whence goods, booked by them for C., have to be transferred from their station to the goods station of the Midland Ry. Co. at L., a short distance off from defts.' station. Had pltf.'s fruit been so transferred at any time before 8 p.m. that evening, which would have taken about half an hour to do, it would have been sent on by a Midland goods train that night, & have arrived at C. early on Saturday morning. It being, however, the custom for defts.' servants to leave work at L. station at 6 p.m. every evening, the fruit in question was, according to the usual course in such cases, kept at defts.' station all that night, & was not transferred to the Midland station until Saturday morning, & consequently did not arrive at C. until Sunday. There was a conflict of testimony as to the terms of the contract, pltf. swearing that the stationmaster at W. undertook that the fruit should be at C. in time for the particular market, whilst the latter denied giving any such undertaking; but he did indorse a memorandum on the waybill of these goods "Forward immediately —wanted for market on Saturday. . . ." Defts. also set up a contract under the consignment note, which pltf. had signed, & contended that the goods had been sent on according to their ordinary course of business:—*Held:* defts. were negligent in not sending on the goods to the Midland station the same evening; it was not a reasonable course of business in them to keep at their station until the following morning goods marked in the waybill to be "forwarded immediately."—SHARP *v.* NORTH EASTERN RY. CO. (1866), 14 L. T. 487.

148. —— Obstruction caused by third party.]—TAYLOR *v.* GREAT NORTHERN RY. CO., No. 144, *ante*.

149. —— Contract illegal—Part of cargo destined for alien enemy.]—(1) The carriage by a shipowner of goods destined for an alien enemy without the knowledge & consent of the other shippers is a breach of duty towards them, & the shipowner is liable for damages for delay in delivering their goods at the port of destination if the ship is seized & detained by reason of having enemies' goods on board.

(2) There is no rule of law that damages cannot be recovered for loss of market on a contract of carriage by sea.—DUNN *v.* BUCKNALL BROTHERS, DUNN *v.* CURRIE (DONALD) & CO., [1902] 2 K. B. 614; 71 L. J. K. B. 963; 87 L. T. 497; 51 W. R. 100; 18 T. L. R. 807; 9 Asp. M. L. C. 336; 8 Com. Cas. 33, C. A.

Annotations:—*As to* (2) Monte Video Gas & Dry Dock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 866.

150. —— Reasonable facilities provided—Train late in starting.]—An action was brought against a railway co. for non-delivery of goods within a reasonable time. The goods, which consisted of poultry in four hampers, arrived at the station at one minute after 11 o'clock, the train by which they were to be forwarded being advertised to leave at 11. The porters had to attend to a passenger train which ought to have left at 10.56 but in point of fact did not leave until 11.3. After that passenger train left, porters came & attended to pltf.'s goods, which were then weighed & booked & taken to the platform to be placed in the train, but the train which was eight minutes late in starting, went off before the goods could be placed in it. The goods were then forwarded by the next train at 1.25 & arrived at their destination in the afternoon. They had been ordered by pltf.'s customers for use on that day, but no notice of that had been given to defts.:—*Held:* the railway co. were not liable; they had, in the circumstances, afforded pltf. all reasonable facilities for the forwarding of the goods.—NICHOLLS *v.* NORTH EASTERN RY. CO. (1888), 59 L. T. 137; 4 T. L. R. 464, D. C.

151. —— Strike of carrier's servants.]—Perishable goods were consigned by defts.' railway for delivery to pltfs. no time being specified within which the goods were to be delivered. During the transit a general strike of railway servants, including defts.' servants, broke out, & defts. were unable to forward the goods to their destination. There was no evidence that the strike was caused or contributed to by defts. The goods becoming deteriorated, defts. sold them. In an action to recover damages for breach of contract to deliver the goods:—*Held:* in calculating what was a reasonable time for delivery, the strike of defts.' servants must be taken into consideration as one of the circumstances existing at the time of the carriage, & defts. were not liable for the delay.

Semble: the doctrine as to sale by an agent of necessity applies to a carrier by land as well as by sea, provided that the necessary conditions exist, namely, that there is a real necessity for the sale, & that it is practically impossible to get the owner's instructions in time as to what shall be done.—SIMS & CO. *v.* MIDLAND RY. CO., [1913] 1 K. B. 103; 82 L. J. K. B. 67; 107 L. T. 700; 29 T. L. R. 81; 18 Com. Cas. 44, D. C.

Annotations:—**Consd.** Springer *v.* G. W. Ry. (1920), 89 L. J. K. B. 1010. **Mentd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

See, also, No. 269, *post*.

152. Who liable for delay—Goods sent over several systems.]—There is a junction between the L. & N. W. Ry. Co. & the N. S. Co., near to C. station of the former. An arrangement was entered into between the two cos., under which goods received by one co. to be delivered at a station on the line of the other, were delivered to such other co. at the junction. Certain goods were delivered to the L. & N. W. Co., at their station at C. to be carried to a station on the N. S. Ry., & they were taken by the L. & N. W. Co. to the junction, & there delivered to the N. S. Co. to be forwarded to their destination. A delay took place on the line of the N. S. Co., & an action was brought against them to recover damages:—*Held:* the N. S. Ry. Co. were not the agents of the L. & N. W. Ry. Co., & the action lay against them.

Semble: the action might also have been maintained against the L. & N. W. Co.—CAWLEY *v.* NORTH STAFFORDSHIRE RY. CO. (1856), 26 L. T. O. S. 222; 20 J. P. 72.

See, also, No. 269, *post*.

153. —— —— Land & sea.]—(1) On a contract made in a foreign country with carriers for the conveyance of goods to this country, & a breach of duty by negligence, causing an injury, in that country, no question being raised as to the *lex loci contractus*, it was left to the jury, upon an express contract, & upon evidence as to the course of business, & the other facts in the case, as occurring abroad, to form a judgment as to whether there had been such negligence as would be a breach of duty in the carrier, & as to what would be reasonable in such circumstances.

(2) In case of carriers undertaking expressly to send goods into England, the jury were directed

that this meant in a reasonable time, & that the default of carriers by sea employed by them to carry the goods would be no excuse for a delay to ship them in such time, or for damage done by the weather, either on the quay or on the passage, which might have been avoided by reasonable care & due despatch.

(3) However stringent the law is as to liability of a carrier, it does not put upon him the obligation to insure goods at all hazard against such superior forces as the agencies of nature—a force against which his skill & care cannot possibly provide (COCKBURN, C.J.).—COHEN *v.* GAUDET (1863), 3 F. & F. 455, N. P.

See, also, Sect. 5, *post.*

154. —— Due to accident—Negligence of third person.]—TAYLOR *v.* GREAT NORTHERN RY. Co., No. 144, *ante.*

155. Effect of delay—Consignee may refuse goods.]—Pltf., a travelling hawker of ready-made clothes for sale to retail dealers, delivered at defts.' station at C. on Nov. 18 a truss of goods to be carried to S., directed to pltf. at S., to be called for, & was told by the booking clerk at C. that the transit would take two days. Upon calling at the station at S. on Nov. 20 he was told that the goods had not arrived. He called again on several occasions between that & Nov. 29, & on each occasion received the same answer, and on calling there for the last time on Nov. 29, & finding that the goods had not come, he told the station master that he was going back to L., & the goods would now be of no use to him, & he should not take them. The present action was then brought on Dec. 4, & the first count of the declaration charged a delivery of the goods to defts. to be carried by them from C. to S., & there to be delivered to pltf. for reward, etc.; yet defts. did not safely, etc., carry the said goods from C. to S., nor there deliver the same, but therein made default, & by their neglect, etc., in that behalf, the goods had never been delivered by them to pltf., although the time for doing so had long since elapsed. There was also a second count in detinue. Defts. pleaded, amongst other pleas, as to so much of the first count as alleged non-delivery within a reasonable time, payment into ct. of £5 as sufficient to satisfy the claim of pltf. in respect of the matter therein pleaded to. Pltf. accepted the money paid in, in full satisfaction of his claim in respect of the matter to which the said plea was pleaded, & continued his action:—*Held:* (1) pltf. having waited several days in vain for the arrival of the goods had a right in point of law to say to defts., "I will not now accept them; if you have them here now at this moment I am ready to take them, but if you have them not here now, I will not accept them, you must keep them yourselves, & pay me the value"; (2) the first count of the declaration was a count, not only for damages for unreasonable delay in delivery, but also for non-delivery of the goods altogether, & comprised a cause of action which was not satisfied by pltf.'s acceptance of the money paid into ct.—LEVENE *v.* GREAT WESTERN RY. Co. (1868), 18 L. T. 295.

See, also, No. 146, *ante.*

156. Proof of damage.]—In an action against a railway co. for delay in delivering goods, a judge is not entitled to nonsuit on the ground that there is no evidence of damage to pltf., without considering whether there has been a breach of contract or negligence on the part of the co.—ROBERTS *v.* MIDLAND RY. Co. (1877), 25 W. R. 323.

Delivery.]—*See* Sect. 7, *post.*

Measure of damages.]—*See* Part IX., *post.*

SECT. 5.—CARRIAGE OVER SEVERAL SYSTEMS.

157. Who liable—Receiving carrier—Payment on delivery.]—The book-keeper of defts., a railway co., whose road was known not to extend beyond a certain point, but to be connected with other roads, on receiving a box, directed to a place beyond that point, booked it, & informed the bearer that the box had better be paid for on its arrival. The box was lost on the road:—*Held:* this was *primâ facie* evidence of a contract by defts. to carry the box safely to its place of destination.—MUSCHAMP *v.* LANCASTER & PRESTON JUNCTION RY. Co. (1841), 8 M. & W. 421; 2 Ry. & Can. Cas. 607; 10 L. J. Ex. 460; 5 Jur. 656; 151 E. R. 1103.

Annotations:—**Consd.** Watson *v.* Ambergate, Nottingham & Boston Ry. (1851), 15 Jur. 448; Crouch *v.* G. W. Ry. (1857), 2 H. & N. 491. **Folld.** Wilby *v.* West Cornwall Ry. (1858), 2 H. & N. 703. **Apld.** Mytton *v.* Mid. Ry. (1859), 4 H. & N. 615. **Consd.** Bristol & Exeter Ry. *v.* Collins (1859), 7 H. L. Cas. 194; Shepherd *v.* Bristol & Exeter Ry. (1868), L. R. 3 Exch. 189. **Refd.** South Wales Ry. *v.* Redmond (1861), 10 C. B. N. S. 675; Pontifex & Wood *v.* Hartley (1893), 62 L. J. Q. B. 196. **Mentd.** Slim *v.* G. N. Ry. (1854), 2 C. L. R. 864; G. W. Ry. *v.* Crouch (1858), 3 H. & N. 183; Buxton *v.* N. E. Ry. (1868), 9 B. & S. 824.

158. —— —— ——.]—(1) In an action for not duly delivering goods at A. it appeared when the goods were received by the office-keeper of defts., properly directed for A., pltf. wished to pay the carriage for the entire journey; the office-keeper said he could not receive the money, as he had no rates of payment for a greater distance than B., where deft.'s line joined another ry., but that the things would go well enough. The goods arrived in regular course at B., but were afterwards delayed upon their journey between B. & A.:—*Held:* as the office-keeper, being agent of the co. for the receipt of goods, had not expressly limited its liability, the co. was responsible for the proper delivery of the goods at A.

(2) A prize had been offered for the best plan & model of a machine for loading colliers from barges, & plans & models intended for the competition were to be sent by a certain day; pltf. sent a plan & model accordingly by a railway, but through negligence it did not arrive at its destination until after the appointed day:—*Semble:* the proper measure of damages in such a case is the

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PART III. SECT. 5.

157 i. *Who liable—Receiving carrier—Payment on delivery.*]—BENNETT *v.* VICKERS, 12 C. L. J. 51.—**CAN.**

i. —— —— —— *Unless safely delivered to forwarding carrier.*]—Defts. contracted to forward pltf.'s goods *via* their railway and a line of steamers to D., & thence to G. under a shipping note addressed to himself at G. The goods were carried to D., & delivered to N. P. R. Co., who delivered them to A. at G. Pltf. sued defts. for misdelivery:—*Held:* defts.' liability was at an end on delivery to N. P. R. Co. at D.—RENNIE *v.* NORTHERN RY. Co. (1876), 27 C. P. 153.—**CAN.**

g. —— —— ——.]—The responsibility of a coach proprietor is restricted to that portion of the journey for which he is paid, provided he can prove the safe delivery of the parcel to the forwarding carrier.—BAIN *v.* BOWIE (1821), 20 Fac. Coll. 341; 1 Sh. (Ct. of Sess.) 14.—**SCOT.**

h. —— —— ——.]—Where goods are consigned to a carrier for conveyance to a place, in several stages by more than one carrier, & they are damaged in transit through neglect of one of the carriers, the first carrier is liable for the damage unless he prove that he delivered the goods to the second carrier in the same good condition as he received them.—COMMERCIAL UNION ASSURANCE CO. *v.* HEYS & CO. (1897), 4 O. R. 414.—**S. AF.**

k. —— —— —— *Presumption of safe delivery.*]—Goods were received by one ry. co. to be conveyed to a point on the line of another ry. co.; the goods were damaged in transit. There was no evidence that the goods had been received in good order by the latter co.:—*Held:* there was no presumption that the goods had been received in good order.—NETHERLANDS SOUTH AFRICA RY. CO. *v.* HOYER AVENT, KERNER & CO. (1898), 5 O. R. 14.—**S. AF.**

Sect. 5.—*Carriage over several systems.* *Sect.* 6.]

value of the labour & materials expended in making the plan & model, & not the chance of obtaining the prize, as the latter is too remote a ground for damages.—WATSON *v.* AMBERGATE, NOTTINGHAM, ETC., RY. CO. (1851), Cox, M. & H. 495; 17 L. T. O. S. 125; 15 Jur. 448.

Annotations :—*As to* (1) **Refd.** Wilby *v.* West Cornwall Ry. (1858), 4 Jur. N. S. 284. *As to* (2) **Consd.** Sapwell *v.* Bass, [1910] 2 K. B. 486; Chaplin *v.* Hicks, [1911] 2 K. B. 786. **Refd.** Simpson *v.* L. & N. W. Ry. (1876), 1 Q. B. D. 274.

159. —— —— Contract for whole journey.]—Defts., a railway co., received goods to be carried, directed to W., "per first steamer from H." Defts.' line terminated at a point far short of W. When they received goods to be carried to W., their usual course was, to send them from the terminus of their line by their own carriers, who took them to P. by land, whence they were taken to their destination by the G. Ry. Co. The goods in question were, however, in compliance with the direction on the packages, carried no further than H., an intermediate station, where they were put on board a steamer, by which they were taken to B., & from B. to W. by another railway co. Defts. had no connection with either the railway co. or the proprietors of the steamer. The carriage of the goods was not prepaid. The goods being damaged after they had been put on board the steamer, & before their delivery at W., the sender sued defts. for damages :—*Held* : there was evidence from which it might be inferred that defts. undertook to carry the goods for the whole distance to W.—WILBY *v.* WEST CORNWALL RY. CO. (1858), 2 H. & N. 703; 27 L. J. Ex. 181; 4 Jur. N. S. 284; 6 W. R. 225; 157 E. R. 290; *sub nom.* WILLEY *v.* WEST CORNWALL RY. CO., 30 L. T. O. S. 261.

Annotations :—**Refd.** Bristol & Exeter Ry. *v.* Collins (1859), 7 H. L. Cas. 195. **Mentd.** South Wales Ry. *v.* Redmond (1861), 10 C. B. N. S. 675.

160. —— —— ——.]—Goods were delivered to P., agent at W. for the G. Ry., to be carried to C. "via Stafford." The goods were conveyed over the line of the G. Ry. from W. to S., & thence to C. over the L. Co.'s line, the G. Ry. having no line between S. & C. The waggons of the G. Co. travelled the whole journey. P. was also agent for the L. Co., whom he favoured rather than the G. Co. :—*Held* : there was evidence of one contract with the G. Co. to carry the whole journey from W. to C., & they were liable for any damage done to the goods during the journey.—WEBBER *v.* GREAT WESTERN RY. CO. (1866), 4 H. & C. 582, Ex. Ch.

161. —— —— **Forwarding carrier instructed to alter destination—Goods delivered to original address.**]—Pltf. delivered at a station of the S. Ry. Co. certain goods, addressed to the E. Docks, L., & paid one sum for their carriage the whole distance. By the practice of the S. Ry. all goods delivered at that station for L. are forwarded on their own line to B., & thence by the L. Ry. Before the goods in question arrived in L., pltf. directed a clerk at the L. station of the latter co. to forward them to another place, which the clerk promised to do. The goods were however delivered according to the original address, & thereby lost :—*Held* : the S. Ry. Co. were responsible for the loss.—SCOTHORN *v.* SOUTH STAFFORDSHIRE RY. CO. (1853), 8 Exch. 341; 7 Ry. & Can. Cas. 810; 22 L. J. Ex. 121; 20 L. T. O. S. 225; 17 Jur. 214; 1 W. R. 154; 155 E. R. 1378.

Annotations :—**Consd.** Giles *v.* Taff Vale Ry. (1853), 2 E. & B. 822; Crouch *v.* G. W. Ry. (1857), 2 H. & N. 491. **Refd.** Bristol & Exeter Ry. *v.* Collins (1859), 7 H. L. Cas. 195.

See, also, Nos. 185–187, 189, *post.*

162. —— —— **Defective apparatus of forwarding carrier.**]—Pltfs. delivered to defts. in L. a lifeboat to be carried to D. on the line of G. Ry. Co., at a "station to station" rate. By defts.' published books of rates the rate charged included collection & delivery within the free cartage boundary only at a station where the cos. had a staff for that purpose. On arriving at D. station the boat was unloaded from the railway trucks on which it was carried by men sent by pltfs. to receive it, with the help of a crane lent for the purpose by the G. Ry. Co. The chain of this crane broke, & the boat was damaged. The jury having found that the crane was in a defective condition owing to the negligence of the G. Ry. Co :—*Held* : even assuming there was no staff at D. station equal to the service of delivering the boat within the free cartage boundary, defts. were bound by their contract to unload the boat from the trucks & deliver it to pltfs. at D. station, or at least to supply proper appliances for the purpose of unloading, & they were therefore liable for the negligence of their agents, the G. Co.—ROYAL NATIONAL LIFEBOAT INSTITUTION *v.* LONDON & NORTH WESTERN RY. CO. (1887), 3 T. L. R. 601.

163. —— —— **Destruction or damage in hands of forwarding carrier.**]—Goods were received

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159 i. —— —— *Contract for whole journey—Destruction or loss in hands of forwarding carrier.*]—Where a carrier takes a contract of carriage to places extending beyond his own line, he is liable for loss occasioned by the fault or default of other carriers over whose lines the goods are carried.—HAMILTON *v.* HUDSON'S BAY CO. (1884), 1 B. C. R., Pt. II., 176.—**CAN.**

159 ii. —— —— —— ——.]—Pltf. delivered goods for carriage to W. to defts., who delivered the goods at W. to a cartage co. to be delivered to pltf., but some of them were not delivered :—*Held* : defts. liable.—ROACH *v.* CANADIAN PACIFIC RY. CO. (1884), 1 Man. L. R. 158.—**CAN.**

159 iii. *S. P.* MERCHANTS' DESPATCH TRANSPORTATION CO. *v.* HATELY (1886), 14 S. C. R. 572.—**CAN.**

159 iv. —— —— —— *Forwarding carrier agent of receiving carrier.*]—Where a ry. co. undertakes to carry goods to a point beyond the terminus of its own line, the other cos. over whose lines the goods must pass are merely agents of the contracting co. for such carriage.—GRAND TRUNK RY. CO. *v.* MCMILLAN (1889), 16 S. C. R. 543.—**CAN.**

159 v. —— —— —— ——.]—RICHARDSON *v.* CANADIAN PACIFIC RY. CO. (1889), 19 O. R. 369.—**CAN.**

159 vi. —— —— —— ——.]—SCANLIN *v.* CANADIAN PACIFIC RY. CO., [1918] 3 W. W. R. 984; 44 D. L. R. 352.—**CAN.**

159 vii. —— —— —— ——.]—CALEDONIAN RY. CO. *v.* HUNTER (W.) & CO. (1858), 20 Dunl. (Ct. of Sess.) 1097.—**SCOT.**

159 viii. —— —— —— ——.]—Goods were received by L. & Y. Ry. Co., in M. under a through-booking contract, to be carried for pltf. & to be delivered to him in L. The goods were carried to L., & there delivered to pltf. ; they were injured in transit, but there was nothing to show on what part of the journey the injury occurred. In an action to recover damages from defts. for breach of contract to carry from M. to L. :—*Held* : there was no evidence that the through-booking contract was made by L. & Y. Ry. as agents of defts., & in the absence of proof that the injury was done on defts.' line, they were not liable.—TUOHY *v.* GREAT SOUTHERN & WESTERN RY. CO., [1898] 2 I. R. 789.—**IR.**

n. —— —— —— *Consignee declining delivery.*]—A ry. co. contracting to carry goods to a point beyond their own line are responsible to the sender, not only for safe carriage, but for safe custody & re-delivery of the goods to the sender's order in the event of the consignee refusing to take delivery.—METZENBURG *v.* HIGHLAND RY. CO. (1869), 7 Macph. (Ct. of Sess.) 919; 41 Sc. Jur. 522.—**SCOT.**

o. —— —— —— ——.]—The H. Ry. Co. at I. accepted delivery of a piano in a packing case in terms of an ordinary consignment note. On the piano being delivered at K. it was found to be damaged, & the consignee having refused to take delivery, the sender raised an action of damages against the ry. co. :—*Held* : the consignment note was to be construed as importing a contract by the ry. co. to carry the goods from I. to K., & the co. were responsible as carriers for the safe carriage of the goods to K.—LOGAN & CO. *v.* HIGHLAND RY. CO. (1899), 2 F. (Ct. of Sess.) 292; 37 Sc. L. R. 214.—**SCOT.**

at the G. Co.'s station in B. to be conveyed to T. At C. the goods were placed on the B. Ry., & at E. they would have had to be placed on the S. line to reach T.; while on the B. line they were destroyed by fire. The receipt-note at B. stated that the goods were received to be sent to T. & delivered to C., consignee, or his agent:—*Held:* the contract was with the G. Co., & the B. Co. was not liable.—BRISTOL & EXETER RY. (DIRECTORS) *v.* COLLINS (1859), 7 H. L. Cas. 194; 29 L. J. Ex. 41; 34 L. T. O. S. 62; 5 Jur. N. S. 1367; 11 E. R. 78, H. L.; *revsg.* S. C. *sub nom.* COLLINS *v.* BRISTOL & EXETER RY. CO. (1856), 1 H. & N. 517, Ex. Ch.

Annotations:—**Consd.** Crouch *v.* G. W. Ry. (1857), 2 H. & N. 491; Coxon *v.* G. W. Ry. (1860), 5 H. & N. 274; South Wales Ry. *v.* Redmond (1861), 10 C. B. N. S. 675. **Folld.** Webber *v.* G. W. Ry. (1865), 3 H. & C. 771. **Refd.** Hall *v.* N. E. Ry. (1875), L. R. 10 Q. B. 437; Hooper *v.* L. & N. W. Ry. (1880), 50 L. J. Q. B. 103; Pontifex & Wood *v.* Hartley (1893), 62 L. J. Q. B. 196.

164. —— —— ——.]—Pltf. sent some oxen to C. on the S. Ry. to be carried to B. The railway from that station to S. belongs to the S. Ry. Co., & the railway from S. to B. belongs to the G. Co. Pltf.'s drover signed a way-bill, which contained a condition that for the convenience of the owner the co. would receive the shares payable to other cos. for conveyance of such cattle over their lines of railway, but the co. would not be subject to liability for any loss, delay, default or damage arising on such other railway. One sum was charged for the carriage, which was to be paid at B. The oxen were placed in trucks belonging to the G. Co., & on the arrival of the train at W. it was found that the bottom of one of the trucks was broken, & one of the oxen dead, & the others injured:—*Held:* this was one contract with the S. Ry. Co. for the entire journey from C. to B., & the G. Co. were not liable for the injury to the oxen.—COXON *v.* GREAT WESTERN RY. CO. (1860), 5 H. & N. 274; 29 L. J. Ex. 165; 1 L. T. 442; 157 E. R. 1186.

Annotation:—**Mentd.** Hall *v.* N. E. Ry. (1875), L. R. 10 Q. B. 437.

See, also, No. 178, *post.*

165. —— —— **Or forwarding carrier—If guilty of negligence.**]—Pltf. desired to send a cow from D. to S., & took her to the station at D., belonging to the G. Co., where he booked her for S. by defts.' railway. He signed a contract, under which it was agreed between him & the G. Co. that they should not be responsible for any loss or injury to cattle, in the delivering, if such damage should be occasioned by kicking, plunging, or restiveness. The cow was put into a truck belonging to defts., & on arriving at S. was brought to a siding by defts.' yard for the purpose of being unloaded. A porter in charge of the yard began to unfasten the truck. Pltf. thereupon warned him not to let the cow out, as she would run at him; nevertheless he did let her out; she ran about the yard, & ultimately got on to the line & was killed. By an agreement between defts. & the G. Co. it was provided that a complete & full system of interchange of traffic in passengers, goods, parcels, etc., should be established from all parts of one co. & beyond its limits to all parts of the other co. & beyond its limits, with through tickets, through rates, & invoices & interchange of stock at junctions; the stock of the two cos. being treated as one stock. . . . That the two cos. should aid & assist each other in every possible way, as if the whole concerns of both cos. were amalgamated. In an action brought against defts. for the loss of the cow, the ct. having power to draw inferences:—*Held:* (1) the action was rightly brought, inasmuch as the agreement, if it did not constitute a partnership between the two cos., showed that the G. Co. became the agents of defts. to make the contract for the carriage of the cow; (2) the condition in the contract did not relieve defts. from liability for negligence on the part of their servants in delivering the cow; (3) the inference to be drawn from the facts was that there was negligence on the part of defts.' porter; & they were liable to pltf. for the loss of the cow.—GILL *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1873), L. R. 8 Q. B. 186; 42 L. J. Q. B. 89; 28 L. T. 587; 37 J. P. 549; 21 W. R. 525.

Annotations:—*As to* (1) **Consd.** Foulkes *v.* Met. Dist. Ry. (1880), 5 C. P. D. 157. **Distd.** White *v.* S. E. Ry. (1885), 1 T. L. R. 319.

166. —— —— —— ——.]—If a person books goods through by one railway co. for a journey over more than one line of railway, he may, in case of damage to the goods on any part of the journey, sue the co. that booked the goods, & he may also sue the other co. if the damage occurs upon their line & by their negligence but not otherwise.—WHITE *v.* SOUTH EASTERN RY. CO. (1885), 1 T. L. R. 319, D. C.

—— **For delay.**]—*See* Sect. 4, *ante.*

—— **Carriage of passengers.**]—*See* Part V., Sect. 4, *post.*

See, also, Nos. 291, 438, *post.*

Passengers luggage.]—*See* Part VI., Sect. 5, *post.*

Amalgamation of railways under Railways Act, 1921 (c. 55).]—*See* RAILWAYS & CANALS.

SECT. 6.—COMMENCEMENT OF LIABILITY.

167. What is delivery to carrier—Leaving goods at starting point.]—Leaving goods in an inn-yard from whence a carrier sets out, is no delivery to the carrier.—SELWAY *v.* HOLLOWAY (1695), 1 Ld. Raym. 46; 91 E. R. 927.

Annotation:—**Refd.** Quiggin *v.* Duff (1836), 1 M. & W. 174.

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165 i. —— —— *Or forwarding carrier—Goods lost.*]—Pltf. delivered to M. R. Co. goods for carriage from B., a station belonging to that co., to S., a station belonging to defts., G. I. P. Ry. Co. The goods were lost while in charge of defts., & pltf. sued them for damages for breach of contract of carriage:—*Held:* whether or not the suit might also have been brought against M. R. Co., it was rightly brought against defts.—GREAT INDIAN PENINSULAR RY. CO. *v.* RADHAKISAN KHUSALDAS (1881), I. L. R. 5 Bom. 371.—**IND.**

p. —— —— *Forwarding carrier—No contract for whole journey—Misdelivery.*]—Pltfs. sent by G. T. Ry. Co. trees, addressed to their own order, to C., a station on deft.'s line of railway, receiving the usual shipping note issued by G. T. Co. The goods were delivered by that co. to defts. in the ordinary course, & carried to C. They were intended for S. there, who had agreed to purchase them from pltfs., but pltfs. required payment from him before delivery. The station-master at C. being authorised to deliver only half of the packages to S., allowed him to take all:—*Held:* defts. were liable for the packages thus wrongfully delivered, & it made no difference that the contract to carry was with G. T. Co. only.—LESLIE *v.* CANADA CENTRAL RY. CO. (1878), 44 U. C. R. 21.—**CAN.**

q. —— —— —— *Delivery without payment.*]—G. shipped goods *via* G. T. Ry. & C. & N. W. R. W. Co., care N. P. Ry. Co. at St. P. deliverable to his own order in B. C. The goods were delivered to E. in B. C. without an order from G.:—*Held:* N. P. Ry. Co. were liable to G.—NORTHERN PACIFIC RY. CO. *v.* GRANT (1895), 24 S. C. R. 546.—**CAN.**

r. —— —— —— *Goods delayed.*]—CORBY *v.* GRAND TRUNK RY. CO. (1905), 6 O. W. R. 81, 492.—**CAN.**

s. —— —— —— *Goods lost.*]—PARKER *v.* GRAND TRUNK RY. CO. (1904), 3 O. W. R. 651.—**CAN.**

t. —— —— —— ——.]—Pltf. shipped goods by Dom. A. Ry. addressed to M. at W., giving directions, by words written across the shipping bill, to "ship, C. P. R.," at St. J., which was done. Defts., the C. P. R., issued a new shipping bill acknowledging receipt of the goods in apparent good order & condition. Several cases were lost in transit:—*Held:* defts. were liable to pltf. for the loss while in their custody.—MCKENZIE *v.* CANADIAN PACIFIC RY. CO. (1909), 43 N. S. R. 452.—**CAN.**

Sect. 6.—Commencement of liability. Sect. 7: Subsects. 1 & 2.]

168. —— To servant—Authority to accept.]—(1) If a parcel be given to a waggoner for him to carry for his own gain, & not for the profit of his master, the master is not liable in case the parcel be lost.

(2) If a box of clothes, packed by the party's own hand, be sent by a carrier, & lost, the judge will recommend the jury to give the fair value of it in damages, although what particular articles the box contained cannot be proved.

(3) A delivery of the parcel to any of the meanest of their servants is quite sufficient, provided that servant, in receiving parcels, be acting by the authority or with the assent of his master (GARROW, B.).—BUTLER *v.* BASING (1827), 2 C. & P. 613, N. P.

See, also, Nos. 77–81, *ante*.

169. —— —— ——.]—(1) If in an action against a carrier it appear that the agent of pltf. went to the carrier's booking-office, & desired that a man should be sent to the agent's house to fetch a package, & one of the carrier's men accordingly fetch the package from the agent's house, & bring it to the booking-office, this is a delivery by pltf. to the carrier, as for this purpose the carrier's man is to be considered as pltf.'s servant.

(2) Under Carriers' Act, 1830 (c. 68), s. 1, there must be an express formal declaration of the value of pictures, etc., to the value of more than £10, sent by a carrier; it is not enough that the carrier had a conviction as to what the contents of a package were.

(3) *Qu.:* whether this Act protects carriers in cases of gross negligence, & as to what amounts to gross negligence.—BOYS *v.* PINK (1838), 8 C. & P. 361, N. P.

170. —— —— —— Receipt.]—A railway co. is not responsible for the non-delivery of live-stock, where the owner has, in defiance of the known course of business of the co., permitted them to be delivered at one of the co.'s stations without an acknowledgment from the proper officer of their receipt for the purpose of being carried, although they are proved to have been delivered to one in the co.'s employ.—SLIM *v.* GREAT NORTHERN RY. Co. (1854), 14 C. B. 647; 23 L. J. C. P. 166; 18 Jur. 1119; 2 W. R. 585; 2 C. L. R. 864; 139 E. R. 266.

Annotations:—**Refd.** G. N. Ry. *v.* Harrison (1854), 2 C. L. R. 1136; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473.

171. —— —— Goods called for on request.]—(1) Silk dresses made up for wearing are not silks within Carriers' Act, 1830 (c. 68), s. 1; (2) nor are an eyeglass with a gold chain attached to it, for the purpose of its being hung round the neck of the wearer, trinkets within the same sect.

(3) If a message be left at the booking-office of a carrier from N. to L., for his van to call for pltf.'s luggage at another inn, for the purpose of its being carried to L., & the carrier's servant & van go to the other inn, & pltf.'s luggage be there put into the carrier's van & afterwards lost therefrom, the carrier is liable for the loss, just as he would be if the luggage had been taken to deft.'s regular booking-office.—DAVEY *v.* MASON (1841), Car. & M. 45, N. P.

Annotations:—*As to* (1) **Dbtd.** Bernstein *v.* Baxendale (1859), 6 C. B. N. S. 251; Brunt *v.* Mid. Ry. (1864), 3 New Rep. 432; Flowers *v.* S. E. Ry. (1867), 16 L. T. 329. *As to* (2) **Refd.** Bernstein *v.* Baxendale (1859), 6 C. B. N. S. 251.

172. —— Receiving office—Negligence of agent.]—If a carrier directs goods to be sent to a particular booking office, he is answerable for the negligence of the booking-office keeper.—COLEPEPPER *v.* GOOD (1832), 5 C. & P. 380, N. P.

173. —— ——.]—(1) A parcel directed to L. was delivered by pltf. to a carrier at B.; no directions were given him as to the mode of conveyance. He left it at an inn in M., where defts.' & many other coaches were in the habit of calling for parcels to be conveyed to L. The inn-keeper delivered the parcel to defts.' coachman, who paid him for the carriage from B. to M.:—*Held:* defts. were liable to pltf., in an action of *assumpsit*, for the loss of the parcel.

(2) An inn where a coach regularly stops to receive & deliver parcels, is a receiving-house within Carriers' Act, 1830 (c. 68), although other coaches stop there for the same purpose, & although the inn-keeper keeps but one general booking-book for all the coaches, & uses his own discretion as to the coach by which the parcel is sent.

(3) In *assumpsit* against carriers for the loss of a parcel, the defence that the value was above £10, not declared at the time of delivery, must be specially pleaded.—SYMS *v.* CHAPLIN (1836), 5 Ad. & El. 634; 5 Dowl. 429; 2 Har. & W. 411; 1 Nev. & P. K. B. 129; 6 L. J. K. B. 25; 111 E. R. 1304.

Annotations:—*As to* (1) **Refd.** Hinton *v.* Dibbin (1842), 6 Jur. 601; Stephens *v.* L. & S. W. Ry. (1886), 18 Q. B. D. 121.

174. —— —— Payment immaterial.]—(1) If, in an action against a carrier for the loss of a parcel, deft. pleads that it was not delivered to him to be carried, it is sufficient for pltf. to show that it was delivered to a person with whom & at a house where parcels were in the habit of being left for this carrier, & it is immaterial whether this person was paid any money or not.

(2) In such an action the person who so left the parcel may be asked, on cross-examination, what direction was on the parcel.—BURRELL *v.* NORTH (1847), 2 Car. & Kir. 680, N. P.

See, also, No. 61, *ante*.

175. Payment for carriage not made — Goods left after refusal to accept.]—If a common carrier demand a certain sum for booking, & refuse to take charge of goods unless such sum be paid, he is not liable to an action if they be left without being paid for, & are lost.— —— *v.* JACKSON (1800), Peake, Add. Cas. 185, N. P.

See, also, Nos. 55, 56, 68, 69, *ante*, No. 1208, *post*; BAILMENT, Vol. III., p. 75.

SECT. 7.—DURATION AND TERMINATION OF LIABILITY—DELIVERY.

SUB-SECT. 1.—WHAT CONSTITUTES DELIVERY.

See, also, No. 184, *post*; BAILMENT, Vol. III., p. 76, Nos. 155, 156.

PART III. SECT. 6.

168 i. *What is delivery to carrier—To servant—Absence of authority to accept.*]—A common carrier is liable for the negligence of his servants in taking goods on board his vessel in his absence, though he may have directed them not to receive goods, pltf. having no notice of such instructions.—STREETS *v.* MORRISON (1862), 5 All. 296.—**CAN.**

a. —— *Sending alongside vessel for shipment—Goods not classified.*]—Pltf. sent boards alongside deft.'s vessel to be shipped, but before being taken on board they had to be surveyed & classified by pltf.; before this was done they were stolen:—*Held:* deft. not liable.—USSHER *v.* ROBERTS (1861), 5 All. 150.—**CAN.**

b. —— *Goods left on platform—Absence of instructions.*] EVERIST *v.* GRAND TRUNK RY. CO. (1909), 13 O. W. R. 1063.—**CAN.**

c. —— *No directions to carrier.*]—A seller by his porter employed a carter to carry a cask to a purchaser. the porter accompanied the carter & assisted him to lower the cask off his cart, each holding a rope; the cask slipped from the rope held by the porter & was stayed:—*Held:* the carter was not responsible, the cask never having been truly given in charge to him.—REID *v.* MACKIE (1830), 8 Sh. (Ct. of Sess.) 918.—**SCOT.**

176. Tender—Delivery refused by master of ship.]—An agreement to load on ship-board seven casks of brandy, is well performed when the master refuses to take them on board by bringing them to the warehouse or the quay from which the vessel takes in her cargo, & offering them to the party there to send them on board; for being cumbersome goods the tender is sufficient if they be brought to a place from whence they may be well received, & need not be carried to the ship's side.—STONE *v.* GILLIAM (1690), 1 Show. 149; 89 E. R. 505.

177. To wharfinger—Custom.]—How far the liability of hoymen extends after they have delivered the goods at the wharf to which they ply. It being left to the jury to say, what was the custom, they found a verdict for pltf.

(2) The delivery of the goods at the wharf by the hoyman raised an implied contract on the part of the wharfinger to take care of them or to deliver them according to direction; for the breach of which an action would lie (LORD KENYON, C.J.).—WARDELL *v.* MOURILLYAN (1798), 2 Esp. 693, N. P.

See, also, No. 207, *post*.

178. Special contract—Railway delivery agent.]—Pltf. delivered to defts., a railway co., certain goods to be carried, & took from them a receipt note which stated that the goods were to be conveyed by the co. as below, & on the conditions stated on the other side. The note stated that B. was the station from which, & P. the station to which the goods were to be conveyed, but below the name of the consignee, pltf., was added in pencil his address at C., which was beyond the immediate vicinity of the goods station at P. The conditions stated, that goods addressed to consignees resident beyond the immediate vicinity of the co.'s goods station would be forwarded by public carrier, or otherwise, as opportunity might offer; but that the delivery of the goods by the co. would be considered as complete, & the responsibility of the co. cease, when such carriers received the goods, & that any money received by the co. as payments for the conveyance of goods by other carriers beyond their own railway, would be received as for the convenience of the consignors, to be paid to such other carriers, & not as a charge made by the co. upon the goods as carriers beyond their own railway. Notice was also given in the conditions, that the co. would not be responsible for any loss or damage to goods occurring beyond the limits of their railway. The goods in question arrived safely at P., & were there delivered to a person appointed by defts. to collect & deliver goods beyond the limits of the railway, & by the negligence of his servants they were damaged before they were delivered to the pltf. at C. The declaration alleged a delivery of the goods to be carried from B. to C.:—*Held:* a fatal variance, for the contract with defts. ceased upon the arrival of the goods at P., & defts. were not liable for the subsequent damage.—FOWLES *v.* GREAT WESTERN RY. Co. (1852), 7 Exch. 699; 7 Ry. & Can. Cas. 421; 22 L. J. Ex. 76; 19 L. T. O. S. 67; 155 E. R. 1129.

Annotation:—**Refd.** Collins *v.* Bristol & Exeter Ry. (1856), 11 Exch. 790.

See, also, No. 164, *ante*.

179. Into possession of consignee.]—In proving delivery of goods by a carrier, though it is not necessary to give evidence of delivery into the hands of the consignee or his servants, it is necessary to show an actual delivery of the goods into their possession.—EVANS *v.* BRISTOL & EXETER RY. Co. (1862), 10 W. R. 359.

See, also, Sub-sect. 3, *post*, & Nos. 1392, 1427, *post*.

180. Landing from ferry.]—WALKER *v.* JACKSON, No. 130, *ante*.

See, further, FERRIES.

Passengers' luggage.]—*See* Part VI., Sect. 7, *post*.

SUB-SECT. 2.—AT WHAT PLACE.

181. Place to which directed—Direction defaced owing to own neglect.]—(1) A carrier is bound to deliver goods, if it be the general course of his trade so to do.

[Defts.'] general course of trade was to deliver goods at the houses to which they were directed; . . . they received a premium, & kept a servant for that special purpose. This box came directed to their warehouse at B. . . . The direction was afterwards defaced owing to their own neglect. They had [the consignee's] name in their way-bill, & might have found him out by their directory.

PART III. SECT. 7, SUB-SECT. 1.

177 i. *To wharfinger—Custom.*]—To an action for not delivering goods shipped on board defts.' vessel, to be delivered to pltfs. at T., defts. pleaded that they carried the goods to T., & there being no person there on pltfs.' behalf to receive the goods, or to whom notice of arrival could be given, & no means of notifying pltfs., who lived at a distance, defts. landed the goods at the only wharf there, where it was customary to land goods, & placed them in charge of the person in charge of the wharf, so far as he would consent to take charge of them:—*Held:* the plea constituted no defence.—CLOSE *v.* BEATTY (1878), 28 C. P. 470.—**CAN.**

d. In warehouse of carrier.]—Delivery of goods was to be considered complete when placed in the carrying co.'s warehouse at their distination. The goods were placed in the co.'s shed used for the purpose of storing goods at the station at the place of delivery, which was some distance from the village where pltf.'s place of business was:—*Held:* the station was the destination of the goods & not the village; after being placed there the co.'s liability was at an end.—RICHARDSON *v.* CANADIAN PACIFIC RY. Co. (1889), 19 O. R. 369.—**CAN.**

e. To customs officers.]—Defts. undertook to carry pltf.'s goods to C., whence pltf. was to take them. Upon their arrival at C., the customs duties not having been paid, & no one being in readiness to receive them, they were placed in a bonded warehouse, & whilst there were destroyed by fire:—*Held:* defts.' duty ceased on deposit of the goods in the bonded warehouse.—INMAN *v.* BUFFALO & LAKE HURON RY. Co. (1858), 7 C. P. 325.—**CAN.**

f. Arrival at station of destination.]—NAZZARENO *v.* ALGOMA EASTERN RY. Co. (1920), 18 O. W. N. 142.—**CAN.**

g. Placing on sidings—As directed by consignee.]—CANADIAN PACIFIC RY. Co. *v.* FORREST (1909), 12 W. L. R. 229.—**CAN.**

h. Notice to remove—Constructive delivery.]—A ry. co. carried coals to the station to which they were addressed, & notified the consignee of their arrival, upon which, according to the usual practice between them & the consignee, it lay upon him to send for them & take them away; he did not do so within a reasonable time, & they unloaded the coals & left them on the siding, where they were lost. In an action against them as common carriers, for non-delivery:—*Held:* they had performed their contract by a constructive delivery.—BRADSHAW *v.* IRISH NORTH WESTERN RY. Co. (1873), 7 I. L. T. 158; I. R. 7 C. L. 252.—**IR.**

k. Delivery of part of goods shipped—Acceptance.]—A carrier agreed to transport goods & was obliged to leave a portion on the road; the rest of the goods were duly delivered to & accepted by the shipper. In an action for freight in which no claim for the undelivered package was made:—*Held:* the contract for carriage was not on its face indivisible, & pltf. could recover.—CHARLESON *v.* ROYAL STANDARD INVESTMENT CO. (1914), 27 W. L. R. 538.—**CAN.**

l. Opening & unloading of car by consignee at delivery siding.]—RUSSELL MOTOR CAR CO., LTD. *v.* CANADIAN PACIFIC RY. Co. & PERE MARQUETTE RY. Co. (1920), 47 O. L. R. 598; 54 D. L. R. 43; 18 O. W. N. 288.—**CAN.**

m. Changing character of goods.]—Defts. were taken by pltf. to cut logs of timber, & contracted to deliver them to pltf. on the bank of a river; the logs were cut in two by defts., without pltf.'s permission, & drawn to the river in that altered state:—*Held:* not delivery within the contract.—REYNOLDS *v.* SHUTER (1847), 3 U. C. R. 377.—**CAN.**

Sect. 7.—Duration and termination of liability—delivery: Sub-sects. 2 & 3.]

Therefore here is a gross & palpable negligence on the part of defts., who, whether bound to deliver or not by the general duty of carriers, had undertaken so to do by their general course of trade (GOULD, J.).

(2) All carriers are bound to give notice of the arrival of goods to the persons to whom they are consigned, whether bound to deliver or not (GOULD, J.).—GOLDEN *v.* MANNING (1773), 3 Wils. 429; 2 Wm. Bl. 916; 96 E. R. 541.

Annotations :—As to (2) **Consd.** Storr *v.* Crowley (1825), M'Cle. & Yo. 129. *Generally* **Refd.** Raphael *v.* Pickford (1843), 5 Man. & G. 551.

182. —— Misdelivery.]—Trover lies against a carrier for the delivery of goods otherwise than at the place to which they are directed.

Defts. had received, as carriers, a box directed to J. W., 27, W. Street, L., & finding the house shut up, afterwards delivered the box to a person at A., calling himself W. :—*Held :* (1) this was a misdelivery, for which defts. were liable in trover, although W. was the person for whom the box was intended, W. being a swindler, & the property in the goods not having passed to him, as he had obtained them from pltf. by fraud; (2) it was properly left to the jury to say, whether defts. had delivered the box according to the course of their business as carriers.—STEPHENSON *v.* HART (1828), 4 Bing. 476; 1 Moo. & P. 357; 6 L. J. O. S. C. P. 97; 130 E. R. 851.

Annotations :—As to (1) **Consd.** Crouch *v.* G. N. Ry. (1856), 11 Exch. 742; M'Kean *v.* M'Ivor (1870), L. R. 6 Exch. 36. *Generally* **Consd.** Heugh *v.* L. & N. W. Ry. (1870), L. R. 5 Exch. 51.

183. —— ——.]—If, on finding that goods have been misdelivered by a common carrier, the owner assents to the party who has received them selling them on his account, though that may be an acceptance of the delivery, it is, *per se*, no defence to the action for the misdelivery, as there is no consideration to make it a discharge, & it is merely accord without satisfaction.

An action was brought against a railway co. for the loss of butter entrusted to them as carriers on behalf of pltf. The butter was sent in casks marked "A," & addressed simply "B. Quay"; there was evidence that "A" meant a firm of A. & A, & that goods so addressed had been delivered to them at H. Wharf; the butter was delivered there by the railway co., by reason of which, A. & A. becoming insolvent, the value was lost to pltf. On hearing of the misdelivery pltf. had assented to the butter being sold by A. & A. on his account; but there was no evidence either of precedent authority on his part for the delivery to them, or that they, in obtaining possession of them, assumed to act as his agents :—*Held :* (1) on the misdelivery, there arose a cause of action against the co. for breach of their duty as carriers; & there was no defence, either on the general issue or on a plea that pltf. had assented to the delivery to A. & A., & had accepted such delivery in satisfaction; for, assuming the fact of acceptance, there was no consideration to make such acceptance a discharge; (2) pltf. was entitled to recover damages to the full amount of the value of the butter.—SANQUER *v.* LONDON & SOUTH WESTERN RY. CO. (1855), 16 C. B. 163; 3 C. L. R. 811; 139 E. R. 718.

Annotation :—As to (1) **Refd.** Butcher *v.* L. & S. W. Ry. (1855) 3 C. L. R. 805.

See, also, No. 66, *ante.*

184. Residence of consignee.]—(1) Common carriers received goods of S., at L., on an undertaking to carry them to W., & deliver them there to S., for his use, on payment of the hire. The goods were carried to W., & sent from the warehouse, nearly half a mile, to the house of S.; but the hire not being ready to be paid, were taken back to the warehouse. Applications to send the goods again to the house were refused, not on the ground that the contract had been performed by the proffer, but until satisfaction of a lien set up on one side, & resisted on the other, & which proved to have been unfounded in fact :—*Held :* in the circumstances, the carriers had waived the benefit which would probably have resulted to them from insisting on the proffer as an execution of their undertaking: both parties had treated the contract as one continuing contract from the commencement of the transaction till an actual delivery should have taken place; & the carriers, not having performed their part of the agreement, the consignee was entitled to recover the value of the goods in an action of *assumpsit.*

(2) *Semble :* common carriers are ordinarily bound to carry goods, entrusted to their conveyance, to the residence of the consignee.—STORR *v.* CROWLEY (1825), M'Cle. & Yo. 129; 148 E. R. 354.

Annotation :—As to (1) **Consd.** G. W. Ry. *v.* Crouch (1858), 3 H. & N. 183.

185. Alteration of destination—By consignee—With carrier's assent.]—(1) Although the consignor of goods directs a carrier to deliver them to the consignee at a particular place, the carrier may deliver them wherever he & the consignee agree.

Pltf. having sold corn by sample, to be delivered to the purchaser at his mill at B., sent the corn by defts., railway carriers, paying the freight to B. station, & an extra sum for cartage from B. to the mill. In pursuance of general orders previously given by the consignee to defts., but not communicated to pltf., defts. left the wheat at their station at B., & advised the consignee of its arrival, who examined it, but left it there for two months, & afterwards refused to take it. The wheat deteriorated in quality during that time :—*Held :* defts. were not liable to an action by pltf. for not delivering at the mill, as the non-delivery there was pursuant to the orders of the consignee, & it made no difference in this respect that pltf. could not recover the price of the wheat from the purchaser in consequence of there being no acceptance of the wheat within the meaning of Stat. Frauds.

(2) *Semble :* the rights of pltf. & the purchaser were not affected by the non-delivery at the mill.—LONDON & NORTH WESTERN RY. CO. *v.* BARTLETT (1861), 7 H. & N. 400; 31 L. J. Ex. 92; 5 L. T. 399; 26 J. P. 167; 10 W. R. 109; 158 E. R. 529; *sub nom.* BARTLETT *v.* LONDON & NORTH WESTERN RY. CO., 8 Jur. N. S. 58.

Annotations :—As to (1) **Refd.** McKean *v.* McIver (1870), 24 L. T. 559; Metcalfe *v.* Britannia Ironworks Co. (1876), 1 Q. B. D. 613. *Generally* **Mentd.** Bethell *v.* Clark (1887), 19 Q. B. D. 553.

PART III. SECT. 7, SUB-SECT. 2.

182 i. *Place to which directed—Misdelivery.*]—A servant of defts., who were carriers, called at pltfs.' place for goods, stating that he was to deliver them to C.'s place, whereupon pltfs. gave him them to make delivery accordingly. The servant, by reason of a fraud perpetrated upon him, did not deliver them at C.'s place, but elsewhere :—*Held :* defts. were liable for the loss of the goods.—ALBERTA PACIFIC GRAIN CO. *v.* MERCHANTS CARTAGE CO. (1914), 29 W. L. R. 19; 20 B. C. R. 1.—**CAN.**

185 i. *Alteration of destination—By consignee.*]—Delivery is sufficient if the consignees demand & take delivery at an intermediate place, & the carrier is then entitled to the full freight.—HUNT *v.* BARBOUR (1877), 3 V. L. R. 189.—**AUS.**

n. —— *By consignor — With carrier's assent.*]—G. booked goods to

186. —— —— Carrier's servant assenting—Scope of authority.]—Pltf. directed defts. to deliver goods at his house When defts.' carman came to the house with the goods in a waggon, pltf. wrote him an acknowledgment of the safe receipt of the goods, & a request to deliver at a stable occupied by him about 1000 yds. off; the goods were not unloaded at pltf.'s house but through the carman's negligence at the stable they were destroyed:—*Held:* defts. could be liable for the value of the goods only if this substitution of one place of delivery for another was within the scope of the carman's duty, or if the carman had authority to enter into a fresh contract of carriage on behalf of his employers; & these were questions for a jury.—POLLARD *v.* LONDON & SOUTH WESTERN RY. Co. (1870), 22 L. T. 551.

187. —— —— Consequential loss to vendor—Carrier not responsible.] — Where goods are delivered by a vendor to a carrier to be carried to a certain place, with the added words, "for Messrs. . . . & Co.," these persons thus appearing to be the consignees of the goods, may demand them of the carrier at another place; & if on such demand, & on receiving payment for the carriage, the carrier, who has not received from the vendor any special communication on the subject of the place of delivery, delivers them up to the consignees, the carrier will not be responsible to the vendor for any damages which may arise to the vendor from such delivery.

Distillers in C., who were under bond to the Crown to pay the duties on all spirits which they might be permitted to remove from one bonded warehouse to another, sold a quantity of whisky to S. & Co., spirit dealers in L. The duty on the whisky had not been paid. The distillers obtained the regular permit for its removal, the permit expressly describing the whisky as spirit on which duty had not been paid, & delivered it to a railway co. to carry it to L. The delivery note described it as sent from C. to "Customs Warehouse, L. . . . For Messrs. J. & Co., L. Station, L." The railway co. gave a receipt note for whisky addressed to S.'s Customs Warehouse at L., for J. & Co. If it had been taken to the customs warehouse, the consignees could not have obtained possession of it without having first paid the duty on it, but no special communication was made by the vendor to the carriers on this subject. Before arriving there the consignees, J. & Co., demanded it at the railway station, & on paying the carriage obtained possession of it, & thus escaped paying the duty. The vendors were compelled under their excise bond to pay the duty, & brought an action against the carriers for the amount:—*Held:* this was the case of an ordinary consignment; the consignees had the right to demand the whisky from the carriers; & the latter were not liable to make good the loss occasioned to the distillers by its delivery.—CORK DISTILLERIES CO. *v.* GREAT SOUTHERN & WESTERN RY. CO. (IRELAND) (1874), L. R. 7 H. L. 269, H. L.

Annotations:—**Refd.** Metcalfe *v.* Britannia Ironworks Co. (1876), 1 Q. B. D. 613; Pontifex *v.* Mid. Ry. (1877), 3 Q. B. D. 23. **Mentd.** G. W. Ry. *v.* Bagge (1885), 54 L. J. Q. B. 599.

See, also, No. 161, *ante.*

SUB-SECT. 3.—TO WHOM.

188. To consignee.]—(1) Pltfs., being carriers, with places of business in towns in the country where defts., a railway co. had stations, were for many years employed as the agents of the co. to carry goods from the stations to their places of consignment. The co. ceased to employ pltfs. as their agents, since when goods had been consigned to pltfs. by name, addressed to them or to their care, with the name and station of the country town in the invoice. Other goods arrived at the country stations addressed to pltfs. "under mark," *i.e.*, bearing initials or other signs upon them indicating the names & addresses of the consignees, which signs were explained to pltfs. by letter sent by post. All these goods the railway co. refused to deliver to pltfs. Those that had directions were entrusted to the co.'s new agent to be delivered by him to their proper addresses, & those "under mark" were delivered by the agent to pltfs.' places of business in the towns. There they were tendered for acceptance. &, on being refused, were taken back to the station, & there at last delivered to pltfs., the co. charging pltfs. for cartage. Pltfs. filed a bill praying for a declaration that the co. were bound to deliver to them, pltfs., the goods so consigned to them, deducting for pltfs.' services a sum from the through rate charged by the co. Defts. demurred for want of equity, & the demurrer was overruled:—*Held:* without prejudice to any question of jurisdiction at the hearing, the demurrer was rightly overruled.

(2) The jurisdiction of the Ct. of Ch. arises with reference to the obligations of co. to abide by the direction of the Acts of Parliament under which they are constituted, & the right of the ct. to confine them by injunction within the limits of those duties.—BAXENDALE *v.* WEST MIDLAND RY. Co. (1862), 7 L. T. 297; 8 Jur. N. S. 1163, L. C.

See, also, No. 179, *ante.*

189. To addressee—Usual course of business—Fictitious addressee.]—H., an agent of pltfs. for obtaining orders for their goods at G., sent fictitious orders to them therefrom, in compliance with which pltfs. *bonâ fide*, & being imposed on by H., addressed goods to "T. & Co., 71, G. Street," the name & address furnished to them by H., & forwarded such goods from M., through M. & Co., carriers by canal, to L., with instructions to M. & Co. to forward them thence by steamer to G. Defts. carried the goods from L. to G., & on their arrival at the latter place they sent, pursuant to their usual course of business, a notice by letter to the address appearing on the goods, requesting their removal & the production of the notice indorsed as a delivery order. H. received this notice, &, having indorsed it in the name "T. & Co." presented it to defts., & thereby procured the delivery of the goods to be made to himself. There was no such name or persons as "T. & Co." at 71, G. Street. In an action by pltfs. against defts. as carriers, for misdelivery & conversion of pltfs.' goods:—*Held:* (1) pltfs.' contract was with M. & Co., & not with defts.; (2) defts. having, in dealing with the goods, *bonâ fide* pursued their usual course of business, the custom of which must be taken as incorporated into the directions given by pltfs., had obeyed such directions & had not been guilty of misdelivery or conversion of the goods; (3) pltfs. having accepted & acted on H.'s representations, were estopped from saying that there were no such persons as "T. &

R. at K. Whilst the consignment was en route to K., G. directed the station-master at K. to deliver the consignment to pltf. at N. Disregarding the order, the station-master delivered the consignment to R. at K. Pltf. sued the ry. co. to recover compensation for loss of goods:—*Held:* the co. was liable; it had contracted to deliver the goods to pltf. at N., & failed so to do.—CHHAGANLAL SHALIGRAM SHET *v.* EAST INDIAN RY. CO. (1903), I. L. R. 27 Bom. 597.—**IND.**

Sect. 7.—Duration and termination of liability—delivery: Sub-sects. 3, 4, 5, 6 & 7.]

Co."—McKEAN *v.* McIVOR (1870), L. R. 6 Exch. 36; 40 L. J. Ex. 30; 24 L. T. 559.
Annotation :—As to (2) **Distd.** Hiort *v.* Bott (1874), 22 W. R. 414.

190. To true owner—Jus tertii—No estoppel as to sender's title.]—A common carrier is not estopped from disputing the title of the person from whom he has received goods to carry. It is an answer to trover against the carrier by such person, that the goods have been delivered to the real owner on his claiming them.

C., residing at M., ordered goods of D. to be shipped to the port of L., to be paid for in cash against the bill of lading. C. never obtained the bill of lading or paid for the goods, but he sold the latter to pltf. The goods arrived at the port of L., but were not to be delivered, except on payment of freight. At an interview between the captain & B., pltf.'s agent at L., at which D. was present, the captain said, in answer to B.'s question, where the bill of lading was, that D. had passed it on to C., which was true, the bill having, in fact, been sent to D.'s agent at M. for that purpose, but C. not paying for the goods, the bill was returned to D. after this interview. No arrangement was then come to, but shortly afterwards B., as pltf.'s agent, paid the freight, on receiving from the captain a document given to him by D. when the bill of lading was signed, by which D. requested C.'s agents at L. to pay the captain his freight. Defts., who were common carriers, were then employed by B. to forward the goods to pltf.:—*Held:* (1) pltf. had acquired no right to take possession of the goods as buyer, either by the purchase from C. or by the conduct of D. at the interview between the captain & B., coupled with the document requesting payment of freight, & the payment of freight thereon; (2) defts. were protected against pltf. by their giving up the goods to D. on his claiming them.—SHERIDAN *v.* NEW QUAY CO. (1858), 4 C. B. N. S. 618; 28 L. J. C. P. 58; 33 L. T. O. S. 238; 5 Jur. N. S. 248; 140 E. R. 1234.

Annotations :—As to (1) **Consd.** Biddle *v.* Bond (1865), 6 B. & S. 225. **Refd.** European & Australian Royal Mail Co. *v.* Royal Mail Steam Packet Co. (1861), 30 L. J. C. P. 247. **Mentd.** Shepherd *v.* Harrison (1869), 17 W. R. 609. *As to* (2) **Refd.** Seagrave *v.* Union Marine Insce. (1866), L. R. 1 C. P. 305.

See, also, BAILMENT, Vol. III., p. 100.

191. According to special directions—Evidence of.]—(1) A declaration, alleging that deft. undertook to deliver a parcel of goods for pltf., is disproved by evidence of a special agreement to deliver them to the bearer of a receipt given for the goods at the time of delivery.

(2) A carrier's receipt for goods is evidence of the contract between himself & the owner.—SAMUEL *v.* DARCH (1817), 2 Stark. 60, N. P.
Annotation :—Generally **Mentd.** Stephenson *v.* Hart (1828), 1 Moo. & P. 357.

192. Delivery to wrong person—Conversion.]—If a carrier has goods to carry, & by mistake deliver them to a wrong person, this is such a tortious conversion as will support an action of trover at the suit of the right owner.—YOUL *v.* HARBOTTLE (1791), Peake, 68, N. P.
*Annotations :—***Consd.** Devereux *v.* Barclay (1819), 2 B. & Ald. 702; Crouch *v.* G. N. Ry. (1856), 11 Exch. 742. **Refd.** Stephenson *v.* Hart (1828), 4 Bing. 476; Wyld *v.* Pickford (1841), 8 M. & W. 443; Fenn *v.* Bittleston (1851), 7 Exch. 152; R. *v.* Vincent & West (1852), 2 Den. 464. **Mentd.** *Re* Parkinson & G. W. Ry. (1871), 24 L. T. 830.

193. —— Right of consignee to sue for.]—DANISH DAIRIES CO-OPERATIVE SOCIETY *v.* MIDLAND RY. CO. (1892), 8 T. L. R. 212, D. C.

SUB-SECT. 4.—NOTICE OF ARRIVAL.

194. General rule.] — GOLDEN *v.* MANNING, No. 181, *ante*.

195. Failure to give—Default of third party—Employed at consignor's request.]—A., a carrier, was in the habit of carrying goods for B.; the ordinary course was to deliver the goods to B. immediately on their arrival at M., where B. carried on business. B. requested A. to employ C. as his agent, & afterwards, without notice to A., arranged with C. not to deliver in due course, but to give him notice of the arrival of the goods, & to keep them till he sent for them. C. on one occasion forgot to give notice pursuant to this arrangement, & B. brought his action against A. for such neglect:—*Held:* A. was not liable.—BUTTERWORTH *v.* BROWNLOW (1865), 19 C. B. N. S. 409; 34 L. J. C. P. 266; 144 E. R. 845.

See, also, No. 185, *ante*, Nos. 207, 1259, *post*.

SUB-SECT. 5.—REFUSAL OF CONSIGNEE TO ACCEPT.

196. Notice of refusal—Whether consignor entitled to.]—(1) Where goods have been tendered by a carrier to a consignee & refused by him, there is no rule of law that the carrier must give notice of such refusal to the consignor; he is only bound to do what is reasonable.

Semble: whether the circumstances of the case make it reasonable that the carrier should give such notice, is a question for the jury.

(2) A carrier is not responsible for leakage arising from an imperfection in the bung of a cask entrusted to him to be carried, & not caused by any negligence or omission on his part.—HUDSON *v.* BAXENDALE (1857), 2 H. & N. 575;

PART III. SECT. 7, SUB-SECT. 3.

190 i. *To true owner.*]—Liability in respect of goods consigned for carriage is at an end when the goods are delivered to a person rightfully entitled to them even though he is not the consignee.—MADRAS & SOUTHERN MAHRATH RY. CO. *v.* HARIDOSS BANMALIDOSS (1918), L. L. R. 41 Mad. 871.—**IND.**

o. *Misdelivery—Production of shipping bills.*]—Pltfs., knowing that defts. sometimes delivered goods without the production of the shipping bills where not consigned "to order," consigned certain goods to the "I. C. Company," not yet incorporated, & defts. delivered them to an individual carrying on business in that name & at the ostensible office of the co., without production of the bill:—*Held:* defts. were not liable for misdelivery.—CONLEY *v.* CANADIAN PACIFIC RY. CO. (1900), 32 O. R. 258.—**CAN.**

p. ——.]—CANADIAN BARTLETT AUTOMOBILE CO., LTD. *v.* GRAND TRUNK RY. CO. (1918), 13 O. W. N. 464.—**CAN.**

PART III. SECT. 7, SUB-SECT. 4.

q. *What amounts to notice.*]—Goods were shipped over defts.' railway to pltf. at E. They arrived at noon, & the station agent immediately gave verbal notice to a drayman, who had been accustomed to deliver pltf.'s goods, that there was freight to be delivered. Pltf. received no other notice of arrival:—*Held:* (1) the customary notice to the drayman was sufficient notice to pltf. of the arrival of the goods; (2) defts.' liability had ceased.—BURDETT *v.* CANADIAN PACIFIC RY. CO. (1894), 10 Man. L. R. 5.—**CAN.**

r. *Direction to notify named person.*]—A bill of lading contained a direction to notify arrival to B. at W. In the waybill the name of G. was erroneously inserted instead of B., & because of the mistake in the waybill, notice was sent to G., instead of to B.:—*Held:* defts.' failure to give notice to B. was the cause of delay in marketing the goods, & they were responsible for the delay.—ARMSTRONG *v.* CANADIAN NORTHERN RY. CO. (1914), 29 W. L. R. 265.—**CAN.**

PART III. SECT. 7, SUB-SECT. 5.

s. *Effect on carrier's liability.*]—The consignee of goods is bound to take delivery thereof within a reasonable time. If by his own laches he

27 L. J. Ex. 93; 30 L. T. O. S. 156; 6 W. R. 83; 157 E. R. 237.
Annotation :—As to (1) Apprvd. Crouch *v.* G. W. Ry. (1858), 27 L. J. Ex. 345.

197. Subsequent demand by consignee—Tender of charge — Within reasonable time.]—Pltf. delivered in L. to defts., who were common carriers, a parcel addressed to pltf.'s agent at P. Defts.' railway terminated at B., from whence they forwarded the parcel to P. by the S. Ry., & shortly before noon, on the day of its arrival, a porter tendered it to pltf.'s agent, who refused to pay the sum charged for its carriage, whereupon the porter took it away, saying that it would be returned to L.; it was sent back to L. at eight o'clock in the morning of the following day. About two hours afterwards pltf.'s agent tendered at the office of the S. Ry. the amount of the carriage & demanded the parcel, when he was told that it had been that morning returned to L. The parcel remained in the custody of defts. at their office in L., & it did not appear that pltf. had applied for it there. The jury found that the parcel was sent back to L. unreasonably soon; & that the demand of the parcel & tender of the charge for the carriage was made within a reasonable time after the parcel had been refused :—*Held :* (1) in the circumstances, defts. were liable for a breach of duty, even supposing their duty as carriers ended with the tender of the parcel; (2) there was no evidence of a conversion.

(3) The lien which a carrier has on goods carried for the carriage money is to be exercised subject to the obligation of keeping the goods for such a time in such a place as may be reasonably adapted for allowing the consignee means of taking possession of them on payment of the charge. *Semble*: these are questions for the jury in each case.—GREAT WESTERN RY. CO. *v.* CROUCH (1858), 3 H. & N. 183; 27 L. J. Ex. 345; 31 L. T. O. S. 38; 4 Jur. N. S. 457; 6 W. R. 391; 157 E. R. 437, Ex. Ch.; *affg.* S. C. *sub nom.* CROUCH *v.* GREAT WESTERN RY. CO. (1857), 2 H. & N. 491.
Annotations :—As to (1) Refd. Heugh *v.* L. & N. W. Ry. (1870), L. R. 5 Exch. 51. *As to* (2) Consd. Evans *v.* Wright (1857), 27 L. J. Ex. 50. *As to* (3) Refd. Hudson *v.* Baxendale (1857), 2 H. & N. 575; Wiltshire Iron Co. *v.* G. W. Ry. (1871), 19 W. R. 935.

198. Delay by police regulation — Subsequent loss — Carriers not liable.]—Pltf. delivered to defts., as common carriers, some cattle to be carried by them to L. The cattle arrived on a Sunday morning between 11 & 12 o'clock, but owing to certain police regulations pltf. was unable to take them away before 12 o'clock at night. Meanwhile, they were placed by defts.' servants, with the sanction & assistance of a man employed by pltf. to receive them, in pens at the station. Early on the Monday morning, when pltf.'s servant went to take them away, he found that two steers had been killed. He wished to take away the remaining cattle, but was refused permission unless he signed a receipt ticket for the whole number, which he declined to do. Later in the day pltf. came & removed them, but before he could reach the market at I. for which they were intended it was over, & he could not sell them until the Thursday following. In an action for the value of the two steers which were killed, & for the damage done to the remaining beasts by delay :—*Held :* defts.' liability as carriers had ceased when the alleged loss & damage occurred.—SHEPHERD *v.* BRISTOL & EXETER RY. CO. (1868), L. R. 3 Exch. 189; 37 L. J. Ex. 113; 18 L. T. 528; 16 W. R. 982.
Annotation :—Follid. Bradshaw *v.* Irish North Western Ry. (1873), 21 W. R. 581.

See, further, Nos. 155, 176, *ante*, No. 208, *post;* BAILMENT, Vol. III., p. 58, Nos. 36, 37.

SUB-SECT. 6.—REFUSAL TO DELIVER.

199. When justified—Clothes of eloping ward.]—Guardians of a female under age are justified in stopping her elopement, and in detaining her clothes if she has eloped; and a carrier by whom she has sent them is justified in delivering them up to the guardians.—BARKER *v.* TAYLOR (1823), 1 C. & P. 101, N. P.

——.]—*See, also*, Nos. 21, 190, *ante;* BAILMENT, Vol. III., pp. 99–105.

Stoppage in transit.]—*See* SALE OF GOODS.
See, also, AGENCY, Vol. I., p. 600, Nos. 2314, 2315.

SUB-SECT. 7.—DUTIES WHEN DELIVERY DELAYED OR IMPOSSIBLE.

200. Whether agent for sale of necessity.]—SIMS & CO. *v.* MIDLAND RY. CO., No. 151, *ante*.

201. —— Perishable goods—Sale without communicating with owner.]—Defts. agreed to carry for pltf. a consignment of tomatoes from J. to L. Owing to the late arrival of the ship, & a strike of defts.' employees, considerable delay took place before the goods could be unloaded at W., & the tomatoes as a whole were found to be in a bad condition when unloaded: defts. decided that the best thing to do in the circumstances was to sell them locally, which they did. They made no attempt to communicate with the owner, & inform him of the condition of the goods :—*Held :* the sale was a breach of contract to carry the goods to L., & a wrongful conversion, as defts. had not proved that communication with its owner was commercially impossible.—SPRINGER *v.* GREAT WESTERN RY. CO., [1921] 1 K. B. 257;

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omits to do so, he cannot hold the carrier liable for loss or damage which may accrue.—BENGAL & NORTH WESTERN RY. CO. *v.* MUL CHAND (1920), I. L. R. 42 All. 655.—IND.

t. *Whether refusal reasonable—Question of law.*]—The question of the reasonableness or unreasonableness of delay in taking delivery is a question of law.—KENNEDY *v.* MCKEE (1906), 26 N. Z. L. R. 375.—N.Z.

u. *Conditional refusal.*]—Trees consigned by pltfs. to C. at Q. were delivered by a ry. co., by mistake, at O. Defts., pursuant to a message received from the ry. co., "Ship by express C.'s trees to Q.," were about to send them on to Q., when C., who was the only person known in the transaction by defts., said to defts.' agent that he would not accept the trees until he saw F. Defts. held the goods & notified the consignors of C.'s refusal. In an action by the consignors for damages for non-delivery & conversion of the trees :—*Held :* C.'s refusal to accept, even if not absolute, was such as dispensed with any further action on the part of defts. till they had a message from C. that he was ready & willing to receive; & this never having come, defts. acted reasonably in holding the goods & notifying the consignors, & were not liable for the loss.—SMITH *v.* CANADIAN EXPRESS CO. (1906), 12 O. L. R. 84; 7 O. W. R. 403.—CAN.

PART III. SECT. 7, SUB-SECT. 6.

v. *What amounts to refusal.*]—Common carriers used to allow consignees of goods to inspect them before receipting therefor & in case of suspicion of short weight to have them re-weighed. Pltf. without making such inspection paid the freight & gave a clear receipt in the delivery book but did not take actual delivery because the co. refused to reweigh the goods, & then sued the co. for the price of the goods :—*Held :* the suit must fail as refusal to reweigh did not amount to a refusal to deliver.—RAMJASH AGARWALLA *v.* INDIA GENERAL NAVIGATION & RY. CO., LTD. (1917), 22 C. W. N. 310.—IND.

PART III. SECT. 7, SUB-SECT. 7.

a. *General rule.*]—Where after enquiry consignees or indorsees of a bill of lading cannot be found, the duty of the carrier is to retain the goods until they are claimed, or to store them prudently for the owner.—CLOSE *v.* BEATTY (1878), 28 C. P. 470.—CAN.

Sect. 7.—Duration and termination of liability—delivery: Sub-sects. 7 & 8. Sect. 8.]

89 L. J. K. B. 1010; 124 L. T. 79; 15 Asp. M. L. C. 86, C. A.

See, also, No. 269, *post*.

Refusal of consignee to accept.]—*See* Sub-sect. 5, *ante*.

Carrier as warehouseman.]—*See* Sect. 8, *post*.

SUB-SECT. 8.—OTHER CASES.

202. Failure of means of delivery provided—Carrier exonerated.]—A carrier is answerable for safe delivery, as well as for safe conveyance. If, by the course of dealing, the owner of the goods supplies the means of delivery, & these means fail, without the default of the carrier, the latter is exonerated from the delivery.—NURRELL *v.* LARKIN (1831), 1 L. J. C. P. 2.

203. Delivery of wrong goods—Action for resulting damage.]—A statement of claim alleged that defts. were common carriers; that C. & B. were in the habit of sending empty casks by defts.' railway to pltf., which pltf. filled with ketchup & returned; that defts., by their agents & servants, knew the purpose for which the casks were delivered to pltf.; that defts. negligently & improperly delivered to pltf., as C. & B.'s casks, certain other casks not belonging to C. & B., which had contained turpentine; that pltf. not knowing or having reasonable means of knowing that the empty casks delivered were not C. & B.'s filled them with ketchup which was spoiled:—*Held:* on demurrer, the statement of claim showed no duty on the part of defts. which could give rise to a cause of action, & they were not liable.—CUNNINGTON *v.* GREAT NORTHERN RY. CO. (1883), 49 L. T. 392; 48 J. P. 134, C. A.

Annotation:—**Consd.** Blacker *v.* Lake & Elliot (1913), 106 L. T. 533.

See, also, No. 1435, *post*.

204. Evidence of non-delivery—Conversion.]—If A. sends goods by B., a common carrier, to be delivered to C., proof that B., asserted he had delivered the goods to C., whereas in truth C. had never received them, is not sufficient evidence of conversion to support trover against B.—ATTERSOL *v.* BRIANT (1808), 1 Camp. 409, N. P.

Annotation:—**Consd.** Stephenson *v.* Hart (1828), 1 Moo. & P. 357.

205. —— Knowledge of consignee's servant.]—In an action against carriers for loss of a parcel, the consignee's shopman not knowing of the delivery, & believing that he must have known it, if a delivery had taken place, is *primâ facie* evidence of non-delivery.—GRIFFITHS *v.* LEE (1823), 1 C. & P. 110, N. P.

Annotation:—**Consd.** Gilbart *v.* Dale (1836), 5 Ad. & El. 543.

206. ——.]—LEVENE *v.* GREAT WESTERN RY. CO., No. 155, *ante*.

SECT. 8.—LIABILITY AS WAREHOUSEMEN.

See, further, BAILMENT, Vol. III., pp. 79 *et seq.*

207. Accidental fire.]—To a count in *assumpsit* by A. against B. upon a contract by B., to carry goods from D. to L., & to deliver them at L. to A., assigning a breach in non-delivery of the goods in L., B. pleaded that after the arrival of the goods at L., he caused them to be landed & deposited upon a certain wharf at L., at which goods conveyed from D. to L. were accustomed to be landed, for the use of consignees, & that the goods whilst they remained upon the wharf, & before a reasonable time for the delivery thereof had elapsed, were accidentally destroyed by fire; also that after the arrival of the goods at L. he was ready & willing to deliver the goods to A., but that A. was not there ready to receive them; whereupon he caused the goods to be landed, etc.:—*Held:* (1) pleas were bad in substance, which neither showed a delivery of the goods to A., nor alleged that a delivery at the wharf was a delivery, according to the usage of L., with respect to goods on such a voyage, or that A. had notice of the arrival of the goods, or that a reasonable time for A. to receive them had elapsed when the goods were landed, or when they were destroyed, or that A. had notice that B. was ready & willing to deliver the goods; & that, if, as the goods were deliverable to A., B. was not bound to deliver them until he had notice that A. would receive, or until the party entitled should come to receive them, still B. was bound to keep the goods on board, or on the wharf at B.'s own risk, for a reasonable time, to enable the consignee to fetch them, & B. continued liable until such reasonable time had elapsed; (2) evidence of former dealings between A. & B. as to the carriage of goods from B.'s wharf to A.'s place of business was admissible for the purpose of showing the course & usage of delivery at the port of L.; though, for the purpose of adding to, or otherwise varying the terms of

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PART III. SECT. 7, SUB-SECT. 8.

203 i. *Delivery of goods not ordered—Action for resulting damage.*]—The consignee of barrels of paraffin received with them from the carrier a barrel of naphtha which had not been ordered; without examination & without ascertaining what had been ordered, it was placed in his store beside the barrels of paraffin. A description of its contents, which was not noticed by the consignee or his servants, was stencilled on each barrel. Some weeks after delivery one of the consignee's servants, believing the barrel of naphtha contained paraffin, drew off part of its contents, by the light of a candle & an explosion ensuing, the store & its contents were destroyed by fire. In an action for damages by the consignee against the carriers:—*Held:* the consignee was entitled to recover the loss he had sustained.—MACDONALD *v.* MACBRAYNE (DAVID), LTD. (1915), 52 Sc. L. R. 476.—**SCOT.**

b. *Proof of delivery—Onus.*]—Defts. received goods for carriage & delivery to pltf. at the place where he carried on business. In an action by pltf. to recover the value of the goods for failure on the part of defts. to deliver them:—*Held:* the burden was upon defts. to prove delivery of goods, & this burden was not satisfied by the production of a receipt signed by a carter in pltf.'s employ, it being shown that it was usual for defts.'s agent to take the receipt for the goods before delivering them & before ascertaining whether or not the goods had arrived at the place to which they were addressed.—HENDERSON *v.* INVERNESS RY. & COAL CO. (1917), 50 N. S. R. 518; *revsd.* Mar. 5, 1918.—**CAN.**

PART III. SECT. 8.

c. *On failure of consignee to remove goods within reasonable time—After notice of arrival.*]—PLEET *v.* CANADIAN NORTHERN QUEBEC RY. CO. (1920), 19 O. W. N. 186.—**CAN.**

d. *Limitation of liability by notice—Goods refused by consignee—Right of sale.*]—Packages were carried by defts. for pltfs. & delivery thereof was tendered to pltfs., who refused acceptance; defts. retained possession of the goods & sold them for unpaid charges for transportation & storage; three days before sale, pltfs. requested defts. to deliver the goods to pltfs., but the goods had been forwarded to M. to be sold there, &, in consequence of the negligence of defts.'s clerk, the request did not reach the proper hands in M. until after the sale:—*Held:* (1) defts. were liable; (2) although defts., after refusal to accept, held the goods as warehousemen, they were entitled to the benefit of a provision in the shipping contract limiting their liability in case of loss or damage.—GETTY & SCOTT, LTD. *v.* CANADIAN PACIFIC RY. CO. (1917), 40 O. L. R. 260; 22 Can. Ry. Cas. 297; *affd.* (1920), 46 O. L. R. 468.—**CAN.**

207 i. *Accidental fire—Limitation of liability.*]—Four car loads of flour were delivered to defts. to be carried from N. to C. under a special contract whereby defts. were not to be liable for any delay occasioned by want of opportunity to forward goods beyond places where defts. had stations & defts.' line did not extend beyond T. On their arrival there, the goods were placed in defts.' freight sheds, & notices

the written contract, it would have been inadmissible; (3) the judge was warranted in declining to tell the jury that a delivery at the wharf was, in point of law, a sufficient delivery, that B. was thereby discharged from all further responsibility, & that no contract could be inferred from the course of dealing, to vary or superadd to, the written contract contained in the bill of lading; & in stating that it was a question for the consideration of the jury, whether there had been a delivery of the goods, & that it was for them to say whether, upon the evidence, a delivery at the wharf was a delivery according to the usage & practice of delivering goods observed in the port of L.

In another count, on a promise, in consideration of the employment of B. by A. for other reward, to take care of the goods at the wharf, & to carry them from such wharf to A.'s place of business, in a reasonable time after landing, a breach was assigned in the non-delivery of the goods, although a reasonable time for that purpose had elapsed, B. pleaded that after the goods had been safely landed on the wharf, he caused them to be safely stored upon the wharf until they could be delivered to A., & that he took care of the goods whilst they remained upon the wharf until they were destroyed by an accidental fire before a reasonable time for delivery to A. had elapsed; by means whereof, etc.:—*Held:* (4) the plea was a good answer as the contract to carry from the wharf for other reward was not of the same nature as the contract to carry to it, & the count contained no averment that B. was a common carrier; (5) if B. was not subject to the liability of a common carrier whilst the goods were in the warehouse, all that he was bound to do by the contract was, to take reasonable care of the goods whilst in the warehouse.—BOURNE *v.* GATLIFFE (1844), 7 Man. & G. 850; 11 Cl. & Fin. 45; 8 Scott, N. R. 604; 135 E. R. 345, H. L.; *varying* S. C. (1841), 3 Man. & G. 643, Ex. Ch.; *sub nom.* GATLIFFE *v.* BOURNE (1838), 4 Bing. N. C. 314.

Annotations:—*As to* (1) **Refd.** Butterworth *v.* Brownlow (1865), 19 C. B. N. S. 409; Bradshaw *v.* Irish North Western Ry. (1873), 21 W. R. 581; Chapman *v.* G. W. Ry. (1880), 5 Q. B. D. 278. *As to* (2) **Expld.** Burges *v.* Wickham (1863), 3 B. & S. 669. **Refd.** Simpson *v.* Margitson (1847), 11 Q. B. 23; The Cargo ex Argos (1873), 42 L. J. Adm. 49; Bruner *v.* Moore, [1904] 1 Ch. 305. *As to* (3) **Refd.** Richards *v.* L. B. & S. C. Ry. (1849), 7 C. B. 839; The Norway (1864), Brown. & Lush. 377; Mitchell *v.* L. & Y. Ry. (1875), L. R. 10 Q. B. 256. *Generally* **Mentd.** Ross *v.* Hill (1846), 2 C. B. 877; Mathewson *v.* Ray (1847), 16 M. & W. 329; Grey *v.* Friar (1850), 15 Q. B. 901.

See, also, BAILMENT, Vol. III., pp. 79, 80, Nos. 175–177.

Goods damaged or lost while at warehouse—No charge for storing.]—*See* BAILMENT, Vol. III., p. 59, Nos. 40, 41.

Growing plants sent by rail—Planted in land belonging to railway to keep plants alive—Refusal of railway to deliver up plants.]—*See* AGENCY, Vol. I., p. 600, No. 2315.

208. Reasonable care—Recovery of expenses.]—When carriers by land have carried goods to their destination, in pursuance of a contract with one who is both consignor & consignee, & through his default the goods are left in the carriers' hands, they are bound to take reasonable measures for the preservation of the goods, & can recover from him payments they have made on account of expenses so incurred.

Deft. sent a horse by railway consigned to himself to a station on the line, & paid the fare. When the horse arrived at the station there was no one on deft.'s behalf to receive it, & the railway co. therefore placed it with a livery stable keeper:—*Held:* they could recover from deft. the reasonable charges which they had paid to the stable keeper.—GREAT NORTHERN RY. CO. *v.* SWAFFIELD (1874), L. R. 9 Exch. 132; 43 L. J. Ex. 89; 30 L. T. 562.

Annotations:—**Refd.** Sims *v.* Mid. Ry., [1913] 1 K. B. 103; L. & N. W. Ry. *v.* Duerden (1915), 85 L. J. K. B. 176; Coldman *v.* Hill, [1919] 1 K. B. 443. **Mentd.** Mitchell *v.* L. & Y. Ry. (1875), L. R. 10 Q. B. 256.

209. Whether warehousing justifiable — Direction to deliver "ex ship."]—Pltfs., directed defts., the owners of a line of steamships carrying certain goods for delivery to pltfs., to "deliver ex ship to the railway co., to our order." The contract contained a clause protecting defts. from liability for damage to goods by fire while lying for collection, delivery, or in the course of transit, at defts.' wharf or warehouse or any other wharf or warehouse at which they might be placed, landed, or kept. On arrival the goods were not delivered direct from the ship to the railway station, but were placed in defts.' warehouse adjoining the quay, where a fire broke out & the goods were destroyed:—*Held:* (1) the expression "ex ship" did not exclude taking the goods into warehouse for the purpose of despatching them by cart to the railway; (2) on the facts the purposes for which the goods were taken into the warehouse was justifiable; & defts. were covered by the exception.—ESSEX COUNTIES FARMERS' CO-OPERATIVE ASSOCN., LTD. *v.* NEWHOUSE & CO. (1916), 86 L. J. K. B. 172; 115 L. T. 308; 13 Asp. M. L. C. 449.

See, further, Nos. 92, 177, *ante*, No. 341, *post*, & cases in Sect. 7, sub-sects. 5, 7, *ante*.

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were sent to the consignor & consignee that defts. were prepared to deliver the goods for further conveyance. After such notice, while the goods were in defts.' freight sheds, they were destroyed by fire without negligence on defts.' part:—*Held:* defts. were not liable as carriers, because they had expressly limited their liability; nor as warehousemen, because no negligence was shown.—BRODIE *v.* NORTHERN RY. CO. (1884), 6 O. R. 180.—**CAN.**

207 ii. ——.]—NAZZARENO *v.* ALGOMA EASTERN RY. CO. (1920), 18 O. W. N. 142.—**CAN.**

e. *Loss of goods—Measure of diligence.*]—Pltf.'s property was sent by deft.'s line of railway addressed to the care of pltf.'s agent at B. The goods arrived in due course & were placed in deft.'s warehouse for custody & delivery to the consignee, but were thereafter lost through negligence of deft.'s servant:—*Held:* deft. was liable for reasonable care & custody of the goods, & must make the loss good.—BELL *v.* WINDSOR & ANNAPOLIS RY. CO. (1892), 24 N. S. R. 521.—**CAN.**

f. —— ——.]—In an action to recover the value of certain goods shipped by pltfs. to K. at D. & destroyed by fire while in defts.' freight shed at D.:—*Held:* it was impossible on the evidence to say that defts. were guilty of negligence in connection with the burning of the shed, that the goods when destroyed were in possession of defts. as warehousemen & that, by virtue of condition 10 on shipping bill, after the goods were placed in the warehouse the defts.' liability was at an end.—CHANDLER & MASSEY CO. *v.* GRAND TRUNK RY. CO. (1903), 2 O. W. R. 286, 407, 427, 1044.—**CAN.**

Part IV.—Modifications of the Common Law Contract.

SECT. 1.—NON-STATUTORY.

See, now, Carriers Act, 1830 (c. 68), & Railway & Canal Traffic Act, 1854 (c. 31).

SUB-SECT. 1.—BY PUBLIC NOTICE.

A. In General.

210. General rule.]—There is a difference where a man is chargeable by law generally, & where on his own contract. Where a man is bound to any duty, & chargeable to a certain extent by the operation of law, in such case he cannot by any act of his own discharge himself. As in the case of common carriers, who are liable by law in all cases of losses, except of those arising from the act of God, or of the King's enemies; they cannot discharge themselves from losses happening in these circumstances by any act of their own; as by giving notice, for example, to that effect. The case is otherwise where a man is chargeable on his own contract; there he may qualify it as he thinks fit (LORD KENYON, C.J.).—HIDE *v.* TRENT & MERSEY NAVIGATION CO. (1793), 1 Esp. 35, N. P.; *subsequent proceedings, sub nom.* HYDE *v.* TRENT & MERSEY NAVIGATION CO., 5 Term Rep. 389.

Annotations:—**Distd.** *Re* Webb (1818), 2 Moore, C. P. 500. **Apld.** Gatliffe *v.* Bourne (1838), 4 Bing. N. C. 314. **Consd.** Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210. **Mentd.** Storr *v.* Crowley (1825), M'Cle. & Yo. 129; The Norway (1864), Brown. & Lush. 377.

211. ——.]—MAVING *v.* TODD, No. 26, *ante*.

212. Extent of notice—Whether applicable to out & home journeys.]—In an action against coach proprietors, for the loss of a parcel directed to pltfs. in L., by their agent at K., defts. put in a notice, in the following form:—"George & Blue Boar, L. Take notice. The proprietors of carriages which set out from this office, will not hold themselves answerable for any passenger's luggage, truss, parcel or any package whatever, above the value of £5, if lost or damaged, unless same be entered as such, & paid for accordingly, when delivered here or to their agents in town or country." They also proved, that pltfs. were in the constant habit of sending parcels from L. to the country & back by their coach. The trial judge being of opinion that the notice applied only to the journey from, & not to that to L., the jury found a verdict for pltfs.:—*Held*: the notice applied both to the out & home journeys; but, as it had not been left to the jury to say whether or not pltfs. were aware that the coach by which the parcel was sent, was one that started from the George & Blue Boar, a new trial must be directed.—RILEY *v.* HORNE (1828), 5 Bing. 217; 2 Moo. & P. 331; 7 L. J. O. S. C. P. 32; 130 E. R. 1044.

Annotations:—**Distd.** Pickford *v.* Grand Junction Ry. (1812), 3 Ry. & Can. Cas. 193. **Consd.** Crouch *v.* L. & N. W. Ry. (1854), 14 C. B. 255. **Distd.** Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412. **Consd.** Horne *v.* Mid. Ry. (1873), L. R. 8 C. P. 131. **Refd.** Nugent *v.* Smith (1875), 1 C. P. D. 19; Spillers & Bakers *v.* G. W. Ry., [1911] 1 K. B. 386.

213. Who protected—Coach proprietor—Notice in general coach office.]—MACKLIN *v.* WATERHOUSE, No. 50, *ante*.

B. Sufficiency of Notice.

(a) How given.

214. Advertisement in newspaper.]—In an action against a carrier for negligence, deft. cannot read in evidence, an advertisement in a newspaper by which he limits his responsibility, unless he first prove that pltf. was in the habit of reading that paper. *Semble*: an advertisement in the *Gazette* may be read without such preparatory proof, but without it, the evidence is weak.—LEESON *v.* HOLT (1816), 1 Stark. 186, N. P.

Annotation:—**Mentd.** Wade *v.* L. & N. W. Ry., [1921] 1 K. B. 582.

215. ——.]—In an action against a coach-proprietor for the loss of a parcel, it was proved for deft. that pltf. had for three years taken in a weekly newspaper, in which deft. had regularly inserted a notice, that he would not be responsible for any parcel above the value of £5 unless entered & paid for accordingly:—*Held*: that such evidence was not sufficient to show that the pltf. had knowledge of such notice at the time of the delivery of the parcel.—ROWLEY *v.* HORNE (1825), 3 Bing. 2; 10 Moore, C. P. 247; 3 L. J. O. S. C. P. 118; 130 E. R. 413.

216. Notice on door of office—& bill.]—It is not sufficient notice to limit the common law responsibility of a carrier for him to paste upon the door of his office where goods are received & delivered a bill blazoning the advantages of his conveyances, & stating in small characters at the bottom of it, that he will not be answerable for goods above the value of £5 unless entered as such & paid for accordingly.—BUTLER *v.* HEANE (1810), 2 Camp. 415, N. P.

Annotation:—**Consd.** Van Toll *v.* S. E. Ry. (1862), 12 C. B. N. S. 75.

217. Notice in office—Must be conspicuous.]—If a carrier receive goods at a distance from his office, to be discharged from his common law liability, he must prove that the special terms on which he deals were communicated to the owner of the goods through some other medium than a notice stuck up in the office; & that to be of any avail must be in such large characters that a person delivering goods at the office cannot fail to read it without gross negligence.—CLAYTON *v.* HUNT (1811), 3 Camp. 27, N. P.

218. —— Must be brought home to consignor.]—In order to affect one who sends goods by a carrier with notice of the terms on which he deals, it is not sufficient to show that a printed notice was exhibited in the carrier's office, where the goods were delivered by a porter, although the porter could read, & had seen the notice, if in fact he had never read it.—KERR *v.* WILLAN (1817), 6 M. & S. 150; 2 Stark. 53; Holt, N. P. 645, n.; 105 E. R. 1199.

Annotations:—**Consd.** Peck *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. **Mentd.** Alexander *v.* Malcolmson (1869), 20 L. T. 930.

219. —— ——.]—A carrier, in order to avail himself of a notice limiting his responsibility, must bring notice of his intention home to the mind of the party. A notice stuck up in the office is insufficient, where the party cannot read.—DAVIS

PART IV. SECT. 1, SUB-SECT. 1.—A.

210 i. *General rule.*]—A carrier cannot escape from legal obligations by issuing a public notice that he will not be responsible for loss or damage to goods carried by him.—NAYLOR *v.* MUNNIK (1859), 3 S. 187.—S. AF.

PART IV. SECT. 1, SUB-SECT. 1.—B. (a).

g. *Notice in railway regulations.*]—Pltf. forwarded, by deft.'s train, fowls & by the same train sent a letter of advice as to the forwarding. The letter was delayed for some days, & the fowls were late for an intended market:—*Held*: the notice to the public in the regulations under which the letter was carried exonerated the co.—BLANCHFIELD *v.* CORK, BANDON & SOUTH COAST RY. CO. (1897), 31 I. L. T. Jo. 100.—IR.

v. WILLAN (1817), 2 Stark. 279 ; cited Holt, N. P. 646, n, N. P.

220. —— —— Omitted from printed conditions.]—A notice was affixed in the office, & a printed paper put into the servant's hand who delivered the parcel. It was doubtful if the servant saw the board in the office ; & in the printed paper, by accident, as it was alleged, the terms of restriction were omitted :—*Held :* the notice was insufficient.—MUNN *v.* BAKER (1817), 2 Stark. 255 ; Holt, N. P. 646, n., N. P.

See, also, No. 350, *post.*

221. —— Goods received away from office.]—CLAYTON *v.* HUNT, No. 217, *ante.*

222. —— ——.]—Though a carrier may, by law, limit his responsibility, a notice of certain limitations on his general liability, suspended at the *termini* of his journey, will not attach on the delivery of goods at intermediate places, where no such notice is given.—GOUGER *v.* JOLLY (1816), Holt, N. P. 317, N. P.

See, also, No. 298, *post.*

223. Notice at one entrance of landing stage.]—WALKER *v.* JACKSON, No. 130, *ante.*

224. Request to insure.]—MACKLIN *v.* WATERHOUSE, No. 50, *ante.*

Handbills.]—*See* No. 229, *post.*

(b) To whom given.

225. Vendor—Affects vendee.]—MAVING *v.* TODD, No. 26, *ante.*

See, also, AGENCY, Vol. I., p. 614.

226. Principal—Goods consigned by agent.]—(1) Where a parcel is delivered by pltf.'s agent at W. to deft., to be carried to pltf., who resides in L., it is sufficient for deft. to prove that pltf. in L. has received notice that deft. would not be responsible for goods exceeding £5 in value, unless entered & paid for, without proving any notice to the agent in the country, especially if the terms of the notice extend to deliveries to agents in the country.

(2) The mere circumstance that deft.'s agent received the parcel, after notice that its value was considerable, does not amount to a waiver of the notice.—ALFRED *v.* HORNE (1822), 3 Stark. 136, N. P.

227. —— ——.]—(1) Notice to the principal is in law notice to all agents. Therefore, if stage-coach proprietors have given the usual £5 notice to principals in L., in the month of Jan. ; & their traveller, who proves that he was ignorant of such notice, sends them, from D., a parcel, containing £87, he has received for them in the month of Feb., by a coach belonging to these coach-proprietors, & it is lost, the coach-proprietors will not be responsible, the notice given to the principals being considered in law as notice to all their agents.

(2) *Qu. :* whether the person sending a parcel, containing £87 by a stage-coach, by writing the word "Mourning" on it, does not commit such a fraud on the coach-proprietors, as to exonerate them from liability.—MAYHEW *v.* EAMES (1825), 3 B. & C. 601 ; 1 C. & P. 550 ; 5 Dow. & Ry. K. B. 484 ; 3 L. J. O. S. K. B. 108 ; 107 E. R. 856.

Annotations :—As to (1) **Expld.** Alexander *v.* Malcolmson (1869), 20 L. T. 930. **Refd.** Willis *v.* Bank of England (1835), 4 Ad. & El. 21 ; Cornfoot *v.* Fowke (1840), 6 M. & W. 358 ; Powles *v.* Page (1846), 3 C. B. 16.

See, also, Nos. 50, 218, 220, *ante.*

SUB-SECT. 2.—BY SPECIAL CONTRACT.

228. In general.]—WYLD *v.* PICKFORD, No. 66, *ante.*

See, also, No. 210, *ante,* Nos. 262, 351, *post.*

229. By public notice—Brought home to consignor—Whether modified by freight note.]—Defts., owners of steam-vessels plying between B. & L., issued every month handbills of the times of their vessels sailing, & which contained a notice that they received goods for shipment on the conditions & agreement only that they are not liable for inward condition, leakage & breakage, & that they would not receive any goods for conveyance by their vessels except upon the terms that they should not be responsible for any loss or damage of or to such goods from any cause whatever during the voyage. On Mar. 8 pltfs., who had received these handbills, shipped on

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h. *Printed on monthly account.*]—Special conditions printed on a monthly account rendered to the consignor would not protect the carrier from the negligence of his servants.—ROYAL INSURANCE CO., LTD. *v.* ATLAS EXPRESS CO., LTD. (1916), 2 S. L. T. 192.—**SCOT.**

PART IV. SECT. 1, SUB-SECT. 1. —B. (b).

226 i. *Principal—Goods consigned by agent.*]—Pltf.'s agent forwarded goods addressed to pltf. by defts.' line ; their receipt given to the agent stated that the goods were to be sent subject to conditions on the back thereof :—*Held :* pltf. was bound by conditions of which his agent had the means of knowledge.—ARMSTRONG *v.* GRAND TRUNK RY. CO. (1879), 18 N. B. R. (2 P. & B.) 445.—**CAN.**

i. *Agent—Goods consigned by agent.*]—K. & Co., merchants, London, sold goods to pltfs., merchants in Dublin, & it was agreed that the goods should be forwarded to pltfs. by steamship from London to Dublin. K. & Co. sent the goods by their own carter to H. & Co., wharfingers, London, for the purpose of having same placed on board the ship of defts., who were carriers by sea. H. & Co. having received the goods, gave a receipt, on the back of which was indorsed a condition that defts. would not be responsible for any loss or damage arising from the negligence of their own officers & crew in the journey from London to Dublin. The ship sailed, & the goods were lost through the negligence of the officers & crew. Pltfs. knew nothing whatever of the condition :—*Held :* (1) the true question to have left to the jury would have been, "whether the receipt containing the condition on which alone the goods consigned to pltfs. were to be carried by defts. was delivered to pltfs. or to their agent at the time the goods were by their agent placed on the wharf of the wharfingers," & it was not necessary to explain to pltfs.' agent the conditions embodied in the receipt ; (2) defts. being carriers by sea, the condition was valid ; (3) K. & Co. being the agents of pltfs. in the making of the contract, pltfs. were bound thereby.—ALEXANDER *v.* MALCOLMSON (1869), 20 L. T. 930.—**IR.**

PART IV. SECT. 1, SUB-SECT. 2.

228 i. *In general.*]—The Comr. of Railways may contract himself out of his liability as a common carrier.—HANNANS SAW MILLING CO., LTD. *v.* COMR. OF RAILWAYS (1901), 3 W. A. L. R. 34.—**AUS.**

228 ii. ——.]—In the absence of restraining statutes, a railway or steamboat co. may impose such terms upon the public as to exempt the co. from responsibility for injury, however caused, including gross negligence & even fraud or dishonesty on the part of their servants.—DODSON *v.* GRAND TRUNK RY. CO. (1871), 8 N. S. R. 405.—**CAN.**

k. *Construction of.*]—Deft. co. as a common carrier, contracted with pltf. to carry for him, P., general merchandise, the rates being according to tariff annexed to an exclusive contract for the sect. of 1899 with guaranteed delivery of shipments during that season. The co. decided not to receive after Aug. 20 any more freight with guaranteed delivery during 1899, & so notified P., of whom pltf. was a customer. P. afterwards shipped goods & received from the co. bills of lading marked with a special condition that the carriers were released by all parties in interest from all claims & liability arising out of or occasioned by non-delivery during 1899. The co. failed to deliver the goods :—*Held :* the goods were not carried under the exclusive contract for the season of 1899, by which delivery was guaranteed that same season, but that they were carried under the terms of the bills of lading, & the co. was not liable for the loss.—WILSON *v.* CANADIAN DEVELOPMENT CO., LTD. (1902), 9 B. C. R. 32 ; *revsd.* 33 S. C. R. 432.—**CAN.**

229 i. *By public notice—Brought home to consignor.*]—The carrier must prove that the consignor saw, & assented to the terms of, a notice limiting the carrier's liability.—NAYLOR *v.* MUNNIK (1859), 3 S. 187.—**S. AF.**

Sect. 1.—*Non-statutory: Sub-sects.* 2, 3 & 4, *A.*]

board one of defts.' vessels two casks of brandy to be carried to F. On Mar. 11 the shipping broker delivered to pltfs. a freight note, at the foot of which was a notice that defts. did not hold themselves liable for leakage of oils, spirits or other liquids, unless from bad stowage. In the course of the voyage one of the casks of brandy was staved in & nearly all its contents lost:—*Held:* the notice in the handbills constituted the terms of the contract under which the goods were shipped, & those terms were not qualified by the notice at the foot of the freight note, & defts. were not responsible.—PHILLIPS *v.* EDWARDS (1858), 3 H. & N. 813; 28 L. J. Ex. 52; 32 L. T. O. S. 147; 157 E. R. 696.

Annotation:—**Mentd.** John *v.* Bacon (1870), 39 L. J. C. P. 365.

See, also, Nos. 217–220, *ante.*

230. By custom—Port of London—Lighterage.]—Pltfs. received in London a quantity of lard from America. They employed defts. to store the lard for them in a warehouse & to lighter it from the ship to the warehouse. Defts. were not common carriers & had no lighters of their own, & could only convey the lard to the warehouse by employing lightermen. Pltfs. sued defts. for negligence whereby the lard had been damaged during the lighterage, & for negligence whereby it had been damaged during the storage:—*Held:* (1) defts. had been negligent both in relation to the lighterage & the storage; (2) the ct. must take judicial notice of the fact that in the Port of London lighterage was only undertaken subject to a clause which protected the lighterman from loss or damage to the goods from any cause whatever, & so far as the claim related to damage during the lighterage the action failed.—ARMOUR & Co., LTD. *v.* TARBARD (C.), LTD. (1920), 37 T. L. R. 208.

231. —— —— ——.]—When parties enter into an agreement for lighterage work in the Port of London, & nothing is said about the terms upon which the work is to be done, the parties must be presumed to have agreed that the work is to be done on the usual terms, which include the exemption of lightermen from liability for loss of goods by pilferage.—LYNCH BROTHERS, LTD. *v.* EDWARDS & FASE, No. 46, *ante.*

Lighterage generally, *see* Part I., Sect. 4, *ante.*

232. Whether common law liability excluded—No liability to deliver within definite time—Liability to deliver within reasonable time.]—(1) Declaration against defts., a railway co., as common carriers of cattle, for non-delivery of pigs within a reasonable time, according to the terms on which they had received them. Pleas (*inter alia*) that they were delivered within a reasonable time; & that they were received on the terms that defts. would not be liable for their delivery within any certain or definite time, or in time for any particular market. The pigs were in fact received on those terms & were forwarded by the first practicable train, according to defts.' arrangements, which were unknown to pltf. This, however, involved a detention of a day, from which the pigs suffered damage. The judge expressed an opinion that the pigs had been delivered within a reasonable time, & pltf. was non-suited, without any expressed opposition on the part of his counsel. On a motion for a new trial on the ground that the question ought to have been left to the jury:—*Held:* if it had gone to the jury, the judge would have been bound to direct them to find for defts. on the traverse of the terms alleged in the declaration.

(2) *Semble:* the special terms excluded the implied liability to deliver within a reasonable time.—HUGHES *v.* GREAT WESTERN RY. CO. (1854), 14 C. B. 637; 23 L. J. C. P. 153; 18 Jur. 1001; 2 C. L. R. 1360; 139 E. R. 262.

Annotations:—*As to* (2) **Folld.** White *v.* G. W. Ry. (1857), 2 C. B. N. S. 7. **Reid.** Peck *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473.

233. —— **Liability limited to breakage—Goods destroyed by fire.**]—Deft. carried on the business of a carrier, removing goods & furniture for hire for all persons indifferently who applied to him, in his own vans, which he sent by road or rail to all parts of England, the goods & furniture being previously inspected before any contract was made. Generally in such contracts the van or vans were hired by & filled with the goods of one person only. Pltf. having applied to deft. to remove his furniture from one town to another, & deft.'s foreman having inspected it, the parties agreed that deft. should remove the furniture for £22 10*s.*, deft. undertaking risk of breakage, if any, not exceeding £5 on any one article. After the furniture was placed in deft.'s vans, & while in transit, it was burnt without any negligence on deft.'s part. Pltf. contended that deft. was liable as a common carrier:—*Held:* the special contract showed that the parties intended to limit deft.'s liability to loss by breakage or by deft.'s negligence, & excluded any question of liability as a common carrier.—SCAIFE *v.* FARRANT (1875), L. R. 10 Exch. 358; 44 L. J. Ex. 234; 33 L. T. 278; 23 W. R. 840, Ex. Ch.

Annotations:—**Consd.** Watkins *v.* Cottell, [1916] 1 K. B. 10; Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210.

234. ——.]—SUTTON & Co. *v.* CICERI & Co., No. 270, *post.*

See, also, No. 165, *ante*, Nos. 261, 435, *post.*

235. Must be specially proved.]—(1) A declaration stated an undertaking to carry safely certain goods by water, with an exception of all accidents

1. *Conditions printed on back of receipt—Whether part of special contract.*]—Conditions printed on the back of the receipt for payment of charges given to a consignor do not necessarily form part of a special contract between the carrier & consignor; but it is a question for the jury, whether such receipt was given merely as an acknowledgment of the payment, or whether it was intended that the condition indorsed on the receipt should affect or qualify the contract.—ANDERSON *v.* CHESTER & HOLYHEAD RY. CO. (1854), 4 I. C. L. R. 435.—**IR.**

232 i. *Whether common law liability excluded.*]—Defts. received glass to be carried for pltf., who signed a paper, partly written & partly printed, requesting them to receive it upon conditions indorsed, which provided that they would not be responsible for damage done to china, glass, etc., delivered to them for carriage; & defts. gave a receipt with the same conditions upon it:—*Held:* such delivery & acceptance formed a special contract, valid at common law, which exempted defts. from injury to the goods, even though caused by gross negligence.—HAMILTON *v.* GRAND TRUNK RY. CO. (1864), 23 U. C. R. 600.—**CAN.**

232 ii. —— ——.]—Goods were delivered to defts. to be carried under a special contract whereby defts. were not to be liable for delay occasioned by want of opportunity to forward the goods beyond places where defts. had stations, & not to be liable after notification to forwarding carriers of readiness to deliver the goods for further conveyance; & not to be liable for loss by fire. Defts.' line did not extend beyond T., & the goods were to be forwarded by G. T. R.; on their arrival at T., they were placed in defts.' freight sheds, & notice was duly given that defts. were prepared to deliver the goods for further conveyance. After such notice, while the goods were in defts.' freight sheds, they were destroyed by fire without negligence on defts.' part:—*Held:* defts. were not liable because they had expressly limited their liability.—BRODIE *v.* NORTHERN RY. CO. (1884), 6 O. R. 180.—**CAN.**

235 i. *Must be specially proved.*]—Where a common carrier fails to deliver goods which he has undertaken to carry, the presumption, upon proof of non-delivery, is that they are still in his possession, & the *onus* lies upon him, if he relies upon a special contract not to be liable for loss, to prove that

arising from the act of God, the King's enemies, fire, pirates, & all other dangers & accidents of the seas, rivers, & navigation of what nature or kind soever :—*Held :* this exception being beyond the common law exception, must be specially proved.

(2) Is there any difference between a carrier by land & by sea except that at sea the acts of God, which give rise to the accidents excepted are multiplied beyond those on land, & therefore many things at sea are excepted against which cannot happen by land (LORD ELLENBOROUGH, C.J.).—RICHARDSON *v.* SEWELL (1805), 2 Smith, K. B. 205.

236. Evidence of.]—LATHAM *v.* RUTLEY, No. 82, *ante*.

237. ——.]—PICKFORD *v.* GRAND JUNCTION RY. CO., No. 290, *post*.

238. ——.]—WYLD *v.* PICKFORD, No. 66, *ante*.

239. ——.]—ROBINSON *v.* GREAT WESTERN RY. CO., No. 424, *post*.

240. Proof of — Question for jury.]—In an action against common carriers for the loss of goods entrusted to their care, there was contradictory evidence as to whether a ticket limiting their responsibility had been delivered by them to pltf. at the time by taking the goods in charge : —*Held :* (1) the jury were rightly directed to say, whether that ticket had ever been delivered to pltf. ; (2) it was not necessary to leave to them whether or not it had been read over or explained to him.—PALMER *v.* GRAND JUNCTION RY. CO. (1839), 4 M. & W. 749 ; 7 Dowl. 232 ; 1 Horn & H. 489 ; 8 L. J. Ex. 129 ; 3 J. P. 630 ; 3 Jur. 559 ; 150 E. R. 1624.

Annotations :—As to (1) **Distd.** Kent *v.* G. W. Ry. (1846), 3 C. B. 714. **Consd.** Lyles *v.* Southend-on-Sea Corpn., [1905] 2 K. B. 1 ; Myers *v.* Bradford Corpn., [1915] 1 K. B. 417 ; Bradford Corpn. *v.* Myers, [1916] 1 A. C. 242. **Refd.** Davis *v.* Curling (1845), 8 Q. B. 286 ; Parker *v.* L. C. C. (1904), 90 L. T. 415. *As to* (2) **Refd.** Carpue *v.* L. & B. Ry. (1844), 5 Q. B. 747 ; Alexander *v.* Malcolmson (1869), 20 L. T. 930.

241. —— ——.]—Pltf. ordered of defts. certain trucks to be ready on a particular day to convey his cattle to market by their railway. The trucks were not ready on the day fixed, but the superintendent at the station then promised they should be ready on the day following, saying the cattle would be then quite in time for the market. Pltf. sent his cattle on the following day, & signed a forwarding note required of him by the co., with special conditions indorsed, but the cattle were then too late for the market, damaged by delay, & sold elsewhere at a loss. In an action against the co., the question left to the jury was, whether a contract had been made to carry the cattle & deliver them at their destination by a particular time ready for the market. On a motion for a new trial, on the ground of misdirection, alleging that the question should have been whether the cattle were carried according to the written bargain made on the day following :—*Held :* the question as left to the jury was the proper one, the other point not having been made by defts. at the trial.—BROWN *v.* BRISTOL & EXETER RY. CO. (1861), 4 L. T. 830 ; 7 Jur. N. S. 950 ; 9 W. R. 872.

Annotation :—**Refd.** Arnold *v.* Jeffreys, [1914] 1 K. B. 512.

242. Whether incoming partner of carrier bound.]—HELSBY *v* MEARS, No. 280, *post*.

Under Carriers Act, 1830 (c. 68).]—*See* Sect. 2, sub-sect. 1, *post*.

Under Railway & Canal Traffic Act, 1854 (c. 31), & subsequent Acts.]—*See* Sect. 2, sub-sect. 2, *post*.

Carriage of animals.]—*See* Part VII., Sect. 3, *post*.

Passengers' luggage.]—*See* Part VI., Sect. 8, sub-sect. 4, *post*.

SUB-SECT. 3.—CONDITIONS ON TICKET OR NOTE.

243. Notice on freight note—Whether modifying terms of handbills.]—PHILLIPS *v.* EDWARDS, No. 229, *ante*.

Passengers.]—*See* Part V., Sect. 3, *post*.

Passengers' luggage.]—*See* Part VI., Sect. 8, sub-sect. 4, *post*.

See, also, Nos. 82, 232, *ante*, Nos. 271, 351, 372, *post*.

Animals.]—*See* Part VII., Sect. 3, *post*.

SUB-SECT. 4.—WHAT RISKS EXCEPTED.

A. Liability for Wilful Misconduct or Gross Negligence.

244. General rule.]—(1) In an action of *assumpsit* against a carrier, evidence to prove negligence is admissible ; (2) a gross neglect will defeat the usual notice given by carriers for the purpose of limiting their responsibility.

(3) A parcel was sent by defts.' coach from W. to L., directed to be delivered at the latter place. It arrived in L., & was taken from the coach-office of defts. in a cart, under the direction of one person only, for the purpose of delivery, & lost :—*Held :* such loss amounted to gross negligence.—SMITH *v.* HORNE (1818), 8 Taunt. 144 ; 2 Moore, C. P. 18 ; 129 E. R. 338.

Annotations :—As to (2) **Distd.** Owen *v.* Burnett (1834), 2 Cr. & M. 353. **Refd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21 ; Garnett *v.* Willan (1821), 5 B. & Ald. 53 ; Hinton *v.* Dibbin (1842), 2 Q. B. 646 ; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327.

245. ——.]—A carrier is liable for gross negligence, although the goods are above the value mentioned in his public notice, & although they are not specially entered & insured.—BIRKETT *v.* WILLAN (1819), 2 B. & Ald. 356 ; 106 E. R. 397.

Annotations :—**Distd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21. **Consd.** Garnett *v.* Willan (1821), 5 B. & Ald. 53. **Distd.** Owen *v.* Burnett (1834), 4 Tyr. 133. **Refd.** Duff *v.* Budd (1822), 3 Brod. & Bing. 177 ; Riley *v.* Horne (1828), 5 Bing. 217 ; Wyld *v.* Pickford (1841), 8 M. & W. 443 ; Hinton *v.* Dibbin (1842), 2 Q. B. 646 ; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327 ; Lloyd *v* General Iron Screw Collier Co. (1864), 3 H. & C. 284.

246. ——.]—A common travelling trunk of a large size, containing apparel & jewels, having been lost by deft., a carrier, either through his having

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the goods have been lost.—SILBERT & SHARP *v.* RAILWAYS COMR. (1906), 8 W. A. L. R. 77.—**AUS.**

235 ii. ——.]—The declaration charged defts., on a contract to carry wool from C. to B., subject to conditions indorsed on a receipt given by defts. that defts. should not be responsible for damages occasioned by delays from storms, accidents, or unavoidable causes. Defts.' receipt showed an additional condition, that as to goods addressed to consignees resident beyond places where defts. had stations, defts.' responsibility should cease upon their giving notice to the carriers onward, that they were prepared to deliver the goods to them for further transport :—*Held :* a substantial qualification of the contract declared on, which was not proved as alleged.—FRASER *v.* GRAND TRUNK RY. CO. (1867), 26 U. C. R. 483.—**CAN.**

236 i. *Evidence of.*]—Pltf. signed a paper requesting defts. to forward goods subject to their tariff & under conditions stated "on the other side." On the other side, headed "General notices & conditions of carriage," the co. "gave public notice," that they would not be responsible for any loss, damage, or detention," to goods beyond their limits. The goods had been delivered by defts. to a railway connecting with their line :—*Held :* defts. had received the goods, on a special contract by which they were exempted from liability.—LA POINTE *v.* GRAND TRUNK RY. CO. (1867), 26 U. C. R. 479.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—A.

244 i. *General rule.*]—A carrier guilty of gross negligence is not protected by the terms of a special agreement.—PETTIGREW *v.* AUSTRALIAN STEAM NAVIGATION CO., LTD. (1864), 1 Q. S. C. R. 113.—**AUS.**

Sect. 1.—Non-statutory: Sub-sect. 4, A., B. & C.]

omitted to place it on his coach, or having fastened it there insecurely :—*Held :* (1) he was liable to make compensation to the owner, a gentleman travelling by his coach, though no disclosure was made of the value of the contents of the trunk, & though there was a notice in the carrier's office limiting his responsibility to £5 in the absence of such disclosure, which notice the owner of the trunk, having been in the office, had an opportunity of seeing ; (2) in the above circumstances, the jury were properly directed to consider generally, whether the carrier had been guilty of gross negligence, without reference to the nature of the article conveyed.—BROOKE *v.* PICKWICK (1827), 4 Bing. 218 ; 12 Moore, C. P. 447 ; 5 L. J. O. S. C. P. 158 ; 130 E. R. 753.

Annotation :—As to (2) **Distd.** Talley *v.* G. W. Ry. (1870), L. R. 6 C. P. 44.

247. ——.]—Where the circumstances of the case show what a jury may be warranted in finding to be gross negligence, a carrier is liable for the loss of goods, notwithstanding a notice to limit his responsibility to a certain sum.—LANGLEY *v.* BROWN (1828), 1 Moo. & P. 583 ; 6 L. J. O. S. C. P. 139.

See, also, No. 66, *ante.*

248. —— **Deliberate concealment of value by consignor.**]—A carrier had given notice that he would not be answerable for parcels of value, unless entered & paid for as such ; pltfs., with the knowledge of this, delivered a parcel, containing bank notes to a large amount, without informing the carrier of its contents. The coach in which the parcel was conveyed, was left, at midnight, standing for some time, in the middle of a very wide street, with a porter, who was ordered to watch it ; during this time the parcel was stolen. At the trial, two questions having been left to the jury, (1) whether pltfs. had been guilty of any unfair concealment, by not informing the carrier of the nature & value of the parcel, & (2), whether the carrier had been guilty of gross negligence :—*Held :* the direction to the jury was right.—BATSON *v.* DONOVAN (1820), 4 B. & Ald. 21 ; 106 E. R. 846.

Annotations :—As to (1) **Distd.** Sleat *v.* Fagg (1822), 5 B. & Ald. 342 ; Brooke *v.* Pickwick (1827), 4 Bing. 218. **Refd.** Hinton *v.* Dibbin (1842), 2 Q. B. 646. *As to* (2) **Distd.** Duff *v.* Budd (1822), 3 Brod. & Bing. 177. **Refd.** Riley *v.* Horne (1828), 5 Bing. 217 ; Wyld *v.* Pickford (1841), 8 M. & W. 443 ; Lloyd *v.* General Iron Screw Collier Co. (1864), 3 H. & C. 284. *Generally* **Refd.** Hutchinson *v.* Guion (1853), 4 Jur. N. S. 1149. **Mentd.** R. *v.* Ashwell (1885), 16 Q. B. D. 190.

249. —— ——.]—(1) A carrier, who has given notice that he will not be answerable for money sent by him, is nevertheless responsible if it is stolen by his servants.

(2) If the party sending it has given no notice of the value of the parcel, but has attempted to disguise it, & has done so to a degree sufficient to prevent the carrier from taking particular care of the parcel, yet not sufficient effectually to conceal its nature from the carrier's servants, he can maintain no action against the carrier for the value, if the parcel be stolen in consequence.—BRADLEY *v.* WATERHOUSE (1828), 3 C. & P. 318 ; Mood. & M. 154 ; Dan. & Ll. 1, N. P.

Annotations :—Generally **Consd.** Butt *v.* G. W. Ry. (1851), 11 C. B. 140. **Mentd.** Bank of Ireland *v.* Evans' Trustees (1855), 25 L. T. O. S. 272.

See, further, Sub-sect. 5, *post.*

250. What amounts to gross negligence—Question for jury.]—To render a common carrier liable for the loss of a valuable parcel of plate received by him to be carried for hire, in a case where deft. relies on the usual defence of notice that he will not be answerable for such losses beyond the amount of £5, unless the subject-matter be booked & paid for in proportion to its value, it is necessary to establish a case of gross negligence ; that is a question for the jury, & the ct. will not disturb their verdict negativing such a case.—LOWE *v.* BOOTH (1824), 13 Price, 329 ; 147 E. R. 1007.

251. —— ——.]—In an action against a carrier for the loss of a painting, it appeared that the stage waggon in which it was sent had seven horses, but that there was only one waggoner :—*Held :* it was for the jury to say, whether the sending but one waggoner was gross negligence.—BECKFORD *v.* CRUTWELL (1832), 5 C. & P. 242, N. P.

*Annotations :—***Mentd.** Simpson *v.* Margetson (1847), 17 L. J. Q. B. 81 ; Wallace *v.* A.-G. (1864), 33 Beav. 384 ; Bruner *v.* Moore, [1904] 1 Ch. 305.

See, also, No. 268, *post.*

252. —— **Goods sent by different coach—Carrier not liable.**]—Where one delivered goods of above £5 value to common carriers to carry by the mail, paying no extra price, & by a public notice which had before reached the owner the carriers had declared they would not be accountable for any package above the value of £5, unless insured & paid for accordingly :—*Held :* (1) the goods having been sent by a different carriage & lost, the owner could not recover the value against the carriers ; for the loss happened by no tortious conversion nor by a renunciation of their character as common carriers, but only by a negligent discharge of their duty as such ; (2) he could not recover even £5, as by the terms of the notice the carriers stipulated not to be answerable at all for goods above £5 value, unless paid for accordingly.—NICHOLSON *v.* WILLAN (1804), 5 East, 507 ; 2 Smith, K. B. 107 ; 102 E. R. 1164.

Annotations :—As to (1) **Distd.** Garnett *v.* Willan (1821), 5 B. & Ald. 53. **Refd.** Harris *v.* Packwood (1810), 3 Taunt. 264 ; Owen *v.* Burnett (1834), 3 L. J. Ex. 76 ; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327 ; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. *Generally* **Refd.** Bodenham *v.* Bennett (1817), 4 Price, 31.

253. —— —— **Carrier liable.**]—A parcel which, with its contents, exceeded £5 in value, having been delivered to A. & B., common carriers, to be carried by their mail-coach, was accepted by them to be so carried, & was actually put into the mail, & carried by that conveyance a short distance ; it was then taken out of the mail-coach by a servant of the carriers, & left to be forwarded by another coach, of which A. was one of the proprietors, but in which B. had no concern, & the parcel was lost. The carriers had previously given notice that they would not be responsible for any package containing specified articles, or which, with its contents, should exceed £5 in value, if lost or damaged, unless an insurance were paid :—*Held :* notwithstanding this notice, the carriers were responsible for the parcel in question, in consequence of their having delivered it to be carried by another coach, of which one of the carriers only was proprietor.—GARNETT *v.* WILLAN (1821), 5 B. & Ald. 53 ; 106 E. R. 1113.

Annotations :— **Folld.** Sleat *v.* Fagg (1822), 5 B. & Ald. 342. **Consd.** Morritt *v.* N. E. Ry. (1876), 1 Q. B. D. 302 ; Neilson *v.* L. & N. W. Ry., [1921] 3 K. B. 213. **Refd.** Wyld *v.* Pickford (1841), 8 M. & W. 443 ; Hinton *v.* Dibbin (1842),

c. What amounts to negligence—Perishable goods transferred to freight train.]—Defts. undertook to forward a consignment of fish from M. to O., subject to conditions expressed in the contract :—*Held :* defts.' engagement implied that a safe & rapid transit would be furnished for the whole distance, & that contract was broken when the perishable goods were transferred to a freight train at W., by which delivery was delayed ; & this was negligence for which defts. were liable as common carriers.—JAMES (F. T.) Co. *v.* DOMINION EXPRESS Co. (1907), 9 O. W. R. 93 ; 13 O. L. R. 211.—CAN.

2 Q. B. 646; Peek *v.* North Staffordshire Ry. (1862–3), 10 H. L. Cas. 473.

254. —— —— ——.]—A parcel containing country banker's notes, of the value of £1,300 & addressed to their clerk, in order to conceal the nature of its contents, was delivered to the carrier, without any notice of its value, to be carried by a mail coach, & was accepted by him to be so carried. The parcel was sent by a different coach, & was lost. The carriers had previously given notice that they would not be answerable for any parcel above £5 in value, if lost or damaged, unless an insurance were paid. No insurance having been paid in this case:—*Held:* notwithstanding that the carrier was responsible for the loss.—SLEAT *v.* FAGG (1822), 5 B. & Ald. 342; 106 E. R. 1216.

Annotations:—**Consd.** Gunyon *v.* S. E. & C. Ry., [1915] 2 K. B. 370; Neilson *v.* L. & N. W. Ry., [1921] 3 K. B. 213. **Refd.** Riley *v.* Horne (1828), 5 Bing. 217; Hinton *v.* Dibbin (1842), 2 Q. B. 646; Morritt *v.* N. E. Ry. (1876), 1 Q. B. D. 302; Morrison *v.* Shaw, Savill & Albion Co., [1916] 2 K. B. 783.

See, also, No. 271, *post*.

255. —— Cart attended by one person only.]—SMITH *v.* HORNE, No. 244, *ante*.

256. —— Delivery to wrong consignee.]—Pltfs. received an order from a stranger to furnish J. P. of H. Street, O., with goods, & finding upon inquiry that Mr. P. of H. Street was a tradesman of respectability, forwarded the goods by a carrier, having directed them to J. P., H. Street, O. On the arrival of the parcel at O., the carrier's porter there, who knew W. P. of H. Street, & was accustomed to deliver parcels at the houses of the consignees, told him of the arrival of the parcel, no other P. residing in that street, & W. P. said he expected no parcel. A person to whom the porter had before delivered parcels under the name of P., called at deft.'s office shortly afterwards, & saying the parcel was his, was allowed to take it on paying the carriage, there being many persons of that name at O. Pltfs. having thus lost their goods, desired deft., by letter, to apprehend the person who had taken them, if he again presented himself, & afterwards said, that they had done with deft., if the man who had the parcel were produced. A notice was suspended in a conspicuous part of deft.'s office, limiting his responsibility to £5, except where articles were entered according to their value; the parcel in question had not been so entered, though worth £89, but pltfs.' porter swore he never saw the notice. Pltfs. having sued the carrier, & the judge having directed the jury that the carrier's negligence had been such as to render it unnecessary to consider the question as to the notice touching the limited responsibility, & a verdict having been found for pltfs.:—*Held:* an application for a new trial, moved for on the grounds that the question touching the notice ought to have been considered, that the judge ought to have pointed the attention of the jury to pltfs.' letter, directing the carrier to apprehend the cheat, & the subsequent conversations thereon, & that the property of the goods had passed out of pltfs., should be refused.—DUFF *v.* BUDD (1822), 3 Brod. & Bing. 177; 6 Moore, C. P. 469; 129 E. R. 1250.

Annotations:—**Consd.** Stephenson *v.* Hart (1828), 4 Bing. 476; Heugh *v.* L. & N. W. Ry. (1870), L. R. 5 Exch. 51. **Refd.** Owen *v.* Burnett (1834), 3 L. J. Ex. 76; Wyld *v.* Pickford (1841), 8 M. & W. 443; Hinton *v.* Dibbin (1842), 2 Q. B. 646; M'Kean *v.* M'Ivor (1870), L. R. 6 Exch. 36; Morritt *v.* N. E. Ry. (1876), 1 Q. B. D. 302. **Mentd.** Cashill *v.* Wright (1856), 6 E. & B. 891.

See, also, Nos. 66, 192, 193, *ante*.

257. —— Waggon left unattended.]—Pltfs. sent goods packed in a box by deft.'s waggon. The box was placed, with its lid outwards, at the tail of the waggon, which was left during several hours in the night standing in the road opposite an inn, where the waggoner stopped, without any person to watch it. The box was forced open, & its contents abstracted. A notice was proved limiting the carrier's responsibility to £5:—*Held:* the carrier was guilty of gross negligence in leaving the waggon so exposed, &, consequently, liable for the loss.—LANGLEY *v.* BROWN (1828), 1 Moo. & P. 583; 6 L. J. O. S. C. P. 139.

258. —— Book-keeper not inquiring for parcel —Driver in liquor.]—A valuable bank parcel sent by a stage coach was lost; on the arrival of the coach, the driver was in liquor, & the book-keeper who saw the entry of it in the way-bill, thinking that the coachman, as was the custom, had the parcel about his person, did not ask him about it, or look into the coach for it:—*Held:* a loss arising from gross negligence, & the proprietors were liable as carriers for the value, notwithstanding they had put up the usual notice in their office disclaiming liability to make good losses beyond £5.—BODENHAM *v.* BENNETT (1817), 4 Price, 31; 146 E. R. 384.

Annotations:—**Consd.** Birkett *v.* Willan (1819), 2 B. & Ald. 356; Garnett *v.* Willan (1821), 5 B. & Ald. 53. **Distd.** Morritt *v.* N. E. Ry. (1876), 1 Q. B. D. 302. **Refd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21; Duff *v.* Budd (1822), 3 Brod. & Bing. 177; Riley *v.* Horne (1828), 5 Bing. 217; Wyld *v.* Pickford (1841), 8 M. & W. 443; Hinton *v.* Dibbin (1842), 2 Q. B. 646; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327.

See, also, No. 210, *ante*, Nos. 261, 262, *post*, & cases in Sect. 2, sub-sect. 2, C. (*d*) ii., *post*.

B. Liability for Conversion.

259. Theft by carrier's servant.]—BRADLEY *v.* WATERHOUSE, No. 249, *ante*.

260. —— Onus of proof.]—SMITH (H. C.), LTD. *v.* MIDLAND RY. CO., No. 366, *post*.

See, also, Nos. 352–366, *post*, & *generally*, Part III., Sect. 3, sub-sect. 1, B., *ante*.

C. Special Exceptions.

Whether common law liability excluded.]—*See* sub-sect. 2, *ante*.

261. Want of care on the part of master of ship —Goods carried past destination.]—The owners of vessels on the navigation between A. & C. having given public notice that they would not be answerable for losses in any case, except the loss were occasioned by the want of care in the master, nor even in such case beyond £10 per cent. unless extra freight were paid, the master of one of the ships took on board pltf.'s goods, to be carried from A. to B., an intermediate place between A. & C., & delivered at B.; the vessel passed by B. without delivering pltf.'s goods there, & sunk before her arrival at C. without any want of care in the master:—*Held:* the owner of the vessel was responsible to pltf. for the whole loss in an action on the contract.

Defts. are responsible for the acts of their servant in those things that respect his duty under them, though they are not answerable for his misconduct in those things that do not respect his duty to them (LORD KENYON, C.J.).—ELLIS *v.* TURNER (1800), 8 Term Rep. 531; 101 E. R. 1529.

Annotations:—**Consd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21; Garnett *v.* Willan (1821), 5 B. & Ald. 53; Morritt *v.*

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p. *Wrongful sale of goods.*]—Conditions relieving the carrier from liability for loss or damage arising out of the safe keeping & carriage of the goods even though caused by the negligence, carelessness or want of skill of the carrier's officers, servants or workmen, without the actual fault or privity of the carrier, do not apply to cases where the goods have been wrongfully sold by the carrier.—WILSON *v.* CANADIAN DEVELOPMENT CO., LTD. (1903), 33 S. C. R. 432.—CAN.

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N. E. Ry. (1876), 1 Q. B. D. 302. **Refd.** Bodenham *v.* Bennett (1817), 4 Price, 31; Owen *v.* Burnett (1834), 3 L. J. Ex. 76.

See, also, No. 857, *post.*

262. —— Lost by unseaworthiness of ship.]—A carrier by water contracting to carry goods for hire impliedly promises that the vessel shall be tight & fit for the purpose & is answerable for damage arising from leakage, though he has given notice that he will not be answerable for any damage unless occasioned by want of ordinary care in the master or crew of the vessel, in which case he will pay £10 per cent. upon such damage so as the whole does not exceed the value of the vessel and freight. A loss happening by the personal default of the carrier himself, such as the not providing a sufficient vessel, is not within the scope of such notice which is meant to exempt the carrier from losses by accident or chance, etc., even if it were competent to a common carrier to exempt himself by a special acceptance from the responsibility cast upon him by the common law for a reasonable reward to make good all losses not arising from the act of God, or the King's enemies.—LYON *v.* MELLS (1804), 5 East, 428; 1 Smith, K. B. 478; 102 E. R. 1134.

Annotations:—**Expld. & Distd.** Chippendale *v.* L. & Y. Ry. (1851), 7 Ry. & Can. Cas. 824. **Consd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379; Stanton *v.* Richardson, Richardson *v.* Stanton (1872), L. R. 7 C. P. 421; Liver Alkali Co. *v.* Johnson (1874), L. R. 9 Exch. 338; Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515; Kopitoff *v.* Wilson (1876), 1 Q. B. D. 377; Nugent *v.* Smith (1876), 1 C. P. D. 423. **Refd.** Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Lloyd *v.* General Iron Screw Collier Co. (1864), 3 H. & C. 284; Steel *v.* State Line S. S. Co. (1877), 3 App. Cas. 72; The Glenfruin (1885), 10 P. D. 103; The Northumbria (1906), 95 L. T. 618; L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324. **Mentd.** Phillips *v.* Clark (1857), 26 L. J. C. P. 168.

263. Loss or damage—Goods stolen.]—A notice by carriers that they will not be accountable for the loss or damage of goods, unless the terms of the notice are complied with, protects them as well against a loss by robbery as against an accidental loss.—COVINGTON *v.* WILLAN (1819), Gow, 115, N. P.

264. Loss by fire & robbery—Goods missing from receiving office.]—A carrier received a parcel of notes to be carried from L. to D., under a contract to deliver them the next day, fire & robbery excepted; the parcel having been deposited by one of defts. in a desk at their office in L., was missing after a short absence of that deft. from the office:—*Held:* not a loss within the exceptions in the contract.—LATHAM *v.* STANBURY (1822), 3 Stark. 143, N. P.

265. Loss which can be covered by insurance—Loss through negligence—Carrier liable.]—Goods were loaded on a barge under a contract for carriage by which the barge owner was exempt from liability for any loss of or damage to goods which could be covered by insurance. The barge was sunk owing to the negligence of the servants of the barge owner, & the goods were lost. In an action to recover damages for the loss of the goods:—*Held:* the exemption being in general terms not expressly relating to negligence, the barge owner was not exempt from liability for loss or damage caused by the negligence of his servants.—PRICE & CO. *v.* UNION LIGHTERAGE CO., [1904] 1 K. B. 412; 73 L. J. K. B. 222; 89 L. T. 731; 52 W. R. 325; 20 T. L. R. 177; 48 Sol. Jo. 207; 9 Com. Cas. 120, C. A.

Annotations:—**Consd.** Nelson *v.* Nelson Line (Liverpool), [1907] 1 K. B. 769; Rosin & Turpentine Import Co. *v.* Jacob (1909), 101 L. T. 56; Travers *v.* Cooper, [1915] 1 K. B. 73. **Refd.** The Pearlmoor, [1904] P. 286; The Modena (1911), 27 T. L. R. 529. **Mentd.** Pyman S. S. Co. *v.* Hull & Barnsley Ry., [1914] 2 K. B. 788; Denholm *v.* Shipping Controller (1920), 36 T. L. R. 855; Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

266. —— —— Onus of proof.]—Goods were loaded into a barge from a ship for delivery at the barge-owner's wharf in the T. under a contract which exempted the barge owner from liability for any damage to goods however caused which could be covered by insurance. While the barge was lying alongside the wharf with the goods on board before being unloaded the barge-owner's lighterman who was in charge of the barge negligently left her unattended at night, & the barge, after taking the ground at low tide, became submerged as the tide rose, & the goods were damaged. There was no direct evidence as to the cause of the barge being submerged & the evidence left it in doubt whether the submerging was or was not attributable to the negligent act of the deft.'s servant in leaving the barge unattended:—*Held:* (1) the *onus* lay on deft., who was in possession of the goods as bailee, of showing that the negligence of his servant in leaving the barge unattended did not cause the loss, & he had failed to discharge that onus; (2) the term in the contract exempting deft. from liability for damage however caused relieved him from liability for damage caused by the negligence of his servant, & therefore he was entitled to judgment.—TRAVERS (JOSEPH) & SONS, LTD. *v.* COOPER, [1915] 1 K. B. 73; 83 L. J. K. B. 1787; 111 L. T. 1088; 30 T. L. R. 703; 12 Asp. M. L. C. 561; 20 Com. Cas. 44, C. A.

Annotations:—*As to* (1) **Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Distd.** The Santa Catharina (1919), 88 L. J. P. 170. *As to* (2) **Refd.** Pyman S. S. Co. *v.* Hull & Barnsley Ry., [1915] 2 K. B. 729; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443; Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426; Reynolds *v.* Boston Deep Sea Fishing & Ice Co. (1921), 38 T. L. R. 22. *Generally,* **Mentd.** The Adriatic (1915), 85 L. J. P. 12; The Wellington (1915), 32 T. L. R. 49.

267. —— —— Negligence expressly included—Carrier not liable.]—Resps. who were lightermen received goods of applts. for carriage under a contract which provided that every reasonable precaution would be taken for the safety of goods whilst in craft; they would not be liable for any loss or damage, including negligence, which could be covered by insurance. While the goods were on board the lighter they were lost through the negligence of resps.:—*Held:* the clause was not ambiguous, & protected resps. from liability.—ROSIN & TURPENTINE IMPORT CO. *v.* JACOB (B.) & SONS (1910), 102 L. T. 81; 26 T. L. R. 259; 54 Sol. Jo. 268; 11 Asp. M. L. C. 363; 15 Com. Cas. 111, H. L.

268. Delay of trains or boats—"Wind, weather,

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q. *Loss or damage—Limited to risk of carriage.*]—Defts. received at P. two car loads of coal oil to be carried to L. The goods were sent under a condition that defts. would not be liable for the loss or damage to goods of a combustible nature. One of the cars reached L., & was damaged there, & all the oil in it lost:—*Held:* defts. were not liable, for the condition related only to risk of carriage.—FITZGERALD *v.* GREAT WESTERN RY. CO. (1876), 39 U. C. R. 525.—CAN.

267 i. *Loss which can be covered by insurance—Loss through negligence—Negligence expressly included—Carrier not liable.*]—Defts., a lighterage co., agreed to lighter pltf.'s goods upon (*inter alia*) the following condition:—"The lighterage contractor will not be liable for any loss or damage, including negligence or the result thereof, which can be covered by insurance." During the lighterage operations, defts.' lighter sank, owing, it was alleged, to its unseaworthiness or its unfitness for the purpose of lightering the goods, or to defts.' negligence; & some of the goods were lost or damaged. The risks causing the loss or damage could have been insured against:—*Held:* even if pltf.'s allegations were proved, defts. were exempted from liability by the contract.—BERGE (AUSTRALIA), LTD. *v.* MOXON LIGHTERAGE CO., LTD. (1920), 28 C. L. R. 194.—AUS.

& tide permitting"—Delay by weather.]—Two consignments of fish for transport by special train & tidal boat from L. via F. to B. were made to a railway co. who advertised special trains & boats at special rates subject to the conditions contained in their tables. One of these conditions was that the co. would not be answerable for loss occasioned by the trains or boats not starting or arriving at the time specified; & another that the boats started wind, weather, & tide permitting. In each case, on arrival at F., it was found that it was not prudent to load the fish on the tidal boat owing to the state of the weather, & the fish had to be sent in the cargo boat, in consequence of which the P. train at B. was missed & the fish delayed for twenty-four hours, & deteriorated, besides losing the market:—*Held:* (1) there was no absolute guarantee that the fish would go by that particular train & boat, but that it was for the jury to say whether in the circumstances defts. had been guilty of negligence or whether they had substantially fulfilled their contract; (2) in estimating the damages, the loss of the market in P. by the non-arrival of the fish at B. in time to catch the train for P. was not to be taken into account.—HAWES & SON *v.* SOUTH EASTERN RY. CO. (1884), 54 L. J. Q. B. 174; 52 L. T. 514; 1 T. L. R. 146, D. C.

269. "Strike or riot"—Causing non-delivery of perishable articles—Carriage over several systems.]—R. consigned apples from a siding on the S. railway to a station on the L. railway, one of the conditions on the back of the consignment note being as follows:—"In respect of goods consigned to places beyond the limits of the managing committee's delivery the responsibility of the managing committee will cease when such goods have been delivered over to another carrier in the usual course of delivery." Another condition by which the consignor was bound was as follows:—"Perishable articles . . . not delivered in consequence of strike or riot may be sold without any notice to sender or consignee, & payment or tender of the net proceeds of any such sale, after deduction of freight charges & expenses, shall be equivalent to delivery." A railway strike took place & some of the apples were stopped on the S. railway, & the remainder on the L. railway. The apples were then sold by the officers of the Food Controller with the concurrence of the railway cos. In an action by R. against the cos.:—*Held:* (1) the S. Ry. Co. were protected by the first condition, &, as apples were perishable articles, by the second condition also; (2) the L. Ry. Co. were protected by the second condition as it must be held to apply to them as well as to the S. Ry. Co.

(3) Margarine was consigned on the G. railway & owing to a railway strike before the transit had been completed the representative of the Food Controller took the goods & sold them. In an action by the consignors against the railway co.:—*Held:* the act of the railway co. in handing over the goods at the request of the representative of the Food Controller was protected by Indemnity Act, 1920 (c. 48), s. 1 (1).—READER *v.* SOUTH EASTERN & CHATHAM RY. CO. & LONDON & NORTH WESTERN RY. CO., VAN DEN BERGHS, LTD. *v.* GREAT WESTERN RY. CO. (1921), 38 T. L. R. 14.

270. Exception of statuary—Whether terra-cotta busts included.]—Resps. applied to applts., who were carriers, for their charges for shipping certain works of art from I. to S. Applts. replied, "For alabaster goods, furniture, etc., but not for goods described as statuary, the rate of 1s. per cubic foot. The rates do not cover any insurance risks, but are simply for freight." Some terra-cotta busts, being part of the goods in question, were damaged in transit by the negligence of applts.:—*Held:* (1) there were no words in the contract to free the applts. from their ordinary liability as common carriers; (2) the terra-cotta busts were not brought within the exception of "statuary" as understood in the carrying trade.—SUTTON & CO. *v.* CICERI & CO. (1890), 15 App. Cas. 144; 62 L. T. 742, H. L.

Annotations:—*As to* (1) **Refd.** Price *v.* Union Lighterage Co., [1904] 1 K. B. 412; Travers *v.* Cooper, [1915] 1 K. B. 73. *Generally* **Mentd.** Pyman S. S. Co. *v.* Hull & Barnsley Ry. (1914), 83 L. J. K. B. 1321; Lovell & Christmas *v.* Wall (1910) 103 L. T. 588.

271. Loss, damage, misdelivery, or delay—Goods sent by wrong route.]—(1) A railway co. which accepts goods for carriage by a named route is liable to the consignor in damages for loss occasioned to him owing to the goods being carried by a different route.

(2) A clause in the consignment note exempting the co. from liability for loss, damage, misdelivery, delay, or detention of the goods, except upon proof that such loss, etc., arose from wilful misconduct on the part of its servants, has no application to such a case.—MALLET *v.* GREAT EASTERN RY. CO., [1899] 1 Q. B. 309; 68 L. J. Q. B. 256; 80 L. T. 53; 47 W. R. 334; 15 T. L. R. 137, D. C.

Annotations:—*As to* (1) **Refd.** Gunyon *v.* S. E. & C. Rys., [1915] 2 K. B. 370. *As to* (2) **Distd.** Foster *v.* G. W. Ry., [1904] 2 K. B. 306. **Consd.** Neilson *v.* L. & N. W. Ry., [1921] 3 K. B. 213. **Refd.** The Cap Palos, [1921] P. 458.

See, also, Nos. 252–254, *ante.*

272. Damage by improper packing.]—BARBOUR *v.* SOUTH EASTERN RY. CO., No. 123, *ante.*

"Owner's risk."]—*See* Sect. 2, sub-sect. 2, C. (d), i., *post.*

See, also, No. 165, *ante.*

SUB-SECT. 5.—EFFECT OF MISREPRESENTATION BY CONSIGNOR.

273. Concealment of value—Carrier not liable.]—It was agreed between pltf. & one of defts., proprietors of a stage coach, to carry certain parcels for pltf. free of expense, which were accordingly carried for two years; there was no evidence of any knowledge of this agreement by the other defts.; defts. had given notice that they would not be accountable for parcels above the value of £5, unless entered & paid for, etc.:—*Held:* defts. were not liable for the loss of a parcel of above the value of £5, sent by pltf. under this agreement, of which no notice of its value had been given to defts.—BIGNOLD *v.* WATERHOUSE (1813), 1 M. & S. 255; 105 E. R. 95.

Annotations:—**Consd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21. **Mentd.** Thompson *v.* Speirs (1845), 14 L. J. Ch. 453.

274. —— Amount recoverable.]—CLAY *v.* WILLAN, No. 292, *post.*

275. —— Question for jury.]—BATSON *v.* DONOVAN, No. 248, *ante.*

276. —— Parcel containing money—Labelled "mourning."]—MAYHEW *v.* EAMES, No. 227, *ante.*

277. —— —— Addressed to banker's clerk.]—SLEAT *v.* FAGG, No. 254, *ante.*

278. —— Theft by carrier's servant.]—BRADLEY *v.* WATERHOUSE, No. 249, *ante.*

See, also, Part III., Sect. 3, sub-sect. 2, F., *ante.*

SUB-SECT. 6.—WAIVER.

279. Conduct amounting to waiver—Previous payments for excepted loss.]—A carrier who had given notice that he would not be liable for loss or damage unless occasioned by the actual negligence

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of the master or mariners:—*Held:* not to have waived that notice by having on former occasions made allowances to pltfs. for damage, without inquiring into the cause of such damage.—EVANS *v.* SOULE (1813), 2 M. & S. 1; 105 E. R. 283.

280. —— ——.]—(1) If a carrier, who has endeavoured to limit his responsibility by what is called "a £5 notice," pay a sum above £5 demanded of him for the loss of a parcel, his doing so will be evidence of a special contract to govern future dealings between him and the person whom he so pays, & will consequently be a waiver of the notice.

(2) Such a special contract as to the course of dealing will bind persons who afterwards become partners with that carrier; an incoming partner being bound by the existing course of dealing, unless he express his dissent.—HELSBY *v.* MEARS (1826), 5 B. & C. 504; 8 Dow. & Ry. K. B. 289; 4 L. J. O. S. K. B. 214; 108 E. R. 188

Annotation:—*As to* (2) **Consd.** Beale *v.* Mouls (1847), 10 Q. B. 976.

281. —— **Acceptance of parcel—With notice of value—Actual notice.**] — Notwithstanding a notice by carriers that they will not be accountable for goods of a particular description, above the value of £5, unless specified & paid for as such when delivered:—*Held:* they were liable for damage done to an article of this description, much above the value of £5, although not paid for as such when delivered, their book-keeper having been then informed of its value, & desired to charge for it what he pleased, which should be paid, provided it was taken care of.—WILSON *v.* FREEMAN (1814), 3 Camp. 527, N. P.

Annotation:—**Distd.** Marsh *v.* Horne (1826), 5 B. & C. 322.

282. —— —— —— ——.]—ALFRED *v.* HORNE, No. 226, *ante*.

283. —— —— —— ——.]—A common carrier, who has given public notice that he will not be accountable for the loss of any parcel above the value of £5, unless entered & paid for accordingly, is not liable for the loss of a parcel worth more than £5, delivered to him by a person informed of his notice, & accepted by him, without any demand for the carriage, although at the time of such acceptance he knew that the value of the parcel exceeded £5.—MARSH *v.* HORNE (1826), 5 B. & C. 322; 8 Dow. & Ry. K. B. 223; 4 L. J. O. S. K. B. 267; 108 E. R. 120.

Annotations:—**Distd.** Brooke *v.* Pickwick (1827), 4 Bing. 218. **Refd.** McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327.

284. —— —— —— ——.]—(1) *Semble:* if the agent of a common carrier be not authorised to fix or receive any additional sum for the insurance of a parcel above the value limited in a notice of non-liability, & that agent receive such a parcel for the purpose of conveyance, the common law liability will attach, & the carrier will be answerable for the full value, in case of the loss thereof.

(2) *Qu.:* whether a notice by a carrier that he will not be accountable for goods of a certain description, however small their value, will, in case of his knowingly receiving such goods for conveyance, afford a valid defence to an action founded upon his common law liability.—LAMBERT *v.* EAMES (1827), 6 L. J. O. S. K. B. 88.

See, also, No. 298, *post*.

285. —— —— —— **Constructive notice.**]—A notice by carriers that they will not be answerable for any goods above the value of £5 unless the value be declared, & a premium paid above the common carriage, does not apply to goods, which from their bulk and appearance, must be known to exceed the specified value.—BECK *v.* EVANS (1812), 16 East, 244; 3 Camp. 267; 104 E. R. 1081.

Annotations:—**Distd.** Down *v.* Fromont (1814), 4 Camp. 40; Levi *v.* Waterhouse (1815), 1 Price, 280; Smith *v.* Horne (1817), Holt, N. P. 643. **Consd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21; Garnett *v.* Willan (1821), 5 B. & Ald. 53; Brass *v.* Maitland (1856), 2 Jur. N. S. 710. **Refd.** Riley *v.* Horne (1828), 5 Bing. 217; Wyld *v.* Pickford (1841), 8 M. & W. 443; Hinton *v.* Dibbin (1842), 2 Q. B. 646; L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

286. —— —— —— ——.]—The usual notice given by carriers exempts them from their liability for the loss of goods above the value of £5 unless the appearance of the goods necessarily indicates that they are above that value.—DOWN *v.* FROMONT (1814), 4 Camp. 40, N. P.

287. —— —— —— ——.]—Notice by a carrier that he will not be responsible for goods sent to be conveyed by his coach unless paid for according to their value is not defeated by proof that the book-keeper who received them might have inferred their value.

Here there was a special notice given by deft., that he would not be answerable, but on certain terms, & there is nothing proved to have been done on his part which amounts to a dispensation with that notice. It appears that the book-keeper might have inferred that this parcel was one of value, but nothing was distinctly said about the actual value, nor did he undertake that the notice should be dispensed with. He did not therefore warrant its safe conveyance (THOMSON, C. B.).—LEVI *v.* WATERHOUSE (1815), 1 Price, 280; 145 E. R. 1403.

Annotation:—**Apld.** Marsh *v.* Horne (1826), 5 B. & C. 322.

288. —— —— —— ——.]—A notice by carriers that they will not be answerable for any goods above the value of £5, unless entered as such and paid for accordingly, applies to goods which from their bulk may be supposed to exceed the specified value.—THOROGOOD *v.* MARSH (1819), Gow, 105, N. P.

289. —— —— **Without inquiry as to value.**]—LONG *v.* DISTRICT MESSENGER & THEATRE TICKET CO., LTD., No. 132, *ante*.

290. —— **Promise by servant of carrier—To forward after advertised hours.**]—The G. Ry. Co., who were carriers on their line, published a printed notice, which was fixed up over the door of their station for the reception of goods in L., that all goods received after 4 p.m. would be forwarded on the next working day. Long after the publication of this notice, certain goods were brought to the station, about 5.30 p.m., to be forwarded to B. by the railway. The person who brought them, a servant of the owner, saw the co.'s weigher, & asked "if there was time" *i.e.* for the goods to proceed that evening; he said there was; & the goods were placed by the co.'s porters on the trucks on which goods are carried upon the railway. The same person had on former occasions taken goods of the same kind to the station at a later hour, which were never refused for being too late, & had been forwarded the same evening:—*Held:* upon these facts there was evidence to go to the jury of a special contract by the railway co. to forward the goods in question on the same evening on which they were delivered.—PICKFORD *v.* GRAND JUNCTION RY. CO. (1844), 12 M. & W. 766; 152 E. R. 1408.

Annotation:—**Refd.** Slim *v.* G. N. Ry. (1854), 2 C. L. R. 864.

291. —— —— **To deliver in particular time—On another railway system.**]—(1) A railway co. professing to carry goods from A. to B. within a specified time is liable, on a promise made by the station clerk that the goods shall be forwarded to a place beyond B. (on the line of another railway) before a particular hour, although a general notice

has been published that the co. would not be responsible for forwarding goods beyond B.

(2) The owner of perishable goods sent by the railway in such circumstances is entitled to recover, as damages, the amount of profits which the goods might be expected to have realised if they had arrived in proper time.—WILSON *v.* YORK, NEWCASTLE & BERWICK RY. CO. (1851), 17 L. T. O. S. 223.

See, also, No. 147, *ante,* & cases in Part III., Sect. 3, sub-sect. 2, F., *ante.*

SUB-SECT. 7.—AMOUNT RECOVERABLE.

292. Goods exceeding specified value—Carrier not to be liable for goods exceeding certain value—Nothing recoverable.]—Where a carrier gives notice by printed proposals that he will not be answerable for certain valuable goods, if lost, of more than the value of a specified sum, unless entered & paid for as such, & goods of that description are delivered to him by A. who knows the conditions, but concealing the value, pays no more than the ordinary price of carriage & booking, on a loss the carrier is neither liable to the extent of the sum specified, nor to repay the price actually paid for the carriage or booking.—CLAY *v.* WILLAN (1789), 1 Hy. Bl. 298 ; 126 E. R. 174.

Annotations :—**Consd.** Clarke *v.* Gray (1805), 6 East, 564. **Refd.** Yate *v.* Willan (1801), 2 East, 128 ; Lyon *v.* Mells (1804), 1 Smith, K. B. 478 ; Batson *v.* Donovan (1820), 4 B. & Ald. 21.

293. —— —— ——.]—Where a carrier gives notice to his customers that he will not be accountable for any parcel, etc. of more than £5 value, unless entered as such & paid for accordingly, if a parcel be sent above that value, without being entered & paid for as such, & it be lost, the owner is not entitled to recover anything.—IZETT *v.* MOUNTAIN (1803), 4 East, 371 ; 102 E. R. 873.

Annotations :—**Refd.** Lyon *v.* Mells (1804), 1 Smith, K. B. 478 ; Batson *v.* Donovan (1820), 4 B. & Ald. 21. **Mentd.** MacAndrew *v.* Electric Telegraph Co. (1855), 17 C. B. 3.

294. —— —— ——.]—NICHOLSON *v.* WILLAN, No. 252, *ante.*

295. —— —— ——.]—(1) If a carrier gives notice that he will not be accountable for goods above the value of £20 unless entered & an insurance paid, over & above the price charged for carriage, according to their value, a person who enters silk exceeding the value of £20, & does not pay the insurance, cannot recover any part of the value of the goods, if lost, although the price he agrees to pay for the carriage of the silk, is, on account of its superior value, higher than the ordinary price charged for the carriage even of bulky articles, & although the carrier does not prove that the loss happened by way of those accidents against which the law makes him an insurer.

(2) The carrier is not bound to prove that he used reasonable care.

(3) *Semble:* a carrier is entitled to make a higher charge for the superior risk attending the carriage of valuable goods, but the charge must be reasonable.—HARRIS *v.* PACKWOOD (1810), 3 Taunt. 264 ; 128 E. R. 105.

Annotations :—*As to* (1) **Refd.** Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. *As to* (1) & (2) **Foll.** Marsh *v.* Horne (1826), 5 B. & C. 322. *As to* (3) **Refd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21.

296. —— **Carrier not to be liable for more than specified sum—Specified sum.**]—In *assumpsit,* in the common form, against a common carrier for not delivering a box delivered to him to be carried safely, pltf., if deft. proved a notice not to be accountable for more than £5, unless the goods are entered according to their value, may recover the £5, although the declaration contains no special count in *assumpsit* upon the notice for £5.—CLARKE *v.* GRAY, MARSDEN *v.* GRAY (1805), 6 East, 564 ; 2 Smith, K. B. 622 ; 102 E. R. 1404.

Annotations :—**Refd.** Batson *v.* Donovan (1820), 4 B. & Ald. 21 ; Streeter *v.* Horlock (1822), 1 Bing. 34 ; M'Cance *v.* L. & N. W. Ry. (1864), 3 H. & C. 343. **Mentd.** Strong *v.* Rule (1825), 11 Moore, C. P. 86 ; Fairmaner *v.* Budd (1831), 5 Moo. & P. 534 ; Stone *v.* Rogers (1837), Murp. & H. 146 ; Weedon *v.* Woodbridge (1850), 13 Q. B. 470.

297. —— —— **Effect of payment into court.**]—The payment of money into ct. upon a count stating a special contract is an admission of such contract, & narrows the inquiry to the *quantum* of damages sustained by the breach thereof ; & if pltf. declare as upon a general undertaking by deft. to carry goods for hire, on which deft. pays £5 into ct., the latter cannot give in evidence that the contract was that he should not be answerable for goods lost to a greater value than £5 unless entered & paid for accordingly, though if no money had been paid into ct., pltf. must have been non-suited on such evidence.—YATE *v.* WILLAN (1801), 2 East, 128 ; 102 E. R. 317.

Annotations :—**Distd.** Nicholson *v.* Willan (1804), 2 Smith, K. B. 107 ; Clarke *v.* Gray (1805), 6 East, 564. **Refd.** Lyon *v.* Mells (1804), 1 Smith, K. B. 478.

Payment into court generally, *see* COUNTY COURTS ; PRACTICE & PROCEDURE.

298. Carrier not to be liable for jewels—Or articles above £5—Jewels under £5.]—A carrier placed a board in his office, giving notice that he would not be answerable for jewels, however small their value, unless entered as such ; but circulated handbills, stating generally that he would not be answerable for any article above the value of £5, unless entered as such :—*Held :* he was answerable for the loss of jewels not entered as such, if under the value of £5.—COBDEN *v.* BOLTON (1809), 2 Camp. 108, N. P.

Annotation :—**Refd.** Evans *v.* Soule (1813), 2 M. & S. 1.

See, also, No. 284, *ante.*

See, further, Sub-sect. 5, & Part III., Sect. 3, Sub-sect. 2, F., *ante.*

SECT. 2.—**BY STATUTE.**

NOTE.—*Throughout this section Carriers Act,* 1830 (*c.* 68), *Railway & Canal Traffic Act,* 1854 (*c.* 31), *Railways Clauses Act,* 1863 (*c.* 92), &

PART IV. SECT. 1, SUB-SECT. 7.

r. *Value of missing article—Carrier not liable for loss of profit—Or wages.*]—RUTHVEN WOOLLEN MANUFACTURING CO. *v.* GREAT WESTERN RY. CO. (1868), 18 C. P. 316.—**CAN.**

s. —— *Less than declared value of whole shipment.*]—One of several parcels was lost by a carrier ; the shipper had paid, in addition to carriage charges, a rate for risk of loss or damage in carriage up to the amount declared as the value in a lump sum of the whole shipment :—*Held :* the shipper might recover the value of the parcel lost, it being less than the declared value, & was not limited to such share of the value declared as the parcel lost bore to the whole shipment. —SPANER BROTHERS *v.* CENTRAL CANADA EXPRESS CO., [1918] 3 W. W. R. 140 ; 43 D. L. R. 400.—**CAN.**

296 i. *Goods exceeding specified value—Carrier not to be liable for more than specified sum.*]—A. consigned books to B. for carriage by rail. A consignment note which stated on the face of it that it was issued subject to the goods traffic regulations in force was signed by the consignor. By a regulation the liability of the railway for loss or damage to goods entrusted to it for carriage was very considerably limited unless the value was declared & the goods insured on consignment. A. read the note but did not make himself acquainted with the regulations & failed to declare or insure the value of the goods, which were lost in transit :—*Held :* A. was bound by the terms of the consignment note & B. was not liable to make good the full value of the goods lost.—BURGER *v.* CENTRAL SOUTH AFRICAN RYS. (1903), T. S. 571. —**S. AF.**

Sect. 2.—By statute: Sub-sect. 1, A. (a) & (b) & B.]

Railways Act, 1921 (c. 55), *are referred to as* 1830 *Act*, 1854 *Act*, 1863 *Act*, & 1921 *Act respectively.*

SUB-SECT. 1.—CARRIERS ACT, 1830.

A. Scope and Effect.

(a) Land Transit.

See 1830 Act, s. 1; 1921 Act, s. 56, Sched. VI.

299. Carriage over land & sea.]—(1) To a count charging defts., common carriers by railway from L. to S., & thence by sea to J. by steam-vessels, charging them with the loss of a passenger's portmanteau, defts. pleaded that the goods contained in the portmanteau were writings, silks, furs, & lace, within 1830 Act, & exceeded the value of £10, & were delivered by pltf. to defts., then being common carriers by land for hire, to be carried by them, as such carriers by land over their railway, that such delivery was made to the servants of defts., that, at the time of such delivery, the value & nature of the goods were not declared by pltf., & that the non-delivery of the said goods to pltf. in the count complained of was by reason of the same being lost by the defts. out of their possession while the same were upon the railway of defts., & in their possession & under their care as carriers by land:—*Held:* a good plea.

(2) To a count alleging that pltf. became a passenger by defts.' railway & steam-vessel from L. to J., & charging that defts. refused to carry his portmanteau, containing articles of wearing apparel, paper writings, & documents, defts. pleaded a similar plea to the above:—*Held:* bad on demurrer, the count not alleging a loss of the package.—PIANCIANI *v.* LONDON & SOUTH WESTERN RY. CO. (1856), 18 C. B. 226; 139 E. R. 1354.

Annotations:—As to (1) **Folld.** Le Conteur *v.* L. & S. W. Ry. (1865), L. R. 1 Q. B. 54. **Refd.** Ashton *v.* L. & N. W. Ry., [1918] 2 K. B. 488. *Generally* **Refd.** Millen *v.* Brasch (1882), 10 Q. B. D. 142.

300. —— Contract divisible.]—(1) A railway co. issuing a ticket for the conveyance of a passenger partly by land & partly by water are entitled to the benefit of 1830 Act, in respect of so much of the journey as is performed by land.

(2) Pltf. arrived at the railway station of defts., carrying a chronometer in his hand wrapped up in a handkerchief. This chronometer he gave to one of the porters, who in the presence of pltf. placed it on the seat of one of the carriages. Both the porter & pltf. immediately after this left the platform together, the porter to attend to other duties & pltf. to look after the rest of his luggage. After ten or fifteen minutes, pltf. returned & found that the chronometer was gone:—*Semble:* the chronometer, at the time of its loss, was in the charge of the co. as carriers, so that but for 1830 Act they would have been liable.—LE CONTEUR *v.* LONDON & SOUTH WESTERN RY. CO. (1865), L. R. 1 Q. B. 54; 6 B. & S. 961; 35 L. J. Q. B. 40; 13 L. T. 325; 30 J. P. 148; 12 Jur. N. S. 266; 14 W. R. 80; 122 E. R. 1448.

Annotations:—As to (1) **Consd.** Ashton *v.* L. & N. W. Ry., [1918] 2 K. B. 488; L. & N. W. Ry. *v.* Ashton, [1920] A. C. 84. **Refd.** Millen *v.* Brash (1881), 8 Q. B. D. 35; Dyke *v.* S. E. & C. Ry. (1901), 17 T. L. R. 651. *As to* (2) **Consd.** Bergheim *v.* G. E. Ry. (1878), 3 C. P. D. 221; Steers *v.* Mid. Ry. (1920), 36 T. L. R. 703. **Refd.** Talley *v.* G. W. Ry. (1870), L. R. 6 C. P. 44. *Generally* **Refd.** Cohen *v.* G. E. Ry. (1876), 45 L. J. Q. B. 298.

301. —— ——.]—BAXENDALE *v.* GREAT EASTERN RY. CO., No. 347, *post.*

302. —— No evidence as to when goods lost—Onus of proof.]—Three packages of furs, each of which was above the value of £10, were delivered by pltfs. to deft. railway co. for carriage from L. to B. Pltfs. made no declaration as to the nature & value of the goods, as required by 1830 Act, s. 1. The goods could not be traced beyond defts.' L. terminus, & there was no evidence as to when or where they were lost. Defts. relied upon 1830 Act, s. 1, as a defence to an action by pltfs. for the value of the goods:—*Held:* 1830 Act did not protect defts., inasmuch as that Act afforded protection to the carrier only when the goods were lost by land, & defts. had failed to show that the goods were lost during the land portion of the transit.—LONDON & NORTH WESTERN RY. *v.* ASHTON (J.P.) & CO., [1920] A. C. 84; 88 L. J. K. B. 1157; 122 L. T. 75; 35 T. L. R. 708; 63 Sol. Jo. 736; 25 Com. Cas. 9, H. L.

(b) Loss or Injury.

See 1830 Act, s. 1; 1921 Act, s. 56, Sched. VI.

303. Temporary loss—Delay—Whether within Act.]—1830 Act, s. 1, does not protect carriers in all cases where the owner of the article sustains damage from the neglect of the carrier, but the loss there referred to is confined to those cases where the article is abstracted or lost from the personal care of the carrier. A plea, therefore, alleging want of notice under the Act, is no answer to a declaration against a railway co. for breach of contract, in not safely delivering pltf.'s luggage on the termination of a journey, averring that by the carelessness of defts. it became wholly lost to pltf., & pltf. was deprived of the use of it from June 3 to Sept. 23, & the damages claimed being in respect of the delay in the delivery.—HEARN *v.* LONDON & SOUTH WESTERN RY. CO. (1855), 10 Exch. 793; 24 L. J. Ex. 180; 25 L. T. O. S. 23; 1 Jur. N. S. 286; 3 C. L. R. 597; 156 E. R. 660.

*Annotations:—***Consd.** Millen *v.* Brasch (1882), 10 Q. B. D. 142. **Mentd.** Pepper *v.* S. E. Ry. (1863), 17 L. T. 469.

304. —— —— ——.]—A carrier is not deprived of the protection afforded by 1830 Act, s. 1, merely by the fact that the loss of the goods is temporary & not permanent, nor can the owner of goods, which ought to have been but were not declared pursuant to that Act, recover damages for the consequence of the loss of them, as distinguished from the loss itself.

Pltf. delivered to defts., who were carriers for hire from L. to R., a trunk to be sent by rail from L. to L., & thence shipped by steamer for I. Owing to defts.' negligence the trunk was put on board a vessel bound for N. Y., where it arrived, & a long time elapsed before it was restored to pltf. The trunk contained articles within the Act, the value of which exceeded £10. Pltf. was obliged to replace at enhanced prices the articles within the Act contained in the trunk:—*Held:* pltf. could not recover from the defts. damages either for the temporary loss of the articles within the Act or for being obliged to replace them at enhanced prices, a carrier being protected by the statute not only as to a loss but also as to all consequences flowing from it.—MILLEN *v.* BRASCH (1882), 10 Q. B. D.

PART IV. SECT. 2, SUB-SECT. 1. —A (a).

300 i. *Carriage over land and sea—Contract divisible.*]—NARANG RAI AGARWALLA *v.* RIVERS STEAM NAVIGATION CO., LTD. (1907), I. L. R. 34 Calc. 419.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1. —A (b).

303 i. *Temporary loss — Delay — Whether within Act.*]—Goods coming within 1830 Act, s. 1, & exceeding £10 in value, were delivered to a common carrier for conveyance without their value having been declared. In an action for delay in delivery:—*Held:* a temporary loss of the goods while they were in charge of defts., was a good answer to the action.—WALLACE *v.* DUBLIN & BELFAST JUNCTION RY. CO. (1874), I. R. 8 C. L. 341.—**IR.**

142 ; 52 L. J. Q. B. 127 ; 47 L. T. 685 ; 47 J. P. 180 ; 31 W. R. 190, C. A.
Annotation :—**Refd.** Foster *v.* G. W. Ry. (1904), 52 W. R. 685.

305. Gross negligence.]—BOYS *v.* PINK, No. 169, *ante*.

306. —— No declaration as to nature & value —No extra payment.]—Under 1830 Act, if a parcel containing any of the valuable goods enumerated in s. 1 be sent to a carrier for conveyance without a declaration of the nature & value of such goods, & without paying, or engaging to pay, an increased charge according to s. 2, the carrier is not liable for their loss, though it happen by the gross negligence of his servants.—HINTON *v.* DIBBIN (1842), 2 Q. B. 646 ; 2 Gal. & Dav. 36 ; 11 L. J. Q. B. 113 ; 6 Jur. 601 ; 114 E. R. 253.
Annotations :—**Consd.** Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473 ; Morritt *v.* N. E. Ry. (1876), 1 Q. B. D. 302. **Refd.** Austin *v.* M. S. & L. Ry. (1852), 10 C. B. 454 ; Metcalfe *v.* L. B. & S. C. Ry. (1858), 4 C. B. N. S. 307 ; M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327 ; Phillips *v.* Clark (1859), 5 Jur. N. S. 1081 ; Treadwin *v.* G. E. Ry. (1868), L. R. 3 C. P. 308 ; M. S. & L. Ry. *v.* Brown (1883), 8 App. Cas. 703 ; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. **Mentd.** Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515.

See, also, No. 308, *post*.

307. Goods carried beyond destination.]—A carrier is not deprived of the protection afforded by 1830 Act, s. 1, by the fact that the loss of or injury to goods happens after they have been negligently taken by him beyond their point of destination. Pltf. took a ticket from Y. to D. by defts.' railway. Before starting on the journey he handed two water-colour drawings, which were tied together face to face, so that it could be seen that they were pictures of some kind, to the guard, asked him to take care of them, & saw them labelled for D. The pictures were above the value of £10, but pltf. made no declaration of the value. When the train arrived at D. he got out, took a fresh ticket for B., & told a porter to see that the drawings were taken out & put in the train by which he was starting. The drawings, however, were not taken out, but were carried on to M., & when they were recovered by pltf. had sustained considerable injury :—*Held :* pltf. was not entitled to recover for the damage to the drawings, on the ground that defts. were protected by the Act, which applied to the case of goods negligently carried beyond the point of destination.—MORRITT *v.* NORTH EASTERN RY. CO. (1876), 1 Q. B. D. 302 ; 45 L. J. Q. B. 289 ; 34 L. T. 940 ; 24 W. R. 386, C. A.
Annotations :—**Folld.** Millen *v.* Brash (1881), 8 Q. B. D. 35. **Refd.** Skipwith *v.* G. W. Ry. (1888), 59 L. T. 520 ; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373 ; Foster *v.* G. W. Ry. (1904), 52 W. R. 685.

See, also, No. 261, *ante*.

B. What Articles within.

See 1830 Act, s. 1 ; 1921 Act, s. 56, Sched. VI.

308. General rule—"Great value in small compass."]—(1) 1830 Act extends to all the articles enumerated in s. 1, although not within the words of the preamble, "an article of great value in small compass."

(2) To entitle a party to recover for loss or injury to any article of such description, he must give express notice to the carrier of the value & nature of the article.

(3) A looking-glass exceeding the value of £10, was packed up in a case, & sent to a carrier's office, to be conveyed from L. to the house of S., near Y. A notice was fixed up in the office, pursuant to s. 2. The words "plate glass," "looking glass," "keep this edge upwards," were written on the case, but no declaration was made of the nature & value of the article, & no increased rate of carriage paid. The parcel was conveyed from Y. to the place of its ultimate destination, on a brewer's truck, that being the usual mode in which parcels were conveyed in that part of the country. When the glass was unpacked it was found to be broken :—*Held :* the carrier was not liable for the damage occasioned by the breaking of the glass.

(4) *Semble :* the carrier would have been liable if he had been guilty of gross negligence.—OWEN *v.* BURNETT (1834), 2 Cr. & M. 353 ; 4 Tyr. 133 ; 3 L. J. Ex. 76 ; 149 E. R. 796.
Annotations :—*As to* (1) **Consd.** Bernstein *v.* Baxendale (1859), 6 C. B. N. S. 251. **Refd.** Syms *v.* Chaplin (1836), 5 Ad. & El. 634 ; Behrens *v.* G. N. Ry. (1862), 8 Jur. N. S. 567. *As to* (4) **Consd.** Hinton *v.* Dibbin (1842), 2 Gal. & Dav. 36. **Refd.** Austin *v.* M. S. & L. Ry. (1852), 10 C. B. 454.

309. —— What is "value."]—Pltf. purchased certain articles of jewellery from the manufacturers of the value of £11 14*s.*, but on the condition that if the price were paid within a month a discount of 15 per cent. would be allowed, reducing the value to £9 19*s.* The price was paid by pltf. within the month. Pltf. consigned these articles to a customer in J. by deft. railway without having declared their value, & they were lost in transit. The price charged to the customer exceeded the sum of £11 14*s.* :—*Held :* in such cases value means the value to the consignor of the goods, which is the price his consignee has contracted to pay for the goods, & as the price contracted to be paid was over £10 pltf. in the circumstances could not recover.—BLANKENSEE *v.* LONDON & NORTH WESTERN RY. CO. (1881), 45 L. T. 761, D. C.

See, further, Sub-sect. 1, C., *post*.

310. —— Articles accessory to valuables.]—(1) A carrier is not liable for the loss of a mere accessory to any article which is exempted from his liability under 1830 Act, s. 1.

(2) A lace corporal in a gilt frame covered with glass, being intended for an exhibition, was enclosed in a packing-case, & sent, without any declaration under the Act, by defts.' railway, & lost :—*Held :* as a matter of fact the gilt frame was distinct from & not accessory to the lace, & the packing-case accessory to both or to the frame only, & the carrier therefore was not protected by the Act from liability as respected either the gilt frame or the packing case.—TREADWIN *v.* GREAT EASTERN RY. CO. (1868), L. R. 3 C. P. 308 ; 37 L. J. C. P. 83 ; 17 L. T. 601 ; 16 W. R. 365.
Annotation :—*As to* (2) **Consd.** Henderson *v.* L. & N. W. Ry. (1870), L. R. 5 Exch. 90.

See, also, No. 323, *post*.

311. —— Question of fact.]—(1) The question whether an article is of the description mentioned in 1830 Act, s. 1, is a question of fact for a jury.

(2) Elastic silk webbing is a woven fabric composed of one-third silk & two-thirds of india-rubber & cotton, the silk being the most valuable of the materials, & this webbing is called in the trade "silk web," as distinguished from cotton web :—*Held :* the question being reserved for the ct. with power to draw inferences, this webbing is within the definition in the Act of "silks wrought up with other materials."—BRUNT *v.* MIDLAND RY. CO. (1864), 2 H. & C. 889 ; 3 New Rep. 432 ; 33

PART IV. SECT. 2, SUB-SECT. 1.—B.

t. *Copper coin.*]—Defenders, who were common carriers, called at Bank to collect boxes for transmission to a branch office ; a box containing copper coins was stolen from defenders' lorry. Pursuers as insurers sued defenders for its value :—*Held :* defenders were not protected by Carriers Act, 1830, s. 1, as copper coin does not come within the sect.—ROYAL INSURANCE CO., LTD. *v.* ATLAS EXPRESS CO., LTD. (1916), 2 S. L. T. 192.—SCOT.

Sect. 2.—By statute: Sub-sect. 1, B. & C.]

L. J. Ex. 187; 9 L. T. 690; 10 Jur. N. S. 181; 12 W. R. 380; 159 E. R. 368.

Annotation :—As to (1) **Consd.** Woodward *v.* L. & N. W. Ry. (1878), 3 Ex. D. 121.

312. —— ——.]—TAYLOR *v.* MIDLAND RY. Co., No. 330, *post.*

See, also, No. 322, *post.*

313. —— **Passenger's luggage.**]—1830 Act applies to passenger's luggage carried in the same train with the passenger.—DYKE *v.* SOUTH EASTERN & CHATHAM RYS.' MANAGING COMMITTEE (1901), 17 T. L. R. 651.

314. —— —— **Luggage left in cloak-rooms.**]—VAN TOLL *v.* SOUTH EASTERN RY. Co., No. 860, *post.*

315. —— —— **Carried free.**]—The provisions of 1830 Act apply to ordinary personal luggage of a passenger which by the regulations of the railway cos. he is entitled to have carried free of charge.

I think it [the contract for carriage] does not mean that the luggage is to be carried free in the most absolute sense; it means that the passenger's fare covers both the carriage of the passenger & of the luggage up to the specified amount (LAWRENCE, J.).—CASSWELL *v.* CHESHIRE LINES COMMITTEE [1907] 2 K. B. 499; 76 L. J. K. B. 734; 23 T. L. R. 580; *sub nom.* CASWELL *v.* CHESHIRE LINES COMMITTEE, 97 L. T. 209; 51 Sol. Jo. 532, D. C.

See, also, Nos. 326, 327, *post.*

"Bill of exchange, note, security, or writing"—Imperfect instrument.]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES, & NEGOTIABLE INSTRUMENTS, Vol. VI., p. 20.

316. **"Furs"—Hat bodies—Mixed materials.**]—Hat bodies, which are made partly of the soft substance which is taken from the skin of rabbits, & partly from the wool of sheep, do not come under the description of furs in 1830 Act.—MAYHEW *v.* NELSON (1833), 6 C. & P. 58, N. P.

317. **"Glass"—Looking-glass.**]—OWEN *v.* BURNETT, No. 308, *ante.*

318. —— **Used for roofing—Composite parcel.**]—A parcel of glass, used for roofing, the value of which is more than £10, but which is composed of several smaller parcels, is within 1830 Act.—HARTLEY *v.* GREAT NORTHERN RY. Co. (1849), 14 L. T. O. S. 134.

319. —— **Smelling bottles.**]—BERNSTEIN *v.* BAXENDALE, No. 332, *post.*

320. —— **Opera glasses—Photographic apparatus.**]—Opera glasses & photographic apparatus:—*Held:* not to be "glass," "plated articles," or "trinkets" within 1830 Act, s. 1.—LEVI, JONES & Co., LTD. *v.* CHESHIRE LINES COMMITTEE (1901), 17 T. L. R. 443.

321. **"Lace"—In frame & packing-case.**]—TREADWIN *v.* GREAT EASTERN RY. Co., No. 310 *ante.*

322. **"Paintings"—Works of art—Coloured imitations of rugs & working designs.**]—(1) "Paintings" in 1830 Act, s. 1, is used in its ordinary and popular sense to denote works of art.

Coloured imitations of rugs & carpets & coloured working designs, each of them valuable & designed by skilled persons & hand painted, but having no value as works of art:—*Held:* not paintings within the Act.

(2) Whether a painting is or is not within the words of the Act is a question of fact for a jury.—WOODWARD *v.* LONDON & NORTH WESTERN RY. Co. (1878), 3 Ex. D. 121; 47 L. J. Q. B. 263; 38 L. T. 321; 42 J. P. 328; 26 W. R. 354.

323. **"Pictures"—Picture frames.**]—If a package containing pictures in frames exceeding £10 in value, be delivered to a carrier to be carried for hire, without any declaration, within 1830 Act, s. 1, as to the value & nature of the articles, picture & frame are to be considered as one article; & the carrier is protected by the Act from liability in respect of damage done to the frame, as well as in respect of damage done to the picture itself.—HENDERSON *v.* LONDON & NORTH WESTERN RY. Co. (1870), L. R. 5 Exch. 90; *sub nom.* ANDERSON *v.* LONDON & NORTH WESTERN RY. Co., 39 L. J. Ex. 55; 21 L. T. 756; 18 W. R. 352.

324. **"Plated articles"—Opera glasses—Photographic apparatus.**]—LEVI, JONES & Co., LTD. *v.* CHESHIRE LINES COMMITTEE, No. 320, *ante.*

325. **Silks—Silk dresses.**]—DAVEY *v.* MASON, No. 171, *ante.*

326. —— ——.]—*Held:* a silk dress carried by a railway passenger was "silk" within 1830 Act, s. 1.—WOOD *v.* METROPOLITAN RY. Co. (1867), cited in 16 L. T. 330.

*Annotation :—***Folld.** Flowers *v.* S. E. Ry. (1867), 16 L. T. 329.

327. —— —— **Wearing apparel of passenger.**]—(1) A silk dress, part of the luggage of a passenger, is silk within the meaning of 1830 Act.

(2) A railway co., under an Act authorising them to construct a portion of their line, were exempted from responsibility in case of loss or damage to property in charge of a passenger, but not being the personal apparel of the passenger. A loss of luggage in charge of, but not belonging to a passenger, occurred during a journey, which included a portion of the line to which that private Act applied:—*Held:* to avail themselves of the protection of that Act, defts. must prove that the loss was sustained on the portion of the line covered by the Act, & at no other portion of the journey.—FLOWERS *v.* SOUTH EASTERN RY. Co. (1867), 16 L. T. 329; 31 J. P. 598.

Annotation :—As to (2) **Folld.** Dyke *v.* S. E. & C. Ry. (1901), 17 T. L. R. 651.

328. —— **Silk guard.**]—BERNSTEIN *v.* BAXENDALE, No. 332, *post.*

329. —— **Elastic silk webbing.**]—BRUNT *v.* MIDLAND RY. Co., No. 311, *ante.*

330. —— **Machine-made lace.**]—(1) In an action against a railway co. for the loss of machine-made lace, which had not been declared:—*Held:* the co. were protected by 1830 Act, as the lace consisted wholly of silk.

(2) *Semble:* it is a question of fact whether an article comes within the description of those mentioned in that Act.—TAYLOR *v.* MIDLAND RY. Co. (1877), 41 J. P. 504.

See, now, 1921 Act, s. 56, Sched. VI.

331. **"Timepiece"—Chronometer.**]—LE CONTEUR *v.* LONDON & SOUTH WESTERN RY. Co., No. 300, *ante.*

332. **"Trinkets"—General rule.**]—(1) It is impossible with precise accuracy to define what are trinkets within 1830 Act, s. 1.—But, *semble,* the closest approximation is this, that they must be articles of mere ornament, or, if ornament and utility be combined, the former must be the predominating quality. For instance, bracelets, shirt-pins, rings, brooches, & ornamented tortoiseshell & pearl port-monnaies, however small their intrinsic value, are trinkets, but a plain German-silver box for holding fusees is not.

(2) Silk watch-guards are "silks in a manufactured state," within the Act.

(3) Smelling-bottles, & the like, are "glass," within the Act.—BERNSTEIN *v.* BAXENDALE (1859), 6 C. B. N. S. 251; 28 L. J. C. P. 265; 33 L. T. O. S. 106; 5 Jur. N. S. 1056; 7 W. R. 396; 141 E. R. 451.

Annotation :—As to (2) **Refd.** Brunt *v.* Mid. Ry. (1864), 2 H. & C. 889.

333. —— Eyeglass with gold chain.]—DAVEY *v.* MASON, No. 171, *ante*.

334. —— Opera glasses—Photographic apparatus.]—LEVI, JONES & CO., LTD. *v.* CHESHIRE LINES COMMITTEE, No. 320, *ante*.

335. "Contained in any parcel or package"—Waggon containing pictures.]—Pltf. sent upon a truck by defts.' line a waggon with wooden sides, but without a top, in which he packed, amongst other things, paintings exceeding the value of £10, which were so placed in the waggon that it could be seen that they were paintings, but their exact character could not be seen:—*Held:* the waggon, with its contents, was a "parcel or package" within 1830 Act, s. 1, & the goods not having been declared, pltf. could not recover.—WHAITE *v.* LANCASHIRE & YORKSHIRE RY. CO. (1874), L. R. 9 Exch. 67; 43 L. J. Ex. 47; 30 L. T. 272; 22 W. R. 374.

336. Pleading.]—To a declaration in case against common carriers for the loss of a trunk containing certain articles of jewellery & female apparel, defts. pleaded, as to the articles of jewellery, one of the said dresses, etc., etc., that, at the time of the delivery to them, they were contained in the trunk in the declaration mentioned; that they were delivered to them after the passing of 1830 Act; that the goods consisted of articles & property of the descriptions following, or of some or one of such descriptions, that is to say, gold or silver in a manufactured or unmanufactured state, etc., enumerating the several articles mentioned in s. 1 of the Act, & that their value exceeded £10; that, at the time of the receipt of the goods by them, defts. had duly affixed the notice required by s. 2 of the Act; & that pltf. gave them no notice of the nature or value of the goods, nor did she pay or tender the increased rate of charge demandable under the Act:—*Held:* the plea was bad, for not alleging with certainty that the articles in question were articles of some or one of the descriptions mentioned in the Act.—SMITH *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1849), 7 C. B. 782; 13 L. T. O. S. 119; 137 E. R. 310.

C. Declaration of Nature and Value of Goods.

See 1830 Act, s. 1; 1921 Act, s. 56, Sched. VI.

337. Necessity for.]—OWEN *v.* BURNETT, No. 308, *ante*.

338. —— Pleading.]—SYMS *v.* CHAPLIN, No. 173, *ante*.

339. Form of—Whether express & formal declaration essential.]—BOYS *v.* PINK, No. 169, *ante*.

340. —— ——.]—It is not essential that a declaration of value within 1830 Act, s. 1, should be express & formal.—BRADBURY *v.* SUTTON (1872), 21 W. R. 128, Ex. Ch.

341. —— Declaration for customs purposes—Insufficient.]—In 1881 a firm of forwarding agents requested defts. to charge the reduced rate at owner's risk, where such rates existed, for the carriage of their goods, consigned by them or on their account, &, in consideration thereof, agreed that the goods were to be forwarded solely at the risk of the owner, with the exception that the co. should be responsible for any wilful act or wilful default of the co. or their servants, if proved for fraud or theft by their servants. In 1905 one of four bales of furs placed by pltfs.' representatives, the forwarding agents, in defts.' custody for delivery was lost in transit. The forwarding agents had made a declaration of the nature and value for customs purposes & for the purposes of the ship's manifest, under Customs Consolidation Act, 1876 (c. 36), s 64, treating the four bales as one parcel. No other declaration as to value had been made. In an action claiming the return of the bale or its value, and for damages for its detention:—*Held:* (1) at the time of the loss the goods were still in transit, & the contract of carriage governed the relationship of the parties. If the goods were lost by negligence after the warehousing period had commenced defts. would have been liable. The goods, however, although stolen by some person unknown, were not lost by negligence. Defts. could not of themselves diminish their own liability as carriers by giving a notice to a consignee, who was not in default in taking delivery, & the goods still in transit.

(2) *Semble:* the receipt of goods by a common carrier under a special contract would not deprive him of the protection of 1830 Act, s. 1, unless the terms of the contract were inconsistent with the goods having been received by him as a common carrier.

(3) *Semble:* the declaration, for the purpose of fulfilling Custom House Rules, as to the nature & value, treating the four bales as one parcel, was not a sufficient declaration of nature & value within 1830 Act, s. 1. There must be a declaration with regard to the contents of each particular parcel, & made for the purposes of the rate.—HIRSCHEL & MEYER *v.* GREAT EASTERN RY. CO. (1906), 96 L. T. 147; 22 T. L. R. 661; 50 Sol. Jo. 576; 12 Com. Cas. 11.

342. Time for—On delivery of goods to carrier.]—(1) A person who delivers to a carrier goods of the description mentioned in 1830 Act, must, in order to fix the carrier with the responsibility for their loss, declare to him the nature & value of the goods at the time of their delivery, whether it takes place at his office, or on the road, or elsewhere.

(2) If no such declaration be made, the omission of the carrier to affix in his office the notice required by that statute, will not render him responsible.

(3) The notice to be affixed by the carrier, under s. 2, is required only for the purpose of his making an increased charge for the conveyance of such goods after having received notice of their value & nature from the sender.—HART *v.* BAXENDALE, BAXENDALE *v.* HART (1852), 6 Exch. 769; 21 L. J. Ex. 123; 18 L. T. O. S. 305; 16 Jur. 126; 155 E. R. 755, Ex. Ch.

Annotations:—As to (1) **Consd.** Robinson *v.* L. & S. W. Ry. (1865), 19 C. B. N. S. 51. **Refd.** G. N. Ry. *v.* Behrens (1862), 7 H. & N. 950. *As to* (2) **Folld.** Collis *v.* Mid. G. W. Ry. (1868), 19 L. T. 150. **Consd.** Ashton *v.* L. & N. W. Ry., [1918] 2 K. B. 488. *As to* (3) **Consd.** Behrens *v.* G. N. Ry. (1861), 6 H. & N. 366. *Generally* **Mentd.** Bernstein *v.* Baxendale (1859), 6 C. B. N. S. 251.

343. Effect of concealment—Estoppel.]—Pltf. delivered to the booking clerk of defts., a railway co., a parcel containing a glass bowl, for carriage to G., & told him that he wished to have it insured, but did not declare the value. The clerk charged him the ordinary rate for glass up to £10 in value carried at co.'s risk. On glass over £10 in value an additional insurance rate ought to have been charged. In the office there was, in compliance with 1830 Act, s. 2, a notice which was headed "Insurance." The bowl was damaged in transit:—*Held:* (1) as pltf. had concealed the material fact that the parcel was above £10 in value defts. were not estopped from denying the existence of

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PART IV. SECT. 2, SUB-SECT. 1.—C.

337 i. *Necessity for.*]—The statutory protection afforded to common carriers by Carriers Act, 1830, s. 1 (requiring as to certain goods a declaration as to value) is not affected by Mercantile Law Act, 1908, ss. 17, 18.—LEES (A.), LTD. *v.* BRIGHTLING, [1921] N. Z. L. R. 144.—N.Z.

Sect. 2.—*By statute: Sub-sect.* 1, *C., D., E., F., G. & H.*]

a special contract, & as the parties were dealing with two different classes of goods they were not *ad idem* & defts. were not liable; (2) the special contract alleged by the plaintiff was one which defts.' clerk had no authority to make, & pltf., who was bound by the notice, either knew or ought to have known it.—DOEY *v.* LONDON & NORTH WESTERN RY. CO., [1919] 1 K. B. 623; 88 L. J. K. B. 737; 120 L. T. 612; 35 T. L. R. 290, D. C.

Annotation:—*As to* (1) **Refd.** Stewarts & Lloyds *v.* L. & N. W. Ry., G. W. Ry. & Mid. Ry. (1919), 16 Ry. & Can. Tr. Cas. 241.

See, further, Sub-sect. 1, F., *post.*

Increased rate not demanded.]—*See* Sub-sect. 1, D., *post.*

D. Increased Charges.

See 1830 Act, s. 2; 1921 Act, s. 56, Sched. VI

344. Duty of carrier to demand—Charge mentioned in notice—Liability for loss.]—Where a carrier receives goods of the description mentioned in 1830 Act, & the person delivering the same has declared their value & nature, he is not bound to tender, but the carrier must demand, the increased charge mentioned on the notice affixed in his office, warehouse or receiving house, whether the goods are there delivered, or to a servant sent to fetch them; if no such demand is made the carrier is liable for the loss of or injury to the goods, although the increased charge has not been paid.—GREAT NORTHERN RY. CO. *v.* BEHRENS (1862), 7 H. & N. 950; 31 L. J. Ex. 299; 8 L. T. 328; 8 Jur. N. S. 567; 10 W. R. 389; 158 E. R. 756, Ex. Ch.; *affg.* S. C. *sub nom.* BEHRENS *v.* GREAT NORTHERN RY. CO. (1861), 6 H. & N. 366.

Annotations:—**Consd.** Robinson *v.* L. & S. W. Ry. (1865), 19 C. B. N. S. 51. **Refd.** Hodgman *v.* West Midland Ry. (1864), 5 B. & S. 173.

345. Notice of—Omission to affix—No declaration as to nature & value.]—HART *v.* BAXENDALE, BAXENDALE *v.* HART, No. 342, *ante.*

E. Notice limiting Liability.

See 1830 Act, s. 4.

See Nos. 348–350, *post.*

F. Receiving Office.

See 1830 Act, s. 5.

346. What is—Inn—No regular booking office.]—SYMS *v.* CHAPLIN, No. 173, *ante.*

G. Effect of Special Contract.

347. Terms not inconsistent with exemptions claimed—Bill of lading.]—Declaration, that pltfs. delivered on board deft.'s ship certain pictures on terms agreed between them; amongst others, that defts. should carry the pictures on board their ship from R. to H., with liberty to tranship them on any other steamer or railway, & deliver them to pltfs. at the port of L. via H., certain perils excepted, for certain freight to be paid by pltfs. to defts.; that defts. did not deliver the pictures to pltfs., although a reasonable time had elapsed, & they had not been prevented by any of the excepted perils. Plea, that the pictures were goods within s. 1 of the 1830 Act, s. 1, & were delivered to defts., they being common carriers by land for hire between H. & L., to be carried from H. to L. & delivered to pltfs. in L.; that the goods were contained in one package & exceeded £10 in value; that at the time of the delivery to defts.' servants the value & nature of the goods were not declared by the persons delivering them; & that the non-delivery by defts. to pltfs. was by reason of the same being lost out of defts.' possession while being carried from H. to L.

Defts., a railway co., carried on the business of carriers between R. & L. via H., the sea journey being performed by their steamships, & the land portion between H. & L. by their railway. A case of pictures was delivered to defts.' agents in R. for carriage to L., & defts.' agents signed a bill of lading; "Shipped in good order on board the A. . . . one small case pictures . . . with liberty to tranship the same on board any other steamer or railway, & are to be delivered at the port of L. via H., the act of God (& various sea perils), also railway accidents being excepted, to [pltfs.] or assigns . . . weight, contents, & value unknown, & not answerable for leakage, breakage, &c., & for wrong delivery of goods caused by error or by insufficiency in marks or numbers." The case containing the pictures was placed on board defts.' ship A. at R., & unshipped at H., & forwarded by defts.' railway, & was lost in the course of transit between Harwich and London. No declaration of the value, £84, was ever made:—*Held:* (1) 1830 Act, s. 6 applies only to contracts the provisions of which are inconsistent with the exemption claimed by the carrier under s. 1; (2) the fact of goods being received by a common carrier under a special contract does not deprive him of the protection of the Act, unless the terms of the contract are such as to be inconsistent with the goods having been received by him in his capacity of a common carrier; (3) by the terms of the bill of lading there was a contract to carry by sea from R. touching at H., to L. or to carry by sea from R. to H., & on land by railway from H. to L.; the contract was divisible, & the terms as to the land carriage were not inconsistent with defts. being subject to all the liabilities of common carriers, except those expressly accepted; & defts, were therefore also entitled to the protection given by the Act to common carriers; (4) the plea was therefore good, & proved; (5) defts. could not avail themselves of the proviso in 1854 Act, s. 7, which provides that no special contract between a railway co. & any other party as to the forwarding of goods shall be binding upon such party unless signed by him or by the person delivering the goods.—BAXENDALE *v.* GREAT EASTERN RY. CO. (1869), L. R. 4 Q. B. 244; 10 B. & S. 212; 38 L. J. Q. B. 137; 17 W. R. 412, Ex. Ch.

Annotations:—*As to* (1) Apld. Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. *As to* (2) **Consd.** Hirschel & Meyer *v.* G. E. Ry. (1906), 96 L. T. 147.

348. Exclusion of liability—Contract based on notice—Special agreement.]—Resp. took a horse to a station on the railway of applts., who were common carriers of horses, to be carried to a distance along the line. After paying the charge for carriage he signed a ticket produced by the co.'s clerk which stated that it was issued subject to the owner's undertaking to bear all risk of injury by conveyance &/or contingencies, etc., & that the co. would not be responsible, etc. for any damages however caused to horses, etc. travelling upon their railway or in their vehicles. The horse was injured during the journey:—*Held:* the ticket was not a mere notice which would be void under 1830 Act, s. 4, but contained the terms of a special agreement between resp. & the co.

a. *What is sufficient.*]—The notice prescribed by Carriers Act, 1830, s. 2, must be affixed in a part of the office so public & conspicuous that its contents shall be legible to persons resorting to the office for business, & transacting that business in the ordinary way while standing outside the counter.—COLLIS *v.* MIDLAND GREAT WESTERN RY. CO. (1868), 2 I. L. T. 542.—IR.

which was valid under s. 6, & consequently the co. was protected by its terms from any liability in respect of the injury to the animal.—GREAT NORTHERN RY. CO. *v.* MORVILLE (1852), 7 Ry. & Can. Cas. 830; Cox, M. & H. 616; 21 L. J. Q. B. 319; *sub nom.* MORVILLE *v.* GREAT NORTHERN RY. Co., 19 L. T. O. S. 140; 16 J. P 696; 16 Jur. 528.

Annotations :—**Refd.** Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Travers *v.* Cooper, [1915] 1 K. B. 73.

349. —— —— ——.]—Defts. had printed many notices declaring that they would not carry fish except on terms relieving them from all liability, & declaring also that none of their servants had power to vary those terms; a parcel of these notices had been sent to S., & served on the fish merchants there, including pltf.; they generally threw down the notices; pltf. had told defts.' station master at S. that they were not of any use; after which the fish were sent by pltf. by defts.' railway, & were not duly carried. The judge advised the jury, if they were satisfied that pltf. was served with the notice, to infer, as a fact, that he sent the fish on a special contract embodying the terms contained in it, unless pltf., before he sent the fish, unambiguously dissented from the terms, & defts. acquiesced in his dissent :—*Held :* (1) the direction was, in the circumstances, right; (2) 1830 Act, s. 4, is confined to public notices; (3) the jury might rightly infer, from pltf. having special notice that fish would not be taken except on certain terms & that no one had power to vary the terms, & from his afterwards persisting in sending his fish, that he assented to a special contract to carry on these terms; (4) defts. were in that case protected by this special contract under s. 6.—WALKER *v.* YORK & NORTH MIDLAND RY. Co. (1853), 2 E. & B. 750; 23 L. J. Q. B. 73; 22 L. T. O. S. 95; 18 Jur. 143; 2 W. R. 11; 2 C. L. R. 237; 118 E. R. 948.

Annotations :—*As to* (3) **Consd.** Crisp *v.* York & Newcastle Ry. (1854), 2 C. L. R. 1357. **Foll.** White *v.* G. W. Ry. (1857), 2 C. B. N. S. 7. **Consd.** Van Toll *v.* S. E. Ry. (1862), 31 L. J. C. P. 241; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. **Distd.** Drayson *v.* Horne (1875), 23 W. R. 793. *As to* (4) **Consd.** McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Hodgman *v.* West Midland Ry. (1864), 5 B. & S. 173. **Refd.** Hughes *v.* G. W. Ry. (1854), 14 C. B. 637; Drayson *v.* Horne (1875), 23 W. R. 793.

350. —— —— **Omission to refer to s. 8.**]—(1) To support a special contract between a carrier & his customer, based on the terms of a notice posted in the carrier's office, it is not sufficient to prove that the customer was aware of the evidence of the notice, but there must also be evidence of his assent to its terms.

(2) A notice was posted up in a carrier's office referring to 1830 Act, & embodying the terms of that Act, but leaving out the provision in s. 8 with regard to the felony of servants, & containing a list of increased prices at which the carrier consented to carry valuables :—*Held :* such notice was a good notice under s. 2 of the Act, but not one which, if merely seen by the customer, would support a special contract excluding the operation of the Act, so as to get rid of the exception in s. 8.—DRAYSON *v.* HORNE (1875), 32 L. T. 691; 39 J. P. 710; 23 W. R. 793.

351. —— **Terms in consignment note—Subject to s. 8.**]—A portmanteau containing jewellery of the value of £250 was delivered to defts. to be carried by them as common carriers. The owner signed a consignment note on which was printed the common condition that the co. would not be liable for loss or damage to goods of the kind described in 1830 Act, unless declared & an assurance paid. The owner paid the ordinary charge for the carriage, but did not declare the articles or pay or tender any extra charge. The jewellery having been stolen during the transit by a servant of the co., without any negligence on the part of the co. :—*Held :* a loss by theft of a co.'s servant without negligence on the part of the co. was not within 1854 Act, s. 7, &, therefore, the co. could at common law protect themselves by a special contract, notwithstanding 1830 Act, s. 8, & although such contract was not reasonable within 1854 Act, s. 7.—SHAW *v.* GREAT WESTERN RY. Co., [1894] 1 Q. B. 373; 70 L. T. 218; 58 J. P. 318; 42 W. R. 285; 10 T. L. R. 176; 38 Sol. Jo. 154; 10 R. 85, D. C.

Annotations :—**Consd.** Duckham *v.* G. W. Ry. (1899), 80 L. T. 774; Hirschel & Meyer *v.* G. E. Ry. (1906), 96 L. T. 147. **Refd.** Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478; Wade *v.* L. & N. W. Ry. (1920), 37 T. L. R. 81.

See, further, Sub-sect. 1, H., *post.*

H. Loss by Felony of Carrier's Servant.

352. Who is carrier's servant—Servant of agent.]—(1) If a carrier who contracts to deliver goods from A. to B. enters into a sub-contract with another party to convey those goods over a certain portion of the journey, such sub-contractor & every person employed by him in the performance of the contract, is a servant in the employ of the carrier within 1830 Act, s. 8.

(2) A delivery ticket issued by a railway co. as common carriers, in respect of goods they had undertaken to carry, described several persons, amongst others J., as porters in their employ. In an action brought by the bailor of the goods for their non-delivery, they having been stolen on their journey by J. :—*Semble :* the co. were not estopped from giving evidence that J. was not their servant.—MACHU *v.* LONDON & SOUTH WESTERN RY. Co. (1848), 2 Exch. 415; 5 Ry. & Can. Cas. 302; 17 L. J. Ex. 271; 11 L. T. O. S. 226; 12 J. P. 744; 12 Jur. 501; 154 E. R. 554.

Annotations :—*As to* (1) **Consd.** Way *v.* G. E. Ry. (1876), 35 L. T. 253; Stephens *v.* L. & S. W. Ry. (1886), 18 Q. B. D. 121. **Refd.** Bristol & Exeter Ry. *v.* Collins (1859), 29 L. J. Ex. 41; Doolan *v.* Mid. Ry. (1877), 2 App. Cas. 792. *As to* (2) **Refd.** Reedie *v.* N. W. Ry., Hobbit *v.* N. W. Ry. (1849), 13 Jur. 659. *Generally* **Foll.** Western Electric Co. *v.* G. E. Ry. (1914), 30 T. L. R. 416.

353. —— —— **Person falsely representing himself to be—Estoppel.**]—To an action for the loss of pictures delivered by pltf. to be carried by defts., a railway co., defts. pleaded 1830 Act, & pltf. replied that the loss arose from the felonious acts of defts.' servants. The pictures were loaded in a van in the defts.' yard ready to be sent to their destination, when a man represented himself to be C., a driver in the employ of M. who carried for defts., & defts.' delivery clerk gave the man a pass which enabled him to drive the van out of the yard, & so to steal the pictures. There was a man named C. in M.'s employ, but he was not the guilty person :—*Held :* defts. were not estopped from denying that the thief was their servant.—WAY *v.* GREAT EASTERN RY. Co. (1876), 1 Q. B. D. 692; 45 L. J. Q. B. 874; 35 L. T. 253.

See, also, No. 102, *ante.*

354. —— **Description in delivery ticket—Estoppel.**]—MACHU *v.* LONDON & SOUTH WESTERN RY. Co., No. 352, *ante.*

355. —— **Person employed in receiving office.**]—A parcel of silk was delivered at a receiving-office for transmission to a station on defts.' railway. No declaration of value was made at the time of delivery. The place where the goods were delivered was stated in the published time tables of the defts. to be a receiving-office for parcels & goods intended for carriage by defts. The goods were collected in due course by defts. & taken to

Sect. 2.—By statute: Sub-sect. 1, H.; sub-sect. 2, A.]

one of their stations; while there they were obtained by a person in the employ of the proprietor of the receiving-office, by means of a forged order, & were stolen:—*Held:* defts. were not protected by 1830 Act, as the loss had arisen from the felonious act of a person who was a servant of defts. within s. 8.—STEPHENS *v.* LONDON & SOUTH WESTERN RY. Co. (1886), 18 Q. B. D. 121; 56 L. J. Q. B. 171; 56 L. T. 226; 51 J. P. 324; 35 W. R. 161; 3 T. L. R. 73, C. A.

356. Negligence of carrier—Case not within Act.]—Pltfs. declared against defts. as common carriers subject to the terms of a special notice, for the loss of a truss of silk by the gross negligence of defts. & the felonious acts of their servants. Defts. pleaded, except as to the gross negligence & felony, that the goods were such as are excepted in 1830 Act, & that defts. did not declare their value. Pltf. now assigned that he had brought his action for that defts.' servants had feloniously stolen the goods:—*Held:* (1) the new assignment was bad & pltfs. might amend on payment of costs, & reply that the goods were lost by the felony of defts.' servants through the gross negligence of defts.; (2) the allegation of gross negligence & felony in the declaration was surplusage, & a replication of felony only without an allegation of gross negligence would have been bad.—BUTT *v.* GREAT WESTERN RY. Co. (1851), 11 C. B. 140; 20 L. J. C. P. 241; 138 E. R. 424.

Annotations:—As to (1) **Refd.** Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. *As to* (2) **Expld.** G. W. Ry. *v.* Rimell (1856), 18 C. B. 575; Metcalfe *v.* L. B. & S. C. Ry. (1858), 4 C. B. N. S. 307; Treadwin *v.* G. E. Ry. (1868), L. R. 3 C. P. 308. *Generally* **Mentd.** Barker *v.* M'Andrew (1865), 18 C. B. N. S. 759.

357. —— Gross negligence.]—(1) A parcel was delivered to a railway co. to be carried from A. to B.; & there were eleven parcels in the waybill & ten in the guard's book; the parcels, including the one in question, were duly delivered to the guard, & afterwards, in his absence, & without his knowledge, a porter put another parcel in the box, & entered it in the bill, & the guard did not count the parcels till he arrived at B., after stopping at several stations, when the parcel was missing:—*Held:* there was no evidence that the parcel had been stolen by one of the co.'s servants.

(2) In cases within 1830 Act the carrier is not liable for the felonious acts of his servants, without gross negligence on his part; but felony by his servants is alone a good answer to a defence by him under the Act.—GREAT NORTHERN [GREAT WESTERN] RY. Co. *v.* RIMELL (1856), 18 C. B. 575; 20 J. P. 679; 139 E. R. 1495; *sub nom.* GREAT WESTERN RY. Co. *v.* RIMELL, Saund. & M. 157; 27 L. J. C. P. 201; 27 L. T. O. S. 262.

Annotations:—As to (1) **Consd.** Metcalfe *v.* L. B. & S. C. Ry. (1858), 4 C. B. N. S. 307. **Refd.** Vaughton *v.* L. & N. W. Ry. (1874), 30 L. T. 119; Smith *v.* Mid. Ry. (1918), 88 L. J. K. B. 868; Smith *v.* G. W. Ry (1920), 37 T. L. R. 117. *As to* (2) **Refd.** Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. *Generally* **Consd.** Groves *v.* Cheltenham & East Gloucestershire Bldg. Soc., [1913] 2 K. B. 100.

358. —— Case within Act.]—To a declaration against defts. as common carriers for negligence, whereby pltf.'s goods were lost, defts. pleaded that the value of the goods exceeded £10, & was not declared under 1830 Act, s. 1. Replication, that the loss arose from the felonious acts of defts.' servants:—*Held:* a good replication.—METCALFE *v.* LONDON, BRIGHTON, & SOUTH COAST RY. Co. (1858), 4 C. B. N. S. 307; 27 L. J. C. P. 205; 6 W. R. 498; 140 E. R. 1102.

*Annotations:—***Refd.** Vaughton *v.* L. & N. W. Ry. (1874), L. R. 9 Exch. 93; McQueen *v.* G. W. Ry. (1875), L. R. 10 Q. B. 569; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373.

359. Proof of felony — Suspicion.]—In an action against carriers, upon an issue that pltf.'s goods were stolen by defts.' porter, pltf. proved only circumstances of suspicion, which probably would not have insured conviction on an indictment for felony; but defts. having omitted to call the porter as a witness, & the jury having found for pltf., the ct. refused to grant a new trial.—BOYCE *v.* CHAPMAN (1835), 2 Bing. N. C. 222; 1 Hodg. 338; 2 Scott, 365; 5 L. J. C. P. 74; 132 E. R. 87.

*Annotations:—***Consd.** Vaughton *v.* L. & N. W. Ry. (1874), L. R. 9 Exch. 93; McQueen *v.* G. W. Ry. (1875), 44 L. J. Q. B. 130.

See, also, No. 363, *post.*

360. —— ——.]—A truss of silk sent by the railway of defts. to L., with seven others, was lost; the other seven arrived safe. The eight trusses were proved to have arrived at L., & to have been deposited in a warehouse there. It was sworn that they were all placed on a cart of defts.' on a Monday morning, having been in the warehouse all Sunday. There was no evidence of the loss, but that only seven trusses arrived. There was no evidence of defts.' carter & his boy loitering on the way, which, it was said, might have given a stranger an opportunity of stealing the truss:—*Held:* the evidence was not sufficient to support a verdict of a felony by the co.'s servants.—JUPE *v.* GREAT WESTERN RY. Co. (1852), 19 L. T. O. S. 93.

361. —— ——.]—GREAT NORTHERN [GREAT WESTERN] RY. Co. *v.* RIMELL, No. 357, *ante.*

362. —— Probability.]—To a declaration against defts. as common carriers for negligence, whereby pltfs.' goods were lost, defts. pleaded that value of goods exceeded £10, & was not declared under 1830 Act. Pltf. replied felony by one of defts.' servants:—*Held:* to support this replication, it was necessary to prove, not only goods had been feloniously abstracted by one of defts.' servants unknown, but that evidence ought to be given sufficient to convict some one or more of such servants of the felony.—METCALFE *v.* LONDON BRIGHTON & SOUTH COAST RY. Co. (1858), 4 C. B. N. S. 307; 27 L. J. C. P. 333; 31 L. T. O. S. 165; 22 J. P. 707; 6 W. R. 580; 140 E. R. 1102.

*Annotations:—***Consd.** Vaughton *v.* L. & N. W. Ry. (1874), L. R. 9 Exch. 93. **Refd.** McQueen *v.* G. W. Ry. (1875), L. R. 10 Q. B. 569; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373.

363. —— ——.]—(1) In an action against a railway co., as carriers for hire, for the loss of goods alleged to have arisen from the felonious act of the servants of the co., it is not necessary

PART IV. SECT. 2, SUB-SECT. 1.—H.

362 i. *Proof of felony—Probability.*]—Pltf., a passenger by defts.' railway from C. to T., had amongst other luggage luggage directed to M., *via* T., which was placed in the luggage van at C. M. was a station on a different line. At P., where passengers for T. changed trains, one of the co.'s porters was seen carrying the box from the C. train towards the T. train. The box was not delivered at T. The guard of the train proved that he had delivered at T. all the luggage which he had received at P. for T. In an action against the railway for the loss:—*Held:* there was no evidence that the loss had arisen from a felony committed by defts.' servants.—GOGARTY *v.* GREAT SOUTHERN & WESTERN RY. Co. (1875), 9 I. L. T. 99.—**IR.**

362 ii. —— —— *Onus of proof.*]—In an action against a ry. co. for the value of silk dresses stolen while in the custody of the co. as carriers:—*Held:* (1) it was not sufficient for pursuer to prove that there was a greater probability of the theft having been committed by servants of the co. than by strangers; (2) *onus* lies on the senders of goods stolen in transitu to establish the theft against the servants of the carrier.—CAMPBELLS *v.* NORTH BRITISH RY. Co. (1875), 2 R. (Ct. of Sess.) 433; 12 Sc. L. R. 310.—**SCOT.**

for pltf., in order to prove the felony, under 1830 Act, s. 8, to bring home the charge to any individual servant of the co. in particular, or to produce such evidence of the fact as would be requisite on a criminal trial; it is sufficient for him to show it to be more probable that the felony was committed by some one or more of such servants than by anyone else.

(2) The mere fact of the co.'s abstaining from calling the suspected servants as witnesses, in answer to pltf.'s case, is sufficient to justify the case being left to the jury.—VAUGHTON *v.* LONDON & NORTH WESTERN RY. CO. (1874), L. R. 9 Exch. 93; 43 L. J. Ex. 75; 30 L. T. 119; 22 W. R. 336; 12 Cox, C. C. 580.

Annotations:—As to (1) **Consd.** Kirkstall Brewery Co. *v.* Furness Ry. (1874), L. R. 9 Q. B. 468; McQueen *v.* G. W. Ry. (1875), L. R. 10 Q. B. 569; Turner *v.* G. W. Ry. (1876), 34 L. T. 22. **Refd.** Simpson *v.* L. & N. W. Ry. (1876), 45 L. J. Q. B. 182.

See, also, No. 359, *ante.*

364. —— —— Facility of access.]—Pltf. delivered to defts., a railway co., a case of drawings, of greater value than £10, to be carried from C. to L. Defts.' servants at C. put it into a truck, which was shunted into a siding of easy access to the public. The case was stolen by some one at C. Pltf. having sued to recover the value of the drawings, defts. pleaded 1830 Act, to which pltf. replied felony by defts.' servants:—*Held:* a direction to the jury that if the facts, in their opinion, were more consistent with the guilt of defts.' servants than with that of any other person not in their employ that was sufficient to call upon defts. for an answer, which not having been given, the inference might well be that a felony had been committed by some of defts.' servants, was a wrong direction, for the greater probability that the goods were stolen by defts.' servants merely arose from their having greater opportunity of committing the theft; & this alone did not make out a *primâ facie* case that the felony had been committed by one of defts.' servants.—MCQUEEN *v.* GREAT WESTERN RY. CO. (1875), L. R. 10 Q. B. 569; 44 L. J. Q. B. 130; 32 L. T. 759; 40 J. P. 55; 23 W. R. 698; 13 Cox, C. C. 89.

*Annotations:—***Consd.** Turner *v.* G. W. Ry. (1876), 34 L. T. 22; Smith *v.* Mid. Ry. (1918), 88 L. J. K. B. 868; Smith *v.* G. W. Ry. (1920), 37 T. L. R. 117.

365. —— —— ——.]—Where 1830 Act is pleaded to an action against carriers for loss of goods, proof that the goods were stolen, & that defts.' servants had greater facility of access than other persons, is not evidence for the jury of a felony by defts.' servants.

A box containing silk was delivered to defts. not declared under 1830 Act, & despatched by goods train on a truck. On the journey, after stopping at two junctions where the train divided, the box was found broken open & the silk gone:—*Held:* no evidence of felony by defts.' servants.—TURNER *v.* GREAT WESTERN RY. CO. (1876), 34 L. T. 22; 3 Cox, C. C. 131.

366. —— —— ——.]—Pltfs. contracted with defts., a railway co., for the carriage of certain goods, at owners' risk, pltfs. agreeing to relieve the co. from all liability for loss, damage, misdelivery, delay, or detention, except upon proof that such loss, damage, misdelivery, delay, or detention arose from wilful misconduct on the part of the co.'s servants. A parcel consigned to defts. for carriage under the contract was made up of six pairs of boots, each pair put in a separate cardboard box, and then carefully packed with a piece of cardboard at the top & bottom of the parcel, with an inner & an outer covering of paper, the whole being tied securely. Between the time when the parcel was handed to the co., & when it was delivered by the co. to the employees of the consignee, some one unpacked the parcel under conditions which enabled him subsequently to pack it up again, extracted two pairs of boots, replaced the empty boxes, & packed up the parcel again in such a way as to represent that it was in the condition in which it had left pltfs.' premises. The trains accomplishing part of the particular journey were principally composed of corridor stock, but beyond that there was no evidence that the particular train in which the parcel was carried was composed of corridor stock. There was no evidence that any member of the general public had effective access to the parcel:—*Held:* the inference could properly be drawn that the two pairs of boots in question had been stolen by some person or persons in the railway co.'s employment, & pltfs. had discharged the *onus* of proving that the loss or damage arose from the wilful misconduct of defts.' servants, & defts. were liable for the loss.—SMITH (H. C.) LTD. *v.* MIDLAND RY. (1918), 88 L. J. K. B. 868; 121 L. T. 27, C. A.

—— Admissibility of evidence.]—*See* AGENCY, Vol. I., p. 607, No. 2366.

Liability excluded by special contract.]—*See* Sub-sect. 1, G., *ante.*

SUB-SECT. 2.—RAILWAY AND CANAL TRAFFIC ACT, 1854 (c. 31), AND SUBSEQUENT ACTS.

A. Scope and Effect.

367. Application of 1854 Act, s. 7—Not beyond limit of own lines.]—1854 Act, s. 7, is to be read in connection with s. 2, & applies only to lines belonging to or worked by the cos. who undertake to carry. A railway co. may, therefore, make any stipulations it pleases as to the receiving, forwarding, & delivering of traffic beyond the limits of the lines belonging to or worked by it; & the special contract containing such stipulations need not be signed by the person with whom the co. contracts.

Pltf. took at L. station of the defts.' railway a through ticket from L. to P., the ticket being in three coupons, the first from L. to D., the second from D. to C., & the third from C. to P. On the ticket was printed a notice that defts. would not be responsible for loss, or detention of, or injury to, the luggage of passengers travelling by this through ticket, except whilst travelling by defts.' trains or boats, & would incur no responsibility of any kind beyond what should arise in connection with its own trains & boats, in consequence of passengers being booked to travel over the railways of other companies, such through booking being only for the convenience of the passenger.

PART IV. SECT. 2, SUB-SECT. 2.—A.

367 i. *Application of* 1854 *Act, s.* 7—*Not beyond limits of own lines.*]—Goods were delivered to deft. ry. co. at A. consigned to a consignee in L., & were booked through, the consignor signing a consignment note containing a condition that the co. would not be responsible for loss or damage happening beyond their own line. The goods were safely carried to C., & there delivered to a carrier, to be taken to the B. steamer. The carrier was not acting as such for the ry. co. The goods were then forwarded by ss. co. to B., to be forwarded to L. In the carriage between B. & L. damage occurred:—*Held:* defts. were not liable, as the contract between them & the consignor was only to carry from A. to C.—BARRY *v.* CORK & BANDON RY. CO. (1874), 8 I. L. T. 67.—IR.

b. *Effect of* 1868 *Act, s.* 16 *&* 1871 *Act, s.* 12—*Extension to steam vessels—Owned & worked by steamship company.*]—MOORE *v.* MIDLAND RY. CO. (1875), I. R. 9 C. L. 20.—IR.

Sect. 2.—By statute: Sub-sect. 2, A., B. & C. (a).]

The hatbox & portmanteau of pltf. having been lost on the journey between C. & P. on the line of another co.:—*Held:* (1) defts. were exempted from liability for the loss by the conditions of the special contract; (2) it was not necessary for that purpose that pltf. should have signed the contract.—ZUNZ *v.* SOUTH EASTERN RY. CO. (1869), L. R. 4 Q. B. 539; 10 B. & S. 594; 38 L. J. Q. B. 209; 20 L. T. 873; 17 W. R. 1906.

Annotations:—As to (1) **Consd.** Watkins *v.* Rymill (1883), 10 Q. B. D. 178. **Refd.** Didcot, Newbury & Southampton Ry. *v.* L. & S. W. Ry. (1897), 10 Ry. & Can. Tr. Cas. 9. *As to* (2) **Consd.** Henderson *v.* Stevenson (1875), L. R. 2 Sc. & Div. 470.

368. —— To passengers' luggage.]—1854 Act, s. 7, by which notices limiting railway cos.' liability for neglect in receiving, forwarding, or delivering articles, goods, or things are void & no special contract respecting such receiving, etc., is binding unless signed, applies to passengers' luggage, & was extended by Regulation of Railways Act, 1868 (c. 119), s. 16 [now repealed as to this], to traffic carried by steamers owned or worked by railway cos.

C. took a through ticket from B. in France by defts.' steamer to F. & rail to L. On the face of the ticket was a condition that defts. were not responsible for luggage of greater value than £6. C. did not sign any special contract. In landing at F. C.'s luggage was damaged to an amount exceeding £6 by the negligence of defts.' servants. By French law the condition on the ticket would be void:—*Held:* assuming English law governed the case, which it was unnecessary to decide, the condition was void, & defts. were liable.—COHEN *v.* SOUTH EASTERN RY. CO. (1877), 2 Ex. D. 253; 46 L. J. Q. B. 417; 36 L. T. 130; 41 J. P. 627; 25 W. R. 475, C. A.; *affg.* S. C. *sub nom.* COHEN *v.* GREAT EASTERN RY. CO. (1876), 45 L. J. Q. B. 298.

Annotations:—Apprvd. Doolan *v.* Mid. Ry. (1877), 2 App. Cas. 792. **Expld.** Bergheim *v.* G. E. Ry. (1878), 3 C. P. D. 221. **Consd.** Bunch *v.* G. W. Ry. (1886), 17 Q. B. D. 215. **Refd.** Wilkinson *v.* L. & Y. Ry., [1907] 2 K. B. 222.

See, further, Part VI., Sect. 8, sub-sect. 2, *post.*

369. —— —— Luggage left in cloak-rooms.]—VAN TOLL *v.* SOUTH EASTERN RY. CO., No. 860, *post.*

370. —— To whole traffic—On railways & canals only.]—(1) 1854 Act applied to the whole traffic upon railways, and not merely to their passenger traffic, but only applied to traffic on railways or canals.

(2) 1863 Act, s. 31, extends 1854 Act to steam vessels, and the traffic carried on thereby, which vessels railway cos. own or work.

(3) Railways Regulation Act, 1871 (c. 119), s. 12, applies to cases where a railway co. under a contract to carry persons, animals or goods by sea, procures the same to be carried in a vessel not belonging to the co., not worked by the co., & the co. becomes liable for damage in like manner as if the vessel had belonged to the railway co.

(4) 1854 Act, s. 7, did not allow of the limitation of the liabilities of railway cos., except by such conditions as should be held by the ct. to be just or reasonable, & be embodied in a special contract, which should be signed by the owner of the goods.

(5) "Servants" in 1854 Act, s. 7, means not merely servants, properly so called, but also the agents, not strictly servants, employed by railway cos. to do for them work which they are under a contract with others to perform.

(6) A railway co. made contracts to carry animals from a port of I. to a town in E. on "through" tickets. The paper or ticket contained, in substance, the following condition: "that with respect to any animals, etc., booked through, by them or their agents for conveyance partly by railway & partly by sea, or partly by canal & partly by sea, such animals, etc., will only be so conveyed on the condition that the co. shall be exempt from any liability for any loss or damages which may arise during the carriage of such animals, etc., by sea, from the act of God, etc., accidents from machinery, etc., & all & every other damages & accidents of the seas, rivers, & navigation of whatever nature & kind soever, in the same manner as if the co. had signed & delivered to the consignor a bill of lading containing such condition. Nor will the co. be responsible for loss of, or damage to, animals, etc., arising from damages or accidents of the sea, or of steam navigation, the act of God, etc., jettison, barratry, collision, improper, careless, or unskilful navigation, accidents connected with machinery or boilers, or any default or negligence of the master or any of the officers or crews of the co.'s vessels":—*Held:* the words "master & crew of the co.'s vessels" in the condition applied to all such vessels as the co. should employ, & not merely to vessels owned or worked by the co. itself; & (7) the condition was unreasonable & void.

(8) If a railway co. is guilty of an illegality by working steamboats, not being authorised by law to work them, it cannot set up such illegality as an answer to a claim for damages arising out of the working of such steamboats.—DOOLAN *v.* MIDLAND RY. CO. (1877), 2 App. Cas. 792; 37 L. T. 317; 25 W. R. 882; 3 Asp. M. L. C. 485, H. L.

Annotations:—As to (2) **Consd.** Cohen *v.* S. E. Ry. (1877), 2 Ex. D. 253. *As to* (7) **Consd.** Riggall *v.* G. C. Ry. (1909), 101 L. T. 392. **Refd.** Western Electric Co. *v.* G. E. Ry., [1914] 3 K. B. 554.

371. —— Theft by carrier's servant.]—SHAW *v.* GREAT WESTERN RY. CO., No. 351, *ante.*

372. —— Delay—No negligence.]—Goods carried at various times by deft. co. for pltfs. arrived too late for market, & pltfs. suffered loss for which they sued. In answer to questions left to them by the judge, the jury found that defts. accepted the goods with the knowledge that they were to be sold in particular markets, that defts. lost those markets, but that they had not, except in one instance, been guilty of negligence.

Two kinds of consignment notes had been used, one of which contained a notice that defts. had two rates for the carriage of the goods thereinunder mentioned, an ordinary rate, when the co. took the ordinary liability of a railway co., & a reduced rate, adopted when the sender agreed to relieve the co. from all liability for loss, damage, misdelivery, delay, or detention, except upon proof that such loss, etc., arose from wilful misconduct on the part of the co.'s servants. Defts. admitted that, as a matter of fact, they had only one rate for the carriage of the class of goods consigned by pltfs. Both kinds of consignment notes contained a condition that the co. would not be liable for any loss of market:—*Held:* (1) if 1854 Act, s. 7, had been applicable, the condition would have been unreasonable; but (2) as the jury had negatived negligence, defts. were not within s. 7, & at common law, the condition was good as a notice to the consignor; (3) in the circumstances, it was not in the contemplation of the parties that damages should be paid for the loss of the market.—DUCKHAM

BROTHERS *v.* GREAT WESTERN RY. CO. (1899), 80 L. T. 774 ; 15 T. L. R. 328.
Annotation :—As to (1) **Refd.** Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478.

373. —— No obligation to carry goods contracted for.]—1854 Act, s. 7, is applicable to a case where a railway co., though under no obligation to carry certain goods, has, nevertheless, made a contract for their carriage.

Deft. co. by their timetables offered to allow commercial travellers to take with them by passenger train, free of charge, a certain amount of luggage, which was not ordinary passengers' luggage, on the condition that the co. were relieved from all liability for loss, damage, misdelivery, or delay. Pltfs., who were commercial travellers, in pursuance of this offer, but without signing any special contract to that effect, took with them on a journey by deft. co.'s line a case of samples, which was lost on the journey by the negligence of the co.'s servants :—*Held* : as no special contract had been signed by pltfs., 1854 Act, s. 7, applied, & the condition being thereby made null & void, deft. co. were liable for the loss of the samples.—WILKINSON *v.* LANCASHIRE & YORKSHIRE RY., [1907] 2 K. B. 222 ; 76 L. J. K. B. 801 ; 97 L. T. 35 ; 23 T. L. R. 509 ; 51 Sol. Jo. 481, C. A.

See, further, ANIMALS, Vol. II., pp. 278 *et seq.*

374. Effect of 1863 Act, s. 31—Extension to steam vessels—Owned or worked by railway company.]—DOOLAN *v.* MIDLAND RY. CO., No. 370, *ante*.

See Regulation of Railways Act, 1868 (c. 119), s. 16, & Railway & Canal Traffic Act, 1888 (c. 25), Sched.

375. —— ——.]—(1) A railway co. which owns steam vessels, &, by its private Act, has adopted 1863 Act, Part IV. (relating to steam vessels), is bound by 1854 Act, s. 7.

(2) A special contract made by such railway co. for the carriage of goods must therefore, whether the carriage is partly by its railway & partly by its steamers, or wholly by its steamers, be just & reasonable, within 1854 Act, s. 7.

(3) A special contract for the carriage of goods by sea which exempts the railway co. from all liability for damage due to the negligence of its servants is not just & reasonable where there is no alternative rate offered to the consignor upon which the goods might be carried.—JENKINS *v.* GREAT CENTRAL RY., [1912] 1 K. B. 1 ; 81 L. J. K. B. 24 ; 106 L. T. 565 ; 28 T. L. R. 61 ; 12 Asp. M. L. C. 154 ; 17 Com. Cas. 32.
Annotation :—As to (3) **Refd.** Western Electric Co. *v.* G. E. Ry., [1913] 3 K. B. 15.

376. —— Or special Railway Acts before 1863.]—(1) 1863 Act, s. 31, does not apply to a railway co. whose special Acts were passed before 1863 Act.

(2) Regulation of Railways Act, 1868 (c. 119), s. 14, does not operate to prevent a railway co. making conditions with a passenger travelling with a free pass which exempt the co. from liability for the loss of such passenger's luggage, although no notice has been posted in the co.'s offices as required by that sect.

A husband & wife were travelling on defts.' steamship on a free pass. The steamship was wrecked & the husband was drowned, & both his & his wife's luggage were lost. Upon the free pass was printed a condition exonerating defts. from any injury, delay, loss, or damage, however caused. Defts. obtained a decree of limitation of liability, & paid the limit of their liability into ct. The wife & children brought a claim under Fatal Accidents Act, 1846 (c. 93), for the loss of their husband & father :—*Held :* (3) the condition covered negligence, & was applicable both to sea & land transit ; (4) a claim by the wife for the loss of her property, & as his personal representative, for the loss of her husband's property, was likewise barred by the condition.—THE STELLA, [1900] P. 161 ; 69 L. J. P. 70 ; 82 L. T. 390 ; 16 T. L. R. 306 ; 9 Asp. M. L. C. 66.
Annotations :—As to (3) **Consd.** Travers *v.* Cooper, [1915] 1 K. B. 73. **Refd.** Pyman S.S. Co. *v.* Hull & Barnsley Ry., [1914] 2 K. B. 788.

See, now, 1921 Act, s. 56, Sched. VI.

Carriage of animals.]—*See* Part VII., *post*.

B. Neglect or Default of Company or Servants.

Loss due to mere accident.]—*See* ANIMALS, Vol. II., No. 536.

Loss by negligence of carrier.]—*See* Nos. 165, *ante*, 402, 421, *post*.

377. —— Onus of proof.]—HARRIS *v.* MIDLAND RY. CO., No. 425, *post*.

Wilful misconduct.]—*See* Nos. 390, 426, *post*.

378. Delay — No negligence.] — DUCKHAM BROTHERS *v.* GREAT WESTERN RY. CO., No. 372, *ante*.

379. Theft by carrier's servant.] — SHAW *v.* GREAT WESTERN RY. CO., No. 351, *ante*.

380. Servant—Who is.]—DOOLAN *v.* MIDLAND RY. CO., No. 370, *ante*.

C. Special Contract or Condition.

(a) Must be Signed and Reasonable.

381. By owner or sender of goods.]—All the parts of 1854 Act, s. 7, must be read together, & therefore the conditions there spoken of as capable of being imposed by railway cos. in limitation of their liability as common carriers must not only be, in the opinion of the ct. just & reasonable, but must also be embodied in a special contract in writing, signed by the owner or sender of the goods.

The owner of some marble chimney pieces desired to send them to L. Messages & notes passed between him & the agent of a railway co. on the subject of the terms on which they were to be carried. The agent stated, as a condition, that the co. would not be responsible for damage to the goods sent by the railway, unless their value was declared & they were insured, the rate of insurance being fixed at 10 per cent. on the declared value. After some delay the agent received a note requesting that the marbles might be forthwith sent to L. "not insured" ; they were sent, & suffered damage :—*Held :* (1) the condition thus sought to be imposed by the co. was not just & reasonable ; (2) there was not any special contract signed by the parties within the meaning of 1854 Act, s. 7 ; (3) the note could not be connected with the other communications so as to constitute the required contract ; (4) the words "not insured" could not be made the

PART IV. SECT. 2, SUB-SECT. 2. —B.

377 i. *Loss by negligence of carrier—Onus of proof.*]—Where carriers purport, by a lower rate of carriage, to relieve themselves from all liability in case of loss, damage, or delay, except upon proof that such loss, etc. should have arisen from the wilful neglect or misconduct of the servants of the co., acting within the scope of their authority, the *onus* of proof of wilful neglect is thrown upon the owners of the goods.—MIDLAND GREAT WESTERN OF IRELAND RY. *v.* CANDON (1883), 17 I. L. T. Jo. 429.—IR.

c. Loss by damage — Onus of proof.]—When goods are damaged in transit the *onus* of proving that they were not damaged by the servants of the co. lies on the co.—MAHONY *v.* WATERFORD, LIMERICK & WESTERN RY. CO., [1900] 2 I. R. 273.—IR.

Sect. 2.—By statute: Sub-sect. 2, C. (a) & (b).]

subject of explanation by parol evidence; & (5) they left the rights & liabilities of the parties as at common law.

(6) The burden of showing that a condition is just & reasonable lies on the railway co. (LORD CRANWORTH).—PEEK *v.* NORTH STAFFORDSHIRE RY. CO. (1863), 10 H. L. Cas. 473; 3 New Rep. 1; 32 L. J. Q. B. 241; 8 L. T. 768; 9 Jur. N. S. 914; 11 W. R. 1023; 11 E. R. 1109, H. L.; *revsg.* S. C. *sub nom.* NORTH STAFFORDSHIRE RY. CO. *v.* PEEK (1860), E. B. & E. 986, Ex. Ch.

Annotations:—As to (1) **Apld.** Aldridge *v.* G. W. Ry. (1864), 15 C. B. N. S. 582. **Folld.** Beal *v.* South Devon Ry. (1864), 3 H. & C. 337; Gregory *v.* West Midland Ry. (1864), 2 H. & C. 944; Lewis *v.* G. W. Ry. (1877), 3 Q. B. D. 195; Ashenden *v.* L. B. & S. C. Ry. (1880), 5 Ex. D. 190. **Apld.** Dickson *v.* G. N. Ry. (1886), 18 Q. B. D. 176. **Consd.** G. W. Ry. *v.* McCarthy (1887), 12 App. Cas. 218; Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478. **Refd.** Robinson *v.* G. W. Ry. (1865), Har. & Ruth. 97; Rooth *v.* N. E. Ry. (1867), 15 L. T. 624; Glenister *v.* G. W. Ry. (1873), 29 L. T. 423; Cohen *v.* G. E. Ry. (1876), 45 L. J. Q. B. 298; Stevens *v.* L. B. & S. C. Ry. (1877), 42 J. P. 70; Foreman *v.* G. W. Ry. (1878), 38 L. T. 851; Wilkinson *v.* L. & Y. Ry., [1907] 2 K. B. 222; Marriott *v.* Yeoward, [1909] 2 K. B. 987. *As to* (2) **Refd.** Lewis *v.* G. W. Ry. (1877), 3 Q. B. D. 195; Wade *v.* L. & N. W. Ry., [1921] 1 K. B. 582. *As to* (4) **Distd.** Wade *v.* L. & N. W. Ry., [1921] 1 K. B. 582. *As to* (6) **Refd.** Dickson *v.* G. N. Ry. (1886), 18 Q. B. D. 176; Williams *v.* Mid. Ry. (1907), 98 L. T. 81. *Generally* **Consd.** M. S. & L. Ry. *v.* Brown (1883), 8 App. Cas. 703; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. **Refd.** M'Manus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Harrison *v.* L. B. & S. C. Ry. (1862), 2 B. & S. 152; Hodgman *v.* West Midland Ry. (1864), 5 B. & S. 173; Doolan *v.* Mid. Ry. (1877), 2 App. Cas. 792; Hill *v.* L. & N. W. Ry. (1880), 42 L. T. 513. **Mentd.** Wilton *v.* Royal Atlantic Mail Steam Navigation Co. (1861), 8 Jur. N. S. 231; Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515; Oliver *v.* Hunting (1890), 44 Ch. D. 205; *Re* North Western Rubber Co. & Huttenbach, [1908] 2 K. B. 907; Belfast Ropework Co. *v.* Bushell, [1918] 1 K. B. 210.

382. By or on behalf of consignor—Agent of consignor & carrier.]—(1) Any condition limiting the liability of a railway co. as carriers must be a condition just & reasonable in the judgment of the ct., & must be set out in a written or printed contract signed by or on behalf of the consignor of the goods.

Certain packages called "empties" were delivered to a railway co. to be carried to a place beyond their line, the person by whom they were delivered signing on the consignor's behalf a printed note containing, among others, conditions that the co. would not be answerable for the loss or detention of, or damage to, wrappers or packages of any description charged by the co. as "empties," nor in respect of goods destined for places beyond the limits of the co.'s railway; &, as respects the co., their responsibility would cease when the goods should have been delivered over to another carrier in the usual course for further conveyance; any money which might be received by the co. as payment for the conveyance of goods beyond their own limits would be so received only for the convenience of the consignors, & for the purpose of being paid to the other carrier; the co. would not be liable for any loss of or injury to articles, except on proof that such loss or injury was occasioned by the neglect or default of the co. or its servants. The goods were carried duly to G., where defts.' line ended, & were there handed over to the M. Co. in further prosecution of the transit, after which the detention & damage of which pltf. complained took place:—*Held*: (1) the second of the above conditions was just & reasonable within 1854 Act, s. 7, & discharged defts. from liability in respect of the damage & detention complained of; (2) a signature of the special contract by a "railway agent" employed by the consignor to deliver & by the co. to receive the goods for them, is a sufficient signature to satisfy 1854 Act, s. 7.

(3) *Semble*: the co. were not to be considered as mere gratuitous bailees because the "empties" were carried free of charge, the contract for payment for the same packages when forwarded full including a contract or engagement on their part to make no additional charge for returning them when empty, & that the first condition was, therefore, not just & reasonable.—ALDRIDGE *v.* GREAT WESTERN RY. CO. (1864), 15 C. B. N. S. 582; 33 L. J. C. P. 161; 143 E. R. 913.

Annotation:—As to (1) **Refd.** Brown *v.* M. S. & L. Ry. (1882), 52 L. J. Q. B. 132.

383. Signature not necessary to bind company.]—BAXENDALE *v.* GREAT EASTERN RY. CO., No. 347, *ante*.

384. Effect of want of—Loss due to negligence of carrier.]—WILKINSON *v.* LANCASHIRE & YORKSHIRE RY., No. 373, *ante*.

See, also, Nos. 368, 370, *ante*.

385. Carriage over several systems.]—ZUNZ *v.* SOUTH EASTERN RY. CO., No. 367, *ante*.

See, also, No. 382, *ante*.

(b) What is Sufficient Signature.

386. Signature under mistake—Induced by carrier's servant.]—A declaration against a railway co., for damage to goods entrusted to them to carry, alleged that the goods were delivered to defts. as common carriers, & that they received them as such common carriers. Plea, that the goods were received by defts. to be carried subject to a special contract whereby they were declared not to be answerable for any loss or damage, however caused. In support of the plea, defts. produced a paper, signed by pltf., acknowledging that the goods were to be carried subject to certain conditions, one of which was, that the co. were not to be responsible for any loss or damage, however caused, etc. On the part of pltf., it was proved, that, when asked by a clerk of defts. at the time the goods were delivered at the co.'s warehouse to sign the paper, pltf. expressed his unwillingness to do so, inasmuch as he could not see to read it, whereupon the clerk said that it was of no consequence, & that the signature was a mere matter of form; & that pltf., relying upon that assurance, signed the paper:—*Held*: upon this evidence, the jury were warranted in finding that the goods were not delivered to the co. to be carried under the special contract.—SIMONS *v.*

PART IV. SECT. 2, SUB-SECT. 2.—C. (a).

d. *Signature not necessary to bind owner—Paying reduced rate—Passenger's bicycle.*]—A ry. co. received a bicycle, to be carried at a reduced rate at passenger's risk, accompanied by the passenger, & his ticket had these conditions printed on it, & a statement that the co. accepted no responsibility for loss or damage, & that the ticket was to be taken as conclusive evidence of an agreement to that effect; the passenger left the train & travelled to his destination by another train, & the bicycle was lost: *Held*:—the co. was not liable although the passenger had not signed the conditions.—DEVERY *v.* GREAT NORTHERN RY. CO. (1905), 39 I. L. T. 274.—IR.

384 i. *Effect of want of.*]—Goods were delivered by A. to D., P. & A. Railway along with a "forwarding note" which was a printed document supplied by the ry. co., & upon the back of which were printed conditions which were not signed by A.:—*Held*: the conditions null.—SCOTTISH CENTRAL RY. CO. *v.* FERGUSON & CO. (1864), 2 Macph. (Ct. of Sess.) 781.—SCOT.

PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

e. *Unauthorised signature.*]—A special contract, by which goods were to be carried at owners' risk, was signed by a clerk of defenders in the name of pursuer's brother, who denied that he gave the clerk authority to sign his name:—*Held*: the special contract was not binding on pursuers.—MACFARLANE *v.* PORTPATRICK & WIGTOWNSHIRE JOINT COMMITTEE (1915), 2 S. L. T. 266.—SCOT.

GREAT WESTERN RY. CO. (1857), 2 C. B. N. S. 620; 29 L. T. O. S. 182; 140 E. R. 560.

387. Knowledge of conditions of contract—Conditions not read.]—Pltf. delivered to a railway co. eighteen packages to be carried on their line. He filled up & signed a receiving note describing the goods as "furniture." On the paper under the head "Conditions," were these words:—"No claim for deficiency, damage or detention will be allowed, unless made within three days after the delivery of the goods; nor for loss, unless made within seven days of the time they should have been delivered"; & "the co. will not be answerable for the loss or detention of any goods which may be untruly or incorrectly described in the receiving note." Pltf. said, "he was told to sign the paper & did so. He might have seen the word "Conditions," but he did not read them, & did not know, & was not told what they were." One of the packages consisted of a sack of clothes, which was not delivered, but no claim was made until more than seven days from the time when the same should have been delivered:—*Held:* (1) there was nothing to rebut the presumption arising from the signature of the paper by pltf. that he understood that the contract was subject to the conditions; (2) the conditions were just & reasonable within 1854 Act, s. 7; & the co. had a defence to an action on the ground that the claim was not made within seven days, & that the bag of clothes was misdescribed.

(3) *Qu.:* whether, under 1854 Act, s. 7, the decision of a judge at *Nisi Prius*, as to the reasonableness of the conditions can be reviewed by the ct. above, where leave for that purpose is not reserved.—LEWIS *v.* GREAT WESTERN RY. CO. (1860), 5 H. & N. 867; 29 L. J. Ex. 425; 157 E. R. 1427.

Annotations:—As to (2) **Foll.** O'Keefe *v.* G. W. Ry. (1920), 123 L. T. 269. *Generally* **Refd.** M'Cance *v.* L. & N. W. Ry. (1861), 10 W. R. 154.

388. Signature of agent—Binding on principal.]—*Held:* (1) a set of conditions in a consignment note is unreasonable & void under 1854 Act, s. 7, if any part of it is unreasonable; (2) a condition not to be liable for delay, however caused, is unreasonable; (3) where an agent who is employed to deliver cattle to be sent by a railway co., signs the consignment note, he must be taken to have known the contents, & to bind his principal.

(4) An agent for a railway co., who is employed to obtain custom for them, does not bind them by his representations as to the railway accommodation.

(5) *Qu.:* whether the liability of a railway co. for live animals is the same as for inanimate objects.—KIRBY *v.* GREAT WESTERN RY. CO. (1868), 18 L. T. 658.

Annotation:—As to (3) **Foll.** Foreman *v.* G. W. Ry. (1878), 38 L. T. 851.

389. —— ——.]—(1) The servant of pltf., the sender of goods, signed a consignment note on which there was a notice that deft. railway co. charged alternative rates, lower or higher according as the goods were carried at owner's or at co.'s risk; it was in evidence that the higher rate which was within the Parliamentary limit was posted up in the office of the co.; that if the sender had declined to send on the conditions contained in the consignment note at the lower rate a general consignment note would have been offered him for carriage of the goods at the higher rate; & that the consignment note signed on behalf of pltf. had been in general use for a long time & had been adopted by pltf.:—*Held:* in the circumstances there was a sufficient offer of an option to render the contract contained in the consignment note reasonable within 1854 Act.

(2) Where a railway co. charge alternative rates for conveyance of cattle or goods, the lower rate being at owner's risk, *a priori* the higher rate, if within the Parliamentary limit, is not necessarily reasonable or prohibitory.

(3) It is a question for the jury whether the higher rate is unreasonable in the sense that it is so high as to be prohibitory; the mere fact that the lower rate is so low that cattle dealers invariably avail themselves of it is not, standing alone, evidence that the higher rate is unreasonable or prohibitory.

(4) A man, who can read, who sends an agent who cannot read, to sign a document or to enter into a contract in which a document must to his knowledge be signed, cannot dispute his liability on the document so signed, on the ground that his agent could not read its contents; in such a case the principal must be taken to be in the same position as though he had signed it himself without reading it.—FOREMAN *v.* GREAT WESTERN RY. CO. (1878), 38 L. T. 851; 42 J. P. 648.

See, also, No. 382, *ante*, & *generally*, AGENCY, Vol. I., pp. 567 *et seq.*

390. Printed signature.]—Pltfs. asked defts. to send to their works a 5-ton waggon for machinery which they desired delivered from L. to R. A waggon of 3 tons capacity was sent, which broke down & the machinery was rendered useless. Pltfs. used a printed consignment form of their own, in the middle of which, after the words "goods specified below as received from," the name of their firm was printed; at the bottom, after the words "carriage paid by," their forwarding clerk wrote "B. & Co." & "pieces over 2 tons owner's risk," & defts.' carman signed pltfs.' delivery book. The ordinary rate charged for carriage from L. to R. was 22*s.* 2*d.* per ton, & the reduced rate for owner's risk 19*s.* 2*d.* Defts. in 1903 sent out notices to traders, including, as they alleged, pltfs., that though they used their own forms with owner's risk put on them defts. would only carry at owner's risk on the conditions set out in their standard consignment forms enclosing copies under which they were only to be liable for wilful misconduct. The clerk who wrote in "B. & Co." understood that pltfs. by owner's risk got the reduced rate, & that defts. claimed only to be liable for wilful misconduct. On an action to render defts. liable as common carriers:—*Held:* (1) there was a special contract within 1854 Act, s. 7, the printed name of the firm being in the circumstances a signature within that sect.; (2) the terms of the conditions were that defts. were only liable for wilful misconduct, which was understood by pltfs.; (3) those conditions were just & reasonable within the sect., as a fair alternative was open to pltfs., who preferred to it the owner's risk conditions, & none the less because all liability except for wilful misconduct was excluded as a part of such conditions; (4) there being no will on the part of defts.' servants to do any act which they knew to be wrong, there was no wilful misconduct, & therefore defts. were not liable for the damage caused.—BUCKTON (JOSHUA), & Co., LTD. *v.* LONDON & NORTH WESTERN RY. (1917), 87 L. J. K. B. 234; 117 L. T. 556; 34 T. L. R. 119.

Annotation:—As to (1) **Foll.** Wade *v.* L. & N. W. Ry., [1921] 1 K. B. 582.

391. —— **At top of consignment note.**]—Pltfs. delivered to defts. a quantity of steel bars for conveyance from B. to consignees at E. Pltfs.' name was printed at the top of the consignment note, which was pltfs.' own form, & in the body of the document were the words "at owner's

Sect. 2.—By statute: Sub-sect. 2, C. (b) & (c), i., ii. & iii.]

risk." Defts. had some time previously sent to their customers, including pltfs., notices referring to defts.' two forms of consignment note—namely, "Owner's risk" consignment note, & "Company's risk" consignment note. One of the conditions on defts.' "Owner's risk" note was that the co. should not be liable for the loss of goods unless a claim was made in writing within fourteen days. The goods were not delivered to the consignees, but no claim was made within the time specified :—*Held :* (1) the condition was just & reasonable ; (2) the effect of the words "at owner's risk" was to incorporate the co.'s "owner's risk" consignment note, & the condition as to notice of claim formed part of the special contract & was binding upon pltfs. ; (3) as the evidence showed that pltfs.' signature appeared on the consignment note in order to authenticate it, it was immaterial that it was printed at the top & not at the foot of the document.—WADE & Co. *v.* LONDON & NORTH WESTERN RY. Co., [1921] 1 K. B. 582 ; 90 L. J. K. B. 593 ; 125 L. T. 166 ; 37 T. L. R. 81, D. C.

(c) *What is Just and Reasonable.*

i. *In General.*

392. Question of law.]—(1) 1854 Act, s. 7, does not prevent a railway co. from making a special contract as to the terms upon which they will carry goods, provided such contract be just & reasonable, & signed by the party sending the goods ; it is for the ct. to say, upon the whole matters brought before them, whether or not the condition or special contract is just & reasonable.

(2) A condition, that the co. will not be accountable for the loss, detention, or damage of any package insufficiently or improperly packed :—*Held :* unjust & unreasonable.

(3) *Semble :* a condition that no claim for damage will be allowed, unless made within three days after the delivery of the goods, nor for loss, unless made within three days of the time that they should be delivered, is just & reasonable.

(4) A condition, that, in the case of goods conveyed at special or mileage rate, the co. will not be responsible for any loss or damage, however caused, is just & reasonable.—SIMONS *v.* GREAT WESTERN RY. Co. (1856), 18 C. B. 805 ; 26 L. J. C. P. 25 ; 4 W. R. 651 ; 139 E. R. 1588 ; *subsequent proceedings* (1857), 2 C. B. N. S. 620.

Annotations :—As to (1) **Apprvd.** McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327 ; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. **Consd.** Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 473. **Refd.** Harrison *v.* L. B. & S. C. Ry. (1862), 2 B. & S. 152 ; Cohen *v.* G. E. Ry. (1876), 45 L. J. Q. B. 298 ; Wilkinson *v.* L. & Y. Ry., [1907] 2 K. B. 222. *As to* (2) **Consd.** Garton *v.* Bristol & Exeter Ry. (1861), 1 B. & S. 112. *As to* (4) **Apld.** McManus *v.* L. & Y. Ry. (1858), 2 H. & N. 693. **Expld.** Brown *v.* M. S. & L. Ry. (1882), 10 Q. B. D. 250. **Apprvd.** M. S. & L. Ry. *v.* Brown (1883), 8 App. Cas. 703. **Refd.** Harrison *v.* L. B. & S. C. Ry. (1860), 2 B. & S. 122 ; D'Arc *v.* L. & N. W. Ry. (1874), L. R. 9 C. P. 325.

393. —— Onus of proof.]—PEEK *v.* NORTH STAFFORDSHIRE RY. Co., No. 381, *ante*.

394. ——.]—(1) Conditions annexed by a railway co. to their "cattle tickets," that the co. are to be free from all risk & responsibility with respect to any loss or damage arising in the loading or unloading, or injury in the transit from any cause whatever, it being agreed that the animals are to be carried at the owner's risk, & that the owner of the cattle is to see to the efficiency of the waggon before his stock is placed therein, complaint to be made in writing to the co.'s officer before the waggon leaves the station, are neither just nor reasonable.

(2) A particular contract, no matter in what circumstances it may be made, may be reviewed by a judge before whom it comes, who is to say whether it is reasonable or not (BRAMWELL, B.).—GREGORY *v.* WEST MIDLAND RY. Co. (1864), 2 H. & C. 944 ; 3 New Rep. 575 ; 33 L. J. Ex. 155 ; 10 L. T. 38 ; 10 Jur. N. S. 243 ; 12 W. R. 528 ; 159 E. R. 391.

Annotation :—As to (1) **Refd.** Rooth *v.* N. E. Ry. (1867), 15 L. T. 624.

395. ——.]—DOOLAN *v.* MIDLAND RY. Co., No. 370, *ante*.

See, also, No. 387, *ante*.

396. Unreasonableness in part.]—KIRBY *v.* GREAT WESTERN RY. Co., No. 388, *ante*.

ii. *As to Claims.*

397. Time limit.]—SIMONS *v.* GREAT WESTERN RY. Co., No. 392, *ante*.

398. ——.]—LEWIS *v.* GREAT WESTERN RY. Co., No. 387, *ante*.

399. ——.]—GARTON *v.* BRISTOL & EXETER RY. Co., No. 56, *ante*.

400. ——.]—Pltfs. delivered two casks of wine to deft. co. for carriage to the consignees. The contract contained two conditions that the co. should not be liable for loss from or damage or delay to a consignment or any part thereof unless a claim be made in writing within three days after the termination of the carriage of the consignment, & that the co. should not be liable for non-delivery of a consignment unless a claim was made in writing within fourteen days after its receipt by the co. As a result of the negligence of defts.' servants at the place of delivery, one of the casks fell & the wine was lost. Pltfs. did not make a claim in accordance with the contract within the time stipulated in the conditions :—*Held :* the conditions were reasonable, &, as pltfs. had not observed them by making a claim within the time stipulated, they were not entitled to recover damages.—O'KEEFE *v.* GREAT WESTERN RY. Co. (1920), 90 L. J. Q. B. 155 ; 123 L. T. 269.

401. ——.]—WADE & Co. *v.* LONDON & NORTH WESTERN RY. Co., No. 391, *ante*.

iii. *As to Loss or Damage.*

402. However caused—Animals—Loss by negligence of carrier.]—(1) A condition affixed by a railway co. to its "cattle receiving notes," that the co. were to be held free from all risk or responsibility in respect of any loss or damage to cattle

PART IV. SECT. 2, SUB-SECT. 2. —C. (c) i.

f. *Lien for general balance owing.*]—A condition that goods forwarded by railway should be subject to a lien not only for their freight, but also for any general balance that might be due from the owners, consignors or consignees :—*Held :* not just & reasonable.—SCOTTISH CENTRAL RY. Co. *v.* FERGUSON & Co. (1864), 2 Macph. (Ct. of Sess.) 781.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2. —C. (c) ii.

397 i. *Time limit.*]—A condition in a contract of carriage by a ry. co. that claims in respect of carriage of goods must be made within three days after delivery is reasonable, & will be enforced.—LEONARD *v.* GREAT NORTHERN RY. Co. (1912), 46 I. L. T. 220.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2. —C. (c) iii.

g. *"From whatever cause arising"—Perishable goods.*]—A. forwarded fish to market by a ry. co. at a rate under the ordinary rate, he undertaking to free & relieve the co. from all liability for loss or damage by delay in transit, or from whatever cause arising :—*Held :* the agreement was just & reasonable within 1854 Act, s. 7.—FINLAY *v.* NORTH BRITISH RY. Co. (1870), 8 Macph. (Ct. of Sess.) 959 ; 42 Sc. Jur. 552.—**SCOT.**

arising in the loading or unloading, from suffocation, or from being trampled on, bruised, or otherwise injured in transit, from fire, or from any other cause whatsoever, is a reasonable condition within 1854 Act, s. 7.

(2) *Held:* a request note, filled up & signed by the sender, requesting trucks to be provided for the conveyance of cattle on the above condition, protected the co. from responsibility for the loss of cattle by suffocation during the journey, occasioned by the negligence of the co.'s servants.

(3) The railway co. conveyed pltf.'s cattle from N. to G. in a close van intended for salt, but to the use of which pltf.'s agent did not object. Pltf.'s drover, who had a free pass, to travel with the cattle, was permitted to travel in the guard's break; & on arriving at G. it was found that the lid of the van had, by some unexplained means, closed during the journey, by which the cattle were suffocated:—*Semble:* independently of the condition, there was no evidence of negligence on the part of the co.—PARDINGTON *v.* SOUTH WALES RY. CO. (1856), 1 H. & N. 392; 26 L. J. Ex. 105; 28 L. T. O. S. 67; 2 Jur. N. S. 1210; 5 W. R. 8; 156 E. R. 1254.

Annotations:—*As to* (1) **Refd.** McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. *As to* (2) **Folld.** White *v.* G. W. Ry. (1857), 2 C. B. N. S. 7.

403. —— ——].—(1) 1854 Act, s. 7, which makes void all notices, conditions & declarations, made & given by a railway or canal co., limiting their liability, unless the ct. or the judge trying the cause may adjudge them to be just & reasonable, extends to cases where a special contract has been signed in conformity with the subsequent provision in the statute.

Pltf. brought three horses to the cattle station of defts.' railway at L., to be forwarded by a cattle truck to Y. Defts.' servant provided a truck for the purpose, which to all external appearance, & so far as the servant knew, was sufficient for the purpose. Pltf. signed a ticket which contained the following memorandum:—"This ticket is issued subject to the owners undertaking all risks of conveyance, loading & unloading whatsoever, as the co. will not be responsible for an injury or damage, howsoever caused, occurring to livestock of any description travelling upon the railway or in their vehicles." Twopence per mile was charged for horses laden at the cattle station. Horses so laden were forwarded in open trucks by a cattle or luggage train. At the passenger station horses were taken at the rate of fourpence a horse per mile. Horses laden at that station were forwarded in horse boxes by the trains departing from the passenger station, usually passenger trains. The tickets issued by the co. for horses forwarded by the passenger trains were similar to that signed by pltf. The truck proved to be insufficient for the carriage of the horses, & a hole was made in it on the journey, by which the horses were injured:—*Held:* (2) the condition that the co. "would not be responsible for any injury or damage, howsoever caused," was not just & reasonable, & was void; (3) it did not protect defts. from liability in respect of the defect in the truck.—M'MANUS *v.* LANCASHIRE & YORKSHIRE RY. CO. (1859), 4 H. & N. 327; 28 L. J. Ex. 353; 33 L. T. O. S. 259; 24 J. P. 4; 5 Jur. N. S. 651; 7 W. R. 547; 157 E. R. 865, Ex. Ch.

Annotations:—*As to* (1) **Refd.** Cohen *v.* G. E. Ry. (1876), 45 L. J. Q. B. 298. *As to* (1) & (2) **Folld.** Beal *v.* South Devon Ry. (1860), 5 H. & N. 875; M'Cance *v.* L. & N. W. Ry. (1861), 7 H. & N. 477. **Consd.** Harrison *v.* L. B. & S. C. Ry. (1862), 2 B. & S. 152; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. **Refd.** Lewis *v.* G. W. Ry. (1860), 29 L. J. Ex. 425. *As to* (2) **Folld.** Gregory *v.* West Mid. Ry. (1864), 2 H. & C. 944. **Refd.** Rooth *v.* N. E. Ry. (1867), 15 L. T. 624; McCawley *v.* Furness Ry. (1872), L. R. 8 Q. B. 57. *Generally:* **Mentd.** Hodgman *v.* West Mid. Ry. (1864), 5 B. & S. 173; Kendall *v.* L. & S. W. Ry. (1872), L. R. 7 Exch. 373; Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515.

404. —— ——.]—GREGORY *v.* WEST MIDLAND RY. CO., No. 394, *ante*.

405. —— —— **Owner's risk.**]—M'CANCE *v.* LONDON & NORTH WESTERN RY. CO., No. 134, *ante*.

406. —— —— **Carriage on land & sea.**]—DOOLAN *v.* MIDLAND RY. CO., No. 370, *ante*.

407. —— **Valuable goods—No liability unless insured.**]—PEEK *v.* NORTH STAFFORDSHIRE RY. CO., No. 381, *ante*.

408. —— **Places beyond limits.**]—ALDRIDGE *v.* GREAT WESTERN RY. CO., No. 382, *ante*.

See, further, ANIMALS, Vol. II., pp. 278 *et seq.*

409. —— **Unless value declared—Limitation of value.**]—A railway co. received, for conveyance by rail, a mare, subject to a condition, signed by the owner, which, *inter alia*, provided they were not to be liable in any case for loss or damage to any horse or other animal above the value of £40, unless a declaration of its value, signed by the owner or his agent at the time of booking was given to them, the owner being bound by such declaration, & the co. not being in any event liable to a greater amount than the value so declared:—*Held:* such condition was reasonable & binding on the owner, having been signed by him.—STEVENS *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1877), 42 J. P. 70.

410. —— **Empties — Gratuitous bailees.**]—ALDRIDGE *v.* GREAT WESTERN RY. CO., No. 382, *ante*.

411. By delay—Loss of market.]—In an action against a railway co. for negligence in carrying goods delivered to them as common carriers, whereby pltf. lost a market for them, the first plea traversed the delivery to, & acceptance of the goods by, defts., to be carried by them as common carriers; & other pleas averred that the goods were delivered on special conditions. Pltf. had delivered a quantity of cheese at a station of defts. railway, to be carried to B. for the purpose of being sold at a certain market, & signed a note containing a condition that the co. should not be liable for loss of market or other delay arising from detention:—*Held:* (1) defts. had not received the cheese to be carried by them as common carriers; (2) the condition was reasonable within 1854 Act, s. 7.—WHITE *v.* GREAT WESTERN RY. CO. (1857), 2 C. B. N. S. 7; 26 L. J. C. P. 158; 29 L. T. O. S. 93; 5 W. R. 488; 140 E. R. 312.

Annotation:—*As to* (2) **Refd.** Garton *v.* Bristol & Exeter Ry. (1861), 1 B. & S. 112.

412. —— —— **Perishable goods.**]—A consignment note signed by the party sending meat by a railway co. contained a condition as to meat & other perishable articles, in which it was stated that the co. would not be responsible for any damage to any such articles, on the ground of loss of market, provided the same was delivered within a reasonable time after the arrival thereof at the station whence delivery was made:—*Held:* the condition was reasonable.—LORD *v.* MIDLAND RY. CO. (1867), L. R. 2 C. P. 339; 36 L. J. C. P. 170; 15 L. T. 576; 15 W. R. 405.

Annotation:—**Refd.** Duckham *v.* G. W. Ry. (1899), 80 L. T. 774.

413. —— —— **Alternative rates.**]—DUCKHAM BROTHERS *v.* GREAT WESTERN RY. CO., No. 372, *ante*.

See, Nos. 421, 428, *post*, & *further*, ANIMALS, Vol. II., p. 279.

Sect. 2.—By statute: Sub-sect. 2, C. (c), iii. & iv.]

414. Due to faulty packing.]—SIMONS *v.* GREAT WESTERN RY. CO., No. 392, *ante*.

415. ——.]—GARTON *v.* BRISTOL & EXETER RY. CO., No. 56, *ante*.

416. ——.]—Pltf. had for many years consigned to defts. for carriage wooden cisterns lined with lead, which were fitted with a crossbar, & had attached a lever which projected above the edge of the cistern; they were carried by defts. unpacked at the ordinary rate of carriage & at co.'s risk. Many of the crossbars & levers having been broken in transit, owing, as defts. alleged, to their brittle nature & to their not being protected by packing, the defts. gave notice in 1907 that they were not, & would not be carriers of certain specified damageable goods, including cisterns, except when they were properly protected by packing. After the notice pltf. continued to consign cisterns for carriage by defts., but defts. required him to sign at the time of sending a special consignment note for damageable goods when not protected by packing. The note contained in substance a notice that defts. would not carry the specified damageable goods, a list of which was given, at co.'s risk except when properly protected by packing, but that the sender might consign them not so protected if he agreed to relieve defts. from liability for loss or injury, except on proof that it arose from wilful misconduct on the part of their servants. Then followed a form of agreement by which the sender agreed to the above terms & also to the conditions on the back of the consignment note, one of which conditions was that the co. would not be liable for any loss of, or damage to, or delay of goods resulting from their not being properly protected by packing. There was no alternative rate of carriage. Pltf. having sued to recover damages for injury done to cisterns in course of transit:—*Held:* (1) the goods were carried by defts. by virtue of their statutory obligation under 1854 Act, s. 2, to afford reasonable facilities for the carriage of traffic; (2) the requirement of packing was not a refusal of reasonable facilities; (3) the condition imposed on the carriage of unpacked articles in the signed consignment note was a just & reasonable condition within s. 7 of the Act.—SUTCLIFFE *v.* GREAT WESTERN RY. CO., [1910] 1 K. B. 478; 79 L. J. K. B. 437; 101 L. T. 930; 26 T. L. R. 205; 54 Sol. Jo. 198, C. A.

Annotations:—As to (2) **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324. *Generally* **Refd.** Smith *v.* L. & N. W. Ry. (1918), 88 L. J. K. B. 742.

See, now, 1921 Act, ss. 42, 44 (2) (3).

Alternative rates.]—*See, generally*, Sub-sect. 2, C. (c) iv., *post*.

417. Goods incorrectly described.]—LEWIS *v.* GREAT WESTERN RY. CO., No. 387, *ante*.

418. Goods improperly addressed—Passenger's luggage.]—Pltf. was a season ticket holder on defts.' line from B. to K. under a special contract, by which he undertook to abide by all the rules, regulations & bye-laws of defts. One of such regulations was that defts. would not be responsible for any passenger's luggage unless fully & properly addressed with the name & destination of the owner. Pltf. having with him at B. a bag which was not so addressed saw it labelled for K. by one of defts.' servants; he left the train at C. an intermediate station, & proceeded to K. by a subsequent train; on his arrival at K. his bag was missing. There was no evidence that the bag ever reached K.:—*Held:* (1) the regulation was not a just & reasonable condition within 1854 Act, s. 7, & could not be enforced against pltf.; (2) there was evidence of negligence on the part of defts. to go to the jury.

(3) *Qu.:* whether the liability of defts. in respect of the portion of the journey from C. to K. was that of common carriers or merely of gratuitous bailees.—CUTLER *v.* NORTH LONDON RY. CO. (1887), 19 Q. B. D. 64; 56 L. J. Q. B. 648; 56 L. T. 639; 51 J. P. 774; 35 W. R. 575, D. C.

419. Negligence—Carrier not liable for—Absence of bonâ fide alternative rates.]—A railway co. contracted to carry a cargo by one of their steamers under a bill of lading, which contained a clause excepting them from liability for negligence on the part of any of their servants:—*Held:* in the absence of a *bonâ fide* alternative rate for the carriage of the cargo, such a condition was void as being unreasonable within 1854 Act, s. 7.—RIGGALL & SON *v.* GREAT CENTRAL RY. CO. (1909), 101 L. T. 392; 25 T. L. R. 754; 53 Sol. Jo. 716; 11 Asp. M. L. C. 303; 14 Com. Cas. 259.

Annotation:—**Folld.** Western Electric Co. *v.* G. E. Ry., [1913] 3 K. B. 15.

420. —— —— ——.]—JENKINS *v.* GREAT CENTRAL RY., No. 375, *ante*.

See, also, ANIMALS, Vol. II., p. 279.

Alternative rates.]—*See, generally*, Sub-sect. 2, C. (c), iv., *post*.

421. Gross neglect or fraud—Loss of market—Perishable goods.]—By the terms of a special contract between a fishmonger & a railway co. for the conveyance of fish, the co. was declared to be exempt from all liability for loss or injury arising from delay or detention of trains, or from any cause other than gross neglect or fraud:—*Held:* the condition was not unreasonable, under 1854 Act, s. 7, & the co. were not liable for damages in consequence of a delay in the arrival of a train, whereby the fish was too late for the market, there being no proof that the delay arose from gross negligence.—BEAL *v.* SOUTH DEVON RY. CO. (1864), 3 H. & C. 337; 11 L. T. 184; 12 W. R. 1115; 159 E. R. 560, Ex. Ch.; *affg.* (1860), 5 H. & N. 875.

Annotations:—**Distd.** Garton *v.* Bristol & Exeter Ry. (1861), 7 Jur. N. S. 1234. **Consd.** M. S. & L. Ry. *v.* Brown (1883), 8 App. Cas. 703. **Refd.** Peck *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Lord *v.* Mid. Ry. (1867), L. R. 2 C. P. 339; Booth *v.* N. E. Ry. (1867), 15 L. T. 621; Giblin *v.* McMullen (1868), L. R. 2 P. C. 317; Dickson *v.* G. N. Ry. (1886), 18 Q. B. D. 176; Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478. **Mentd.** Grill *v.* General Iron Screw Collier Co. (1866), L. R. 1 C. P. 600.

422. Wilful misconduct.]—BUCKTON (JOSHUA) & CO., Ltd. *v.* LONDON & NORTH WESTERN RY., No. 390, *ante*.

See, also, No. 426, *post*, & Sub-sect. 2, C. (d) ii., *post*.

iv. *Effect of Alternative Rate.*

See 1921 Act, s. 44.

423. General rule.]—SIMONS *v.* GREAT WESTERN RY. CO., No. 392, *ante*.

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h. *Carriage over several systems—Receiving carrier not liable for negligence of forwarding carrier.*] — A condition exempting defts. who had contracted to carry goods "through," partly by railway & partly by sea, from liability in respect of the negligence of the captain & crew of a steamer, owned & worked by a S.S. Co. who had made arrangements with defts. for through booking: — *Held:* unreasonable.—MOORE *v.* MIDLAND RY. CO. (1875), L. R. 9 C. L. 20.—IR.

422 i. *Wilful misconduct—Carriage over several systems.*]—Where there is a through booking of goods which necessitates their being carried over lines owned by different cos., a condition limiting the liability of the contracting co. to wilful misconduct of its servants on its own line is valid.—MAHONY *v.* WATERFORD, LIMERICK & WESTERN RY. CO., [1900] 2 I. R. 273; 33 I. L. T. 112.—IR.

424. Makes risk condition reasonable.]—Horses sent from S. by defts.' railway to W., to be delivered there, were sent to a station called H. station; if booked through to M., as they might be, they were sent to B., a mile beyond W., to meet a train on another railway, to be carried to M. Horses might be sent either by horse-boxes & passenger train, when the co. charged more money & took more risk, or by cattle-trucks & goods train, when they charged less & took less risk.

Pltf. went to the station-master at S., & required twelve horses to be carried to M., by the latter method; the station-master told him he could not book through, but would telegraph to W. to have the horses sent on to meet the train on the other railway. Pltf. paid the fare to W., & signed a contract, on which was the direction, "S. to W.," & a declaration that the horses were carried at owner's risk. The trucks were directed to W.; the horses were taken to H. station, & it was clear that if they ought, under the contract, to have been carried to B., there was a delay of twenty-four hours, & consequent injury to the horses:—*Held:* (1) there was some evidence that W. meant B.; (2) as there was an alternative method of carriage, the condition as to risk was reasonable; (3) the condition did not apply to a failure to carry in a reasonable time.

(4) Pltf., in order to prove a contract to carry six horses from S. to M., relied on a conversation at M. with the station-master there, in which he, pltf., said he was going to send the horses, & the station-master said he would telegraph about them; on the fact of the arrival of the horses; & on the station-master conducting himself as if there was such a contract; but pltf. did not put in any written contract, though it was clear there was one:—*Held:* there was no evidence to go to the jury of a contract to carry the horses.—ROBINSON *v.* GREAT WESTERN RY. CO. (1865), Har. & Ruth. 97; 35 L. J. C. P. 123; 14 W. R. 206.

Annotations:—As to (3) **Folld.** D'Arc *v.* L. & N. W. Ry. (1874), L. R. 9 C. P. 325. **Consd.** Lewis *v.* G. W. Ry. (1877), 3 Q. B. D. 195. *As to* (4) **Refd.** Malpas *v.* L. & S. W. Ry. (1866), 35 L. J. C. P. 166.

425. —— Liability limited to negligence.]—A railway co. entered into a special contract by which they agreed to carry cattle at a lower rate on condition that they should be liable for negligence only:—*Held:* (1) this was not an unreasonable condition within 1854 Act, s. 7; (2) the condition took the co. out of the category of common law carriers & accordingly in an action against the co. for damage to the cattle during the journey, the *onus* of proving negligence was on pltf.—HARRIS *v.* MIDLAND RY. CO. (1876), 25 W. R. 63.

Annotation:—As to (2) **Consd.** Smith *v.* Mid. Ry. (1887), 57 L. T. 813.

426. ——.]—Pltf., under a contract in writing signed by his agent, delivered to defts. certain cheeses to be carried from L. to S. at owner's risk. As pltf. knew, defts. had two rates of carriage; a higher rate, when they took the ordinary liability of carriers, & a lower, when they were relieved of all liability except that arising from the wilful misconduct of their servants. In using the words owner's risk pltf. intended that the cheeses should be carried at the lower rate, & subject to the conditions restricting defts.' liability. Defts.' servants packed the cheeses in such a manner that during their transit upon defts.' railway they were damaged but defts.' servants did not know that damage would result from the mode in which the cheeses were packed:—*Held:* (1) as defts. carried at alternative rates, the condition excepting them from liability when carrying at the lower rate was just & reasonable; (2) the injury to the cheeses had not arisen from the wilful misconduct of their servants.—LEWIS *v.* GREAT WESTERN RY. CO. (1877), 3 Q. B. D. 195; 47 L. J. Q. B. 131; 37 L. T. 774; 26 W. R. 255, C. A.

Annotations:—As to (1) **Consd.** Foreman *v.* G. W. Ry. (1878), 42 J. P. 648; Ashenden *v.* L. B. & S. C. Ry. (1880), 5 Ex. D. 190; Brown *v.* M. S. & L. Ry. (1882), 10 Q. B. D. 250. **Refd.** M. S. & L. Ry. *v.* Brown (1883), 8 App. Cas. 703; Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478. *As to* (2) **Consd.** Stevens *v.* G. W. Ry. (1885), 52 L. T. 324; Bennett *v.* Stone, [1902] 1 Ch. 226; Cordey *v.* Cardiff Pure Ice & Cold Storage Co. (1903), 19 T. L. R. 256. **Refd.** G. W. Ry. *v.* Lowenfeld (1892), 8 T. L. R. 230; Pontifex & Wood *v.* Hartley (1893), 62 L. J. Q. B. 196; *Re* London Corpn. & Tubbs' Contract, [1894] 2 Ch. 524; Foster *v.* G. W. Ry. (1904), 73 L. J. K. B. 811; Forder *v.* G. W. Ry., [1905] 2 K. B. 532; Sheppard *v.* Mid. Ry. (1915), 85 L. J. K. B. 283; Buckton *v.* L. & N. W. Ry. (1916), 87 L. J. K. B. 234.

427. —— Question for jury.]—FOREMAN *v.* GREAT WESTERN RY. CO., No. 389, *ante*.

428. ——.]—A fish merchant delivered fish to a railway co. to carry upon a signed contract relieving the co. as to all fish delivered by him from all liability for loss or damage by delay in transit or from whatever other cause arising in consideration of the rates being one-fifth lower than where no such undertaking was granted; the contract to endure for five years. The servants of the co. accepted the fish although from pressure of business they could not carry it in time for the intended market, & the fish lost the market:—*Held:* (1) upon the facts the merchant had a *bonâ fide* option to send fish at a reasonable rate with liability on the co. as common carriers or at the lower rate upon the terms of the contract; (2) the contract was in point of fact just & reasonable within 1854 Act, s. 7, & covered the delay; (3) the co. were not liable for the loss.—MANCHESTER, SHEFFIELD, & LINCOLNSHIRE RY. CO. *v.* BROWN (1883), 8 App. Cas. 703; 53 L. J. Q. B. 124; 50 L. T. 281; 48 J. P. 388; 32 W. R. 207, H. L.; *revsg.* S. C. *sub nom.* BROWN *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1882), 10 Q. B. D. 250, C. A.

Annotations:—As to (1) **Refd.** Dickson *v.* G. N. Ry. (1886), 18 Q. B. D. 176; G. W. Ry. *v.* McCarthy (1887), 12 App. Cas. 218; Hirschel & Meyer *v.* G. E. Ry. (1906), 22 T. L. R. 661; Riggall *v.* G. C. Ry. (1909), 101 L. T. 392; Western Electric Co. *v.* G. E. Ry. (1914), 30 T. L. R. 416; Pyman S.S. Co. *v.* Hull & Barnsley Ry., [1914] 2 K. B. 788; Buckton *v.* L. & N. W. Ry. (1917), 117 L. T. 556. *As to* (3) **Refd.** Cordey *v.* Cardiff Pure Ice Co. (1903), 88 L. T. 192; Travers *v.* Cooper, [1915] 1 K. B. 73.

See, also, No. 372, *ante*.

429. ——.]—CUSACK *v.* LONDON & NORTH WESTERN RY. CO., No. 795, *post*.

430. —— Knowledge of rates by consignor.]—Cattle were carried by a railway co. under a special contract signed by the consignor which stated that the co. had two rates for the conveyance of cattle; one the ordinary rate when they took the ordinary liability of the carrier; the other a reduced rate; that these cattle were to be carried at the reduced rate, the co. to be relieved from all liability in case of damage or delay, except upon proof that such loss, detention or injury arose from wilful misconduct on the part of the co.'s servants. A notice was posted up in the co.'s office which stated that the co. had two rates, namely, the owner's risk rate upon the terms above given, & the co.'s risk rate,

424 i. *Makes condition reasonable—Liability limited to wilful misconduct.*]—A ry. co. contracted specially to carry at a reduced rate, when the sender relieved them of all liability for loss, or damage, or delay, except upon proof that such loss, or damage, or delay arose from wilful misconduct on the part of their servants; the higher rate was not prohibitive or excessive:—*Held:* the alternative afforded to the public was just & reasonable.—GALLAGHER *v.* GREAT WESTERN RY. CO. (1874), I. R. 8 C. L. 326.—IR.

Sect. 2.—By statute: Sub-sect. 2, C. (c), iv., (d), i. & ii.]

which was 10 per cent. above the owner's risk rate, at which the co. undertook the ordinary risk of carriers in respect of rail transit, limited for neat cattle to £15, for pigs & sheep to £2, but did not admit liability for any animals dying of disease or arriving at destination in such condition as to be able to walk from the truck. The consignor had never seen any rate but the owner's risk rate. After two trials cattle had ceased to go at the higher rate. The higher rate was less than the maximum allowed by the co.'s Acts. No list of rates was exhibited.—The cattle having been injured through the negligence, but not the wilful misconduct, of the co.'s servants :—*Held :* (1) the notice of the higher rate was not invalidated by the limitation as to value, nor by the fact that it did not mention the terms upon which cattle could be carried without limitation of value as provided by 1854 Act, s. 7 ; (2) the clause as to not admitting liability meant only that the liability must be established by proof, & so construed the condition was just & reasonable within s. 7 ; (3) the consignor might have known & must be taken to have known the terms of the higher rate, and had the offer of a just & reasonable alternative ; (4) the co. were therefore protected by the special contract.—GREAT WESTERN RY. CO. *v.* MCCARTHY (1887), 12 App. Cas. 218 ; 56 L. J. P. C. 33 ; 56 L. T. 582 ; 51 J. P. 532 ; 35 W. R. 429 ; 3 T. L. R. 374, H. L.

Annotations :—As to (3) **Consd.** Duckham *v.* G. W. Ry. (1899), 80 L. T. 774. **Refd.** Rickett, Smith *v.* Mid. Ry., Derbyshire Silkstone Coal Co. *v.* Mid. Ry., Grassmoor Co. *v.* Mid. Ry., [1896] 1 Q. B. 260 ; Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478.

431. —— Liability limited to wilful misconduct.]—BUCKTON (J.) & CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO., No. 390, *ante*.

See, also, Nos. 426, 430, *ante*.

432. Transit partly by sea—No alternative rate for sea transit—Liability for negligence.]—Defts. owned steamers trading between A. & H. ; they also owned a line of railway from H. to W. Their special Act, which empowered them to maintain & work the steamers, applied 1854 Act to the steamers & traffic carried thereon. Pltfs. were in the habit of having goods consigned to them from A. to W. *via* H. by defts.' steamers & railway, & had signed an agreement requesting that all goods for which there were alternative rates delivered by them on their account at any of defts.' stations for carriage by railway might be carried at the reduced rates, & in consideration thereof pltfs. agreed to relieve defts. from all liability from loss, damages, misdelivery, delay, or detention except upon proof that such loss, etc., arose from wilful misconduct on the part of defts.' servants. Goods of pltfs. were shipped on defts.' steamer at A. for delivery at W. *via* H. at the reduced rate under a bill of lading which had "owner's risk" upon it, & which exempted defts. from liability for (*inter alia*) all accidents, loss, & damage whatsoever from any act, neglect, or default of the pilot, master, officers, engineers, or crew in the management of navigation of the ship or otherwise. The goods were damaged during the land journey between H. & W. owing to the negligence of defts.' servants. There was a higher rate for goods of the same class from A. to W. under which the goods would have been carried so far as the land portion of the journey was concerned, at defts.' risk as common carriers, but pltfs. would have to accept a bill of lading for the sea portion of the journey containing the same negligence clause as that in the bill of lading under which the goods were actually carried :—*Held :* there was evidence to support a finding that, as it was one journey from A. to W., & as during the sea portion of that journey there was no alternative rate under which pltfs. could have had the goods carried at defts.' risk as common carriers, the condition relieving defts. from liability for negligence was not just & reasonable within 1854 Act, s. 7, & defts. were liable for the damage to the goods.—WESTERN ELECTRIC CO., LTD. *v.* GREAT EASTERN RY. CO., [1914] 3 K. B. 554 ; 83 L. J. K. B. 1326 ; 111 L. T. 29 ; 30 T. L. R. 416 ; 19 Com. Cas. 301, C. A.

See, also, Nos. 372, 421, *ante*.

(*d*) *Particular Conditions.*

i. *Owner's Risk.*

433. Whether delay included—Contract to deliver in reasonable time—Injury.]—ROBINSON *v.* GREAT WESTERN RY. CO., No. 424, *ante*.

434. ——.]—Goods contained in several packages were delivered to a railway co. at C. to be carried to H., under a contract note which expressed that they were to be carried at owner's risk. Several of the packages were delayed, through the negligence of the co., for, as the jury found, an unreasonable time, & their contents were in consequence damaged :—*Held :* the special terms of the contract did not absolve the co. from responsibility for these consequences, notwithstanding that the goods were to be carried at a lower rate than the ordinary rate.—D'ARC *v.* LONDON & NORTH WESTERN RY. CO. (1874), L. R. 9 C. P. 325 ; 30 L. T. 763 ; 38 J. P. 710 ; 22 W. R. 919.

435. ——.]—Clover seed consigned to pltf. by defts.' railway was mis-delivered by defts., & pltfs. did not receive it till after a fortnight's delay, too late for the season's market. The goods had been forwarded at defts.' lower rate of charge, & therefore by special contract solely at the risk of the sender, except that the co. would be responsible for any wilful act or wilful default of the co. or their servants if proved, for fraud or theft by their servants, & for collision of trains conveying the goods within the co.'s limits :—*Held :* in the circumstances there was nothing in the special contract to free the defts. from their ordinary liability as carriers.—GOLDSMITH *v.* GREAT EASTERN RY. CO. (1881), 44 L. T. 181 ; 29 W. R. 651, D. C.

Annotation :—**Distd.** Stevens *v.* G. W. Ry. (1885), 52 L. T. 324.

See, also, Nos. 449–453, *post*.

436. Whether negligence included.]—(1) Defts., carriers in India, received pltf.'s goods under a contract, by which the baggage of certain troops, including pltf.'s goods, was to remain in charge of a guard provided by the troops, the co. accepting no responsibility :—*Held :* the stipulation did not exempt defts. from liability for a loss arising wholly from their own negligence.

(2) Pltf. & his goods were carried by defts. under a contract with the Indian Govt., & whilst being so carried his goods were destroyed by defts.' negligence :—*Held :* although pltf. could not sue defts. for non-performance of their duty as carriers, he was entitled to sue for an injury done to his property through their negligence whilst the goods were in their custody.—MARTIN *v.* GREAT INDIA PENINSULAR RY. CO. (1867), L. R. 3 Exch. 9 ; 37 L. J. Ex. 27 ; 17 L. T. 349.

Annotations :—As to (1) **Distd.** Taubman *v.* Pacific Steam Navigation Co. (1872), 26 L. T. 704. **Refd.** D'Arc *v.* L. & N. W. Ry. (1874), L. R. 9 C. P. 325. *Generally* **Mentd.** *Re* Lancashire & Cheshire Coal Assocn. & L. & N. W. Ry. (1907), 76 L. J. K. B. 1020.

437. ——.]—D'ARC *v.* LONDON & NORTH WESTERN RY. CO., No. 434, *ante*.

438. —— Carriage over several systems.]—Where two or more railway cos. agree together to carry through goods at a special rate in consideration that the goods are conveyed at owner's risk on their respective lines, & goods are lost or damaged, the sender has no cause of action, although the loss or damage to the goods occurred through the negligence of one of the cos. other than that to which the sender or his agent consigned the goods on these terms.—BARRATT *v.* GREAT NORTHERN RY. CO. (1904), 52 W. R. 479; 20 T. L. R. 175; 48 Sol. Jo. 208, D. C.

439. —— Carriage of furs from abroad.]—HIRSCHEL & MEYER *v.* GREAT EASTERN RY. CO., No. 341, *ante*.

440. ——.]—Pltfs. requested defts., a railway co., to send a van for a milling machine weighing 18 cwt., having a steel base one inch thick, & to take it to a station & forward it by rail. Defts. sent a van for the machine & pltfs.' servant handed to the carman a form of consignment note, which contained no restrictions exempting defts. from any liability for damage to the machine during transit. The carman requested pltfs.' servant to write "O. R." (owner's risk) upon the note tendered by him & to sign his initials. This he did. The machine was then taken away in defts.' van, & was afterwards found damaged at the station, the base being cracked. The evidence was that this must have been caused by a blow while the machine was in defts.' custody:—*Held:* though pltfs. took the ordinary risks of transit, defts. remained liable for negligence, &, as there was *primâ facie* evidence of negligence, the *onus* lay on defts. to prove that there was no negligence, & pltfs. were entitled to damages.—UNITED MACHINE TOOL CO. *v.* GREAT WESTERN RY. CO. (1914), 30 T. L. R. 312, D. C.

441. Incorporated by sender's form of consignment note.]—WADE & CO. *v.* LONDON & NORTH WESTERN RY. CO., No. 391, *ante*.

See, also, Nos. 134, 367, 372, 373, 376, 394, & cases in Sub-sect. 2, C. (*c*) iv., *ante*, & *generally* Part X., Sect. 7, *post*.

ii. *Wilful Misconduct.*

442. General rule.]—A parcel of sheepskins which had been delivered by pltf. to defts. for carriage from P. to W. arrived at their destination in a damaged condition owing to their having been packed in a truck with wood chips, which had become entangled in the wool. Pltf. wrote to the station-master at W. complaining of the damage, & asking him to communicate with the authorities at P. to prevent a recurrence of the injury, as further consignments of sheepskins were expected to be sent off thence shortly. He received a reply saying, "I have asked our P. people not to use the kind of litter you object to in the future." Subsequently, pltf. sent a second parcel of sheepskins from P. to W. on the terms of an "owner's risk" note, whereby he relieved defts. from liability for damage except upon proof that it arose from wilful misconduct on the part of defts.' servants. This parcel, like the first, arrived damaged from being put into trucks containing wood chips. In an action to recover for the damage to the second parcel:—*Held:* (1) in the absence of proof that the persons who actually loaded the goods in the trucks or who superintended their loading had notice that the mode of packing employed was likely to be injurious to the goods, there was no evidence of wilful misconduct on the part of the defts.' servants: the mere fact that some other official of defts. had that notice was not sufficient; (2) wilful misconduct in such a special condition means misconduct to which the will is party as contra-distinguished from accidents, & is far beyond any negligence, even gross or culpable negligence, & involves that a person wilfully misconducts himself who knows & appreciates that it is wrong conduct on his part in the existing circumstances to do, or fail, or omit to do, as the case may be, a particular thing, & yet intentionally does, or fails, or omits to do it, or persists in the act, failure, or omission regardless of consequences.—FORDER *v.* GREAT WESTERN RY. CO., [1905] 2 K. B. 532; 74 L. J. K. B. 871; 93 L. T. 344; 53 W. R. 574; 21 T. L. R. 625; 49 Sol. Jo. 597, D. C.

Annotations:—As to (1) **Distd.** Smith *v.* Mid. Ry. (1918), 88 L. J. K. B. 868. *As to* (2) **Consd.** Norris *v.* G. C. Ry. (1915), 85 L. J. K. B. 285, n.; Sheppard *v.* Mid. Ry. (1915), 85 L. J. K. B. 283. **Apld.** Buckton *v.* L. & N. W. Ry. (1917), 87 L. J. K. B. 234.

443. Loss due to stray cattle derailing train—Cattle under company's control.]—Pltf. consigned goods by defts.' railway at a reduced rate, below the ordinary rate, upon an undertaking to relieve defts. from all liability in case of damage or delay, except upon proof that such loss, detention, or injury, arose from wilful misconduct on the part of the defts.' servants. The goods were placed in a truck to be attached to a train passing the station late at night. That train brought some cattle to the station, & defts.' servants, in order to prevent the cattle from being kept in their trucks till the next day, drove them into a yard, from which they strayed upon the railway, & upset the train, thereby injuring pltf.'s goods:—*Held:* (1) the contract of carriage was reasonable; & (2) the facts proved did not constitute evidence for a jury of defts.' liability.—GLENISTER *v.* GREAT WESTERN RY. CO. (1873), 29 L. T. 423; 38 J. P. 181; *sub nom.* GREAT WESTERN RY. CO. *v.* GLENISTER, 22 W. R. 72.

Annotations:—As to (2) **Reid.** Webb *v.* G. W. Ry. (1877), 26 W. R. 111. *Generally* **Reid.** Forder *v.* G. W. Ry. (1905), 93 L. T. 344.

444. Goods sent over other system—Goods too high for other company's gauge.]—Defts., a railway co., contracted with pltfs. to carry a van at a reduced rate, on the terms that they should not be liable for damage or delay except such as was occasioned by wilful misconduct on the part of their servants. The van was to be delivered at a station outside defts.' system & on the line of another co. A delay having been occasioned by the van's having been loaded on a truck which was too high to allow of its passing under the other co.'s gauge, although it passed under that of defts.:—*Held:* there was not sufficient evidence of wilful misconduct on the part of defts.' servants to go to a jury, inasmuch as it was not proved that they knew that the truck was too high to carry the van under the other co.'s gauge.—WEBB *v.* GREAT WESTERN RY. CO. (1877), 26 W. R. 111, D. C.

445. Goods improperly packed in train by company's servants—Knowledge of packers.]—LEWIS *v.* GREAT WESTERN RY. CO., No. 387, *ante*.

446. —— ——.]—FORDER *v.* GREAT WESTERN RY. CO., No. 442, *ante*.

447. Misdelivery.]—A railway co. having carried goods from one of its stations to another, the stationmaster at the place to which they were carried, without making inquiries of the consignor, after a delay of a week, delivered the goods to a person of a name very similar to that of the person named as consignee. The contract of carriage was at a reduced tariff conditioned to exclude all liability except for wilful misconduct:—*Held:* the delivery of the goods amounted to wilful

Sect. 2.—By statute: Sub-sect. 2, C. (d), ii.]

misconduct.—HOARE *v.* GREAT WESTERN RY. Co. (1877), 37 L. T. 186; 25 W. R. 631, D. C.
Annotations:—**Distd.** Stevens *v.* G. W. Ry. (1885), 52 L. T. 324. **Consd.** Forder *v.* G. W. Ry. (1905), 74 L. J. K. B. 871. **Refd.** Goldsmith *v.* G. E. Ry. (1881), 29 W. R. 651.

448. —— Burden of proof.]—Goods consigned by pltfs. to B. were carried by a railway co. at the owner's risk rate, the contract containing the condition that the co. were not to be liable for loss, damage, or delay, except upon proof that such loss, damage, or delay arose from wilful misconduct on the part of the co.'s servants. The goods were misdelivered to another firm, & on being found were tendered to the consignees, who refused to accept them:—*Held:* in the absence of evidence on the part of pltfs. as to the cause of the misdelivery, such misdelivery did not amount to wilful misconduct so as to render defts. liable.—STEVENS *v.* GREAT WESTERN RY. Co. (1885), 52 L. T. 324; 49 J. P. 310; 1 T. L. R. 342, D. C.
Annotations:—**Refd.** Foster *v.* G. W. Ry. (1904), 73 L. J. K. B. 811; Smith *v.* G. W. Ry., [1921] 2 K. B. 237.

449. Delay in delivery—Refusal to pay charges already paid.]—Defts. charge two rates for the conveyance of goods—one where they take the ordinary liability of the carrier, & the other a reduced rate known as the "owners' risk rate," in which they make it a condition of carriage that they shall not be liable in respect of loss or detention of or injury to the goods in the receiving, forwarding, or delivery thereof, except upon proof that such loss or damage arose from wilful misconduct on the part of the co.'s servants. Pltf. delivered to defts. at W. some cattle to be carried to G. & there delivered to his agents. The cattle were consigned & the carriage prepaid at "owners' risk rate." On their arrival at G. they were unloaded & placed in cattle-pens by the defts.' servants, but in consequence of the clerk at W. having negligently omitted to enter the cattle on the consignment note as "carriage paid," defts. refused to deliver the cattle to pltf. until two days afterwards, alleging that the carriage had not been paid. In an action brought by pltf. to recover damages for the wrongful detention of the cattle:—*Held:* (1) defts. were liable, inasmuch as the condition as to "detention" did not include the case of an intentional refusal to deliver by reason of a supposed claim or lien which turned out to be unfounded.

(2) *Qu.:* whether, upon those facts, there was evidence of wilful misconduct on the part of defts.—GORDON *v.* GREAT WESTERN RY. Co. (1881), 8 Q. B. D. 44; 51 L. J. Q. B. 58; 45 L. T. 509; 46 J. P. 294; 30 W. R. 230, D. C.
Annotation:—*As to* (2) **Distd.** Spittle *v.* G. W. Ry. (1886), 2 T. L. R. 618.

450. —— Misdirection of goods.]—SPITTLE *v.* GREAT WESTERN RY. Co. (1886), 2 T. L. R. 618, C. A.

451. ——.]—MALLET *v.* GREAT EASTERN RY. Co., No. 271, *ante*.

452. ——.]—Pltf. delivered to defts. goods to be carried to their destination by a particular route upon the terms that pltf., in consideration of his being charged a reduced rate below defts.' ordinary rate, relieved defts. "from all liability for (*inter alia*) delay . . . except upon proof that such . . . delay . . . arose from wilful misconduct on the part of the co.'s servants." Defts. by mistake carried the goods past the station at which they ought to have been transferred to another train, &, on discovering their mistake & that it was then too late for the goods to be sent back to that station in time to catch that train, forwarded them by another route (which was admitted to be the best alternative) to their destination. In consequence of this, the arrival of the goods at their destination was delayed & pltf. suffered damage:—*Held:* defts. were relieved from responsibility by the terms of the contract.—FOSTER *v.* GREAT WESTERN RY. Co., [1904] 2 K. B. 306; 73 L. J. K. B. 811; 90 L. T. 779; 52 W. R. 685; 20 T. L. R. 472; 48 Sol. Jo. 459, D. C.
Annotations:—**Distd.** Gunyon *v.* S. E. & C. Ry., [1915] 2 K. B. 370; Neilson *v.* L. & N. W. Ry., [1921] 3 K. B. 213.

453. ——.]—Pltf. delivered to defts. fruit to be carried to its destination by passenger train upon the terms of a consignment note which provided that pltf., in consideration of his being charged a reduced rate below defts.' ordinary rate for the carriage of fruit by passenger train, relieved the defts. "from all liability for" (*inter alia*) "delay . . . except upon proof that such . . . delay . . . arose from wilful misconduct on the part of" defts.' servants. The fruit was sent from the departure station in a passenger train, but in the course of transit it was transferred to a goods train, in which it was carried for the rest of the journey. In consequence of this, the arrival of the fruit at its destination was delayed, & pltf. suffered damage:—*Held:* the carriage of the fruit by passenger train was of the essence of the contract, & after the fruit had been transferred to the goods train the contract was no longer being performed & the fruit was not being carried at owner's risk, & defts. were not relieved from liability by the conditions in the consignment note.—GUNYON *v.* SOUTH EASTERN & CHATHAM RY. Co.'S MANAGING COMMITTEE, [1915] 2 K. B. 370; 84 L. J. K. B. 1212; 113 L. T. 282; 31 T. L. R. 344, D. C.
Annotation:—**Consd.** Neilson *v.* L. & N. W. Ry., [1921] 3 K. B. 213.

454. ——.]—Pltf. delivered a number of packages to defts. for carriage from L. to B. *viâ* M. on the terms of an owner's risk note, which provided that defts. were not to be liable to pay for "delay during any portion of the transit except upon proof that such delay arose from the wilful misconduct of the co.'s servants." By the contract pltf. was entitled to the exclusive use of a truck for the carriage of his goods to B. The packages as delivered to defts. were not addressed or labelled to B., but had on them old labels bearing the names of various stations in different parts of the country. The packages were put in the truck reserved for pltf. & despatched from L., there being attached to the truck some labels indicating B. as the destination. By the time the truck arrived at M. the labels had become detached,

PART IV. SECT. 2, SUB-SECT. 2. —C. (d) ii.

m. *Delay in delivery — Perishable goods — Onus of proof.*] —G. delivered to a ry. co. goods, which they knew to be perishable, to be delivered at a town in time for market. They failed to despatch the goods by either of two trains, which would have ensured their arrival in time; the goods on arrival had deteriorated in value. The consignee refused to take delivery, & G. sued the co. for the loss occasioned by their wilful misconduct in delaying the goods:—*Held:* unreasonable delay, even though entirely unexplained, did not amount to wilful misconduct, & it lay upon pltf. to prove that defts. intentionally delayed the goods.—GRAHAM *v.* BELFAST & NORTHERN COUNTIES RY. Co., [1901] 2 I. R. 13.—**IR.**

n. —— —— ——.]—A fish curer had his goods carried by a ry. co. at a reduced rate, he by special contract undertaking to relieve the co. & all other cos. over whose lines his goods might pass from all liability in case of loss, damage, or delay, except upon proof of wilful fault or negligence on the part of the co.'s servants. The co. undertook to deliver the goods within a reasonable time. In consequence of a block on the line, certain barrels of fish sent by him were delayed on their way to market & spoiled. In an action for damages

& defts.' official at that station, who had been advised that the truck was on the train, but had forgotten all about it, negligently took the truck off, & not knowing that pltf.'s packages were destined for B., sent them to the places respectively specified on the old labels which they bore, with the result that their delivery was delayed :—*Held :* as defts.' servant intentionally sent the goods to places which were in fact not upon the contract route, the delay did not occur " during any portion of the transit " within the consignment note, & it made no difference in that respect that his intention in so sending them was the result of an honest mistake, & defts. were not relieved from liability by the terms of the contract.—NEILSON *v.* LONDON & NORTH WESTERN RY. Co. (1921), 38 T. L. R. 75 ; 66 Sol. Jo. (W. R.) 13, C. A.

455. Negligence—Goods exposed to weather.]—Pltf. delivered to deft. co. certain scenery & theatrical properties for carriage from R. to S. on the terms of an " owner's risk " note, whereby in consideration of the co. carrying the goods at a reduced rate pltf. agreed to relieve the co. from all liability for damage or loss except upon proof that it arose from the wilful misconduct of the co.'s servants. On arrival at S. it was found that the scenery had been damaged by rain & snow. Pltf. contended that the co.'s servants, whose duty it was to cover the scenery with a tarpaulin, had been guilty of wilful misconduct in leaving the scenery uncovered for a considerable time, or in improperly covering it :—*Held :* as the evidence was consistent with ordinary negligence or forgetfulness on the part of the co.'s servants, it was not sufficient to establish wilful misconduct. —NORRIS *v.* GREAT CENTRAL RY. Co. (1915), 114 L. T. 183 ; 32 T. L. R. 120, D. C.

Annotation :—**Refd.** Sheppard *v.* Mid. Ry. (1915), 85 L. J. K. B. 283.

456. Servant unable to support package.]—Pltfs. sued defts. for damages for gross negligence in dealing with a consignment of glass, & in the alternative for breach of contract. The goods were carried under an owner's risk note, whereby pltfs. agreed to relieve defts. from all liability for loss or injury, except upon proof that such loss or injury arose from wilful misconduct on the part of the co.'s servants. Defts.' servant was engaged in unloading the crates containing the glass from a lorry outside pltfs.' premises when a tramcar came along. In order to allow it to pass the lorry had to be moved. At that time only one crate was left upon the lorry, & defts.' servant, before moving the lorry, told another man who was assisting him to get on to the lorry & to hold the crate, which was standing on its edge. When the lorry moved, the man was unable to hold the crate & it fell flat on the lorry, damaging some of the glass :—*Held :* the conduct of defts.' servant was completely inconsistent with wilful misconduct.—SHEPPARD & SON *v.* MIDLAND RY. (1915), 85 L. J. K. B. 283 ; 114 L. T. 515, D. C.

457. Supplying inadequate vehicle.]—BUCKTON (JOSHUA) & Co., LTD. *v.* LONDON & NORTH WESTERN RY., No. 390, *ante*.

458. When inferred.]—Pltf. delivered certain horse rakes to a railway co. for carriage, upon the special terms that he was, in consideration of a reduced rate, to relieve the co. from all liability for loss, damage, or delay, except upon proof that such loss, damage, or delay arose from wilful misconduct of the co.'s servants. The rakes were in sound condition when delivered to the co., & were greatly damaged & broken upon arrival ; they had been placed upon a truck shorter than the rakes themselves, without any covering to conceal their structure, & had been conveyed under the sole control of the co., without any attendant on the part of pltf. :—*Held :* (1) these facts did not amount to evidence from which wilful misconduct of the co.'s servants could be inferred.

(2) Evidence to support such an inference must not only be consistent with wilful misconduct, but reasonably inconsistent with its absence.—HAYNES *v.* GREAT WESTERN RY. Co. (1879), 41 L. T. 436, D. C.

Annotation :—*As to* (2) **Consd.** Norris *v.* G. C. Ry. (1915), 85 L. J. K. B. 285, n.

459. ——.]—JARMAN *v.* GREAT WESTERN RY. Co. (1873), 22 W. R. 73, n.

460. ——.]—Certain traders delivered to a railway co. a parcel containing six pairs of boots of the value of £10 11*s.* 6*d.* & weighing 19 lbs. for carriage by the co. from B. to W., on the terms that the co. should not be liable for loss, damage, misconveyance, misdelivery, delay or detention except upon proof that the loss, damage, etc., arose from the wilful misconduct of the co.'s servants. The parcel was never delivered to the consignee. When nineteen days had passed the traders wrote to the co. to complain & were told that their complaint would have immediate attention. They heard no more for three months. Then in answer to a letter from their solr. asking by whom & when the parcel was or should have been handled & what had become of it, they were told that the matter should receive immediate attention. A fortnight later the solr. wrote threatening proceedings unless he received by return of post some account of what had happened to the parcel, & the co. replied that the reason of the delay in the case was that the whole of the papers had been lost in transit, & that as soon as possible a definite reply would be given. A week later the traders brought an action in the county ct. In answer to interrogatories defts. stated that inquiries had been made but that they had no knowledge as to whether the parcel had been despatched from B. or received by their servants at W. ; that there was no record of its having been so received ; & that they believed that it was lost, that it never arrived at W., & was never delivered or tendered to the consignee :—*Held :* pltfs. had failed to prove that the loss of the parcel arose from the wilful misconduct of defts.' servants.—SMITH, LTD. *v.* GREAT WESTERN RY. Co., [1921]

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against the co. :—*Held :* (1) the special contract had the effect of laying the burden of proof on the consignor ; (2) on the facts, the co. were liable in respect that they had neither taken proper measures to guard against the occurrence of the block, nor warned the consignor that there was a risk of delay. McCONNACHIE *v.* GREAT NORTH OF SCOTLAND RY. Co., GREAT NORTH OF SCOTLAND RY. Co. *v.* McCONNACHIE (1875), 3 R. (Ct. of Sess.) 79 ; 13 Sc. L. R. 39.—**SCOT.**

o. *Goods sent over other systems—Goods too high for other company's gauge.*]—A ry. co. contracted to convey the plant of a switchback railway at a special reduced rate, one of the conditions of the contract being that the proprietor of the goods should relieve the co. of all liability except for damage arising from the " wilful misconduct " of the co.'s servants. One of the co.'s regulations directed that all loads must be gauged when there was any reason to doubt that they are not within the dimensions specified for the lines over which they had to travel. The stationmaster at the station of departure did not gauge the load, but merely judged the height of it with his eye & concluded that it did not exceed the dimensions. Part of the load, in the course of transit, came in contact with the smokeboard of a bridge beneath which the train was passing, & was damaged : *Held :* the damage was due to " wilful misconduct " of the stationmaster, for which the co. was liable.—BASTABLE *v.* NORTH BRITISH RY. Co., [1912] S. C. 555 ; 49 Sc. L. R. 446.—**SCOT.**

Sect. 2.—By statute: Sub-sect. 2, C. (d), ii., iii. & iv.; sub-sects. 3 & 4, A. & B.]

2 K. B. 237; 90 L. J. K. B. 644; 125 L. T. 44; 37 T. L. R. 117; 65 Sol. Jo. 172; 26 Com. Cas. 84, C. A.

iii. *Detention or Delay.*

See Nos. 411 *et seq.*, *ante*.

iv. *Non-Delivery.*

461. What is—Whether part delivery.]—A consignment of carcases of frozen mutton was delivered to a railway co. for carriage on their railway at a reduced rate upon the terms of a contract signed by the owner, which provided that the co. should be relieved from all liability for loss, damage, misdelivery, delay or detention, unless arising from the wilful misconduct of their servants, but not from any liability they might otherwise incur in the case of non-delivery of any package or consignment fully & properly addressed, & that no claim in respect of goods for loss or damage during the transit should be allowed unless made within three days after delivery of the goods in respect of which the claim was made, or in the case of non-delivery of any package or consignment, within fourteen days after despatch. When the consignment arrived at its destination a few of the carcases were missing, & the owner made a claim against the co. within fourteen days after the despatch of the consignment:—*Held:* non-delivery of a consignment meant non-delivery of the consignment as a whole, as contrasted with short delivery, & the claim failed.—GREAT WESTERN RY. CO. *v.* WILLS, [1917] A. C. 148; 86 L. J. K. B. 641; 116 L. T. 615; 33 T. L. R. 254; 61 Sol. Jo. 335, H. L.; *revsg.* S. C. *sub nom.* WILLS *v.* GREAT WESTERN RY. Co., [1915] 1 K. B. 199, C. A.

Annotation:—Refd. O'Keefe *v.* G. W. Ry. (1920), 123 L. T. 269.

SUB-SECT. 3.—WAR EMERGENCY STATUTES.

462. Indemnity Act, 1920 (c. 48), s. 1 (1)—Perishable goods delayed by strike—Handed over to Food Controller for sale.]—READER *v.* SOUTH EASTERN & CHATHAM RY. CO. & LONDON & NORTH WESTERN RY. CO., VAN DEN BERGHS, LTD. *v.* GREAT WESTERN RY. CO., No. 269, *ante*.

SUB-SECT. 4.—COLONIAL STATUTES.

A. Carriers Acts.

See cases, *infra*.

B. Other Statutes.

See cases, *infra*.

PART IV. SECT. 2, SUB-SECT. 4.—A.

p. *Scope & effect—Sea transit.*]—Common carriers by sea are under Mercantile Law Act, 1880, ss. 25, 26, 27, subject to the same rules which govern land carriers under Carriers' Act, 1830.—STAPLES *v.* JOSEPH (1887), 6 N. Z. L. R. 236.—N.Z.

q. —— *Carriage over land & water.*]—Goods were carried partly in steamers of one co. & partly by trains of another:—*Held:* so far as the journey was by river, the SS. Co. was entitled to the protection of Carriers Act, 1865, ss. 3–5, 8, & so far as the journey was by rail, to the protection of Railways Act, 1890, s. 75.—NARANG RAI AGARWALLA *v.* RIVERS STEAM NAVIGATION CO., LTD. (1907), I. L. R. 34 Calc. 419.—IND.

r. *Declaration of nature & value of goods—Form of—Whether express formal declaration necessary.*]—A guard snatched a bag out of a passenger's hand as the train was on the point of departure, saying, "You must not take that into the carriage. It must go into the luggage van." The passenger replied, "Take it; you must be responsible for it; it is worth £200":—*Held:* the value had been sufficiently declared within the meaning Common Carriers' Act, 1878.—SHERWIN *v.* RAILWAYS COMRS. (1881), 2 N. S. W. L. R. 209.—AUS.

s. *Increased charges—Duty of carrier to demand—Railways Act*, 1879, *s.* 11.] —Pltfs. delivered a box of coins for carriage to the servants of a railway, & declared the nature of the contents at the time of delivery. No demand was made on the part of the railway for any increased payment for insurance. The box miscarried:—*Held:* the railway were liable for the loss.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* BUDHU NATH PODDAR (1892), I. L. R. 19 Calc. 538.—IND.

t. —— *Effect of non-payment—Railways Act*, 1879, *s.* 11.]—A box containing rupees was delivered by pltfs. to deft. co. in B. to be carried to S. Pltfs. did not intend to insure the box, which was taken to the booking office at the station; the parcel clerk asked what it contained, & was told that it contained coin, & he learned casually that the amount was R6,000. The clerk charged the "treasure rate" for carriage. This sum was paid, & the box was duly dispatched, but was lost or stolen in the course of transit. Pltfs. sued to recover the R6,000:—*Held:* deft. co. was not liable because the sum paid by pltfs. for carriage of the box was the ordinary charge for treasure, & not the increased charge which under above sect. should have been paid in order to make the co. liable.—GREAT INDIAN PENINSULA RY. CO. *v.* RAISETT CHANDMULL (1894), I. L. R. 19 Bom. 165.—IND.

PART IV. SECT. 2, SUB-SECT. 4.—B.

a. *Scope & effect—Application of Railway Act*, 1868, *s.* 20 (4)—*Whether to particular railway.*]—The above sub-sect., as amended by 34 Vict. c. 43, s. 5, is not, by virtue of s. 7 of the latter Act, made applicable to G. W. Ry. Co.—SCOTT *v.* GREAT WESTERN RY. CO. (1873), 23 C. P. 192.—CAN.

b. —— —— ——.]—ALLEN *v.* GREAT WESTERN RY. CO. (1873), 33 U. C. R. 483.—CAN.

c. —— *Application of* 33 *Vict.* c. 19, *s.* 3 (*o*)—*Extends to railways.*]—The insertion in above sect. of the word "train" not found in Bills of Lading Act, 1851, clearly makes the former act applicable to railways.—ROYAL CANADIAN BANK *v.* GRAND TRUNK RY. CO. (1873), 23 C. P. 225.—CAN.

d. —— *Application of Consolidated Railway Act*, 1879, *s.* 25 (4)—"*Receiving, transporting & discharging.*"]—WALTERS *v.* CANADIAN PACIFIC RY. CO. (1887), 1 Terr. L. R. 88.—CAN.

e. —— *Application of* 51 *Vict.* c. 29, *s.* 246—*Whether to foreign railway.*]—The above sect., disabling a ry. co. from relieving itself from liability for its own negligence or that of its servants, is not applicable to a railway situate in a foreign country, though operated by a co. incorporated by or under authority of the parliament of Canada.—MACDONALD *v.* GRAND TRUNK RY. CO. (1900), 31 O. R. 663.—CAN.

f. —— *Application of Railways Regulation Act*, 1908, *s.* 18—*Loss through "inevitable superior force."*]—BENONI PRODUCE & COAL CO. *v.* RAILWAYS & HARBOURS MINISTER (1914), W. L. D. 31.—S. AF.

g. *Neglect or default of company or servants—Loss by negligence of carrier—Whether within Railway Act*, 1868, *s.* 20 (4).]—SCARLETT *v.* GREAT WESTERN RY. CO. (1877), 41 U. C. R. 211.—CAN.

h. — — — — *Railway Act*, 1888, *s.* 246 (3).]—The above sect. does not disable a ry. co. from entering into a special contract, for the carriage of goods, limiting its liability as to amount of damages to be recovered for loss or injury to such goods, arising from negligence.—ROBERTSON *v.* GRAND TRUNK RY. CO. (1895), 24 S. C. R. 611.—CAN.

k. —— —— ——.]—Under above sect. a ry. co. is precluded from setting up a condition relieving the co. from liability for damage sustained to goods whilst in transit, where damage is occasioned through negligence.—ST. MARY'S CREAMERY CO. *v.* GRAND TRUNK RY. CO. (1904), 24 C. L. T. 332; 8 O. L. R. 1; 3 O. W. R. 472.—CAN.

l. —— —— ——.]—When it clearly appears that the loss of goods shipped by railway must have been caused by the negligence or omission of the ry. co. or its servants, the co. is precluded by above sub-sect. from relying on a condition exempting it from liability for any deficiency in weight or measurement.—FERRIS *v.* CANADIAN NORTHERN RY. CO. (1905), 15 Man. L. R. 134.—CAN.

m. —— —— 1854 *Act*, *s.* 11.]—East Indian Ry. Co. cannot, under above sect. limit their responsibility as carriers in respect of ordinary goods so as not to be liable for loss or injury caused by gross negligence or misconduct, though possibly they may, with the consent of Govt.—EAST INDIAN RY. CO. *v.* JORDAN (1867), 4 B. L. R. 97; 14 W. R. 11.—IND.

n. *Special contract or condition—Must be signed—What is sufficient signature—Condition not understood.*]—F. a Chinese sued R. a carrier for not safely delivering opium. Counterparts of delivery & receipt notes in a printed English form were exchanged; F. signing in Chinese, R. in English. F. did not understand what he signed. The note contained a condition exempting R. from liability for the excess beyond £10 of the value of goods worth more than £10 unless the extra value were declared at the time of booking & so entered on the receipt. The extra value was declared at the time of booking & an extra price paid; but the extra value was not "entered on the receipt" given by R. In an action for non-delivery:—*Held:* F. voluntarily signed the note & was bound to comply with the condition that extra value must be entered on the receipt in order to be entitled to

sue.—FONG GAEP *v.* REYNOLDS & ENGLISH (1863), 2 W. & W. 80.—AUS.

o. —— —— —— —— *Signature of agent.*]—GRAND TRUNK RY. Co. *v.* FITZGERALD (1881), 5 S. C. R. 204.—CAN.

p. —— —— —— ——.] — The signature to a special contract may be made by an agent for the person delivering the goods for carriage.—MARSDEN *v.* WESTPORT COAL CO. (1909), 29 N. Z. L. R. 787.—N.Z.

q. —— *Must be just & reasonable —Custom or acquiescence — Mercantile Law Act*, 1880, *ss.* 25, 26, 27.]—A condition in the contract of affreightment purporting to exempt the carrier from responsibility for the negligence of his servant is, *primâ facie*, unjust & unreasonable under Mercantile Law Act, 1880, ss. 25–27 ; it is not enough to show that it is usual to insert such condition, & that it has been acquiesced in by the shipper.—STAPLES *v.* JOSEPH (1887), 6 N. Z. L. R. 236.—N.Z.

r. —— ——.] — A special contract altogether exempting a carrier from liability is just & reasonable where the carrier offers a *bonâ fide* option to have the goods carried at a reasonable rate with liability on the co. as a common carrier.—MARSDEN *v.* WESTPORT COAL CO. (1909), 29 N. Z. L. R. 787.—N.Z.

s. —— —— *Act* 22 *of* 1916.]—NIGHTINGALE *v.* SOUTH AFRICAN RYS. & HARBOURS, ADAMS *v.* SOUTH AFRICAN RYS. & HARBOURS, [1921] E. D. L. 91.—S. AF.

t. —— —— *As to claims — Time limit.*]—An express co. gave a receipt for money to be forwarded with the condition endorsed that the co. should not be liable for a claim in respect of the package, unless within sixty days of loss or damage a claim should be made by written statement with a copy of the contract annexed :—*Held :* strict compliance with these terms was a condition precedent to recovery for failure to deliver to the consignee.—NORTHERN PACIFIC EXPRESS CO. *v.* MARTIN (1896), 26 S. C. R. 135.—CAN.

u. —— —— ——.]—A condition that no claim for damage for loss of or detention of any goods for which the co. is accountable shall be allowed unless notice in writing & particulars of the claim for damage are given to the station freight agent at or nearest to the place of delivery within 36 hours after the arrival of the goods, in respect of which the said claim is made or delivered, is a reasonable condition, & if the terms be not complied with, the value of goods lost cannot be recovered.—GÉLINAS *v.* CANADIAN PACIFIC RY. CO. (1897), Q. R. 11 S. C. 253.—CAN.

v. —— —— —— ——.]—HAYWARD *v.* CANADIAN NORTHERN RY. Co. (1906), 16 Man. L. R. 158.—CAN.

w. —— —— —— ——.]—A bill of lading of defts., covering wheat shipped, provided that its surrender should be required before delivery of the wheat, & that claims for loss or damage must be made in writing to defts.' agent at point of delivery promptly after arrival of the wheat, & if delayed for more than thirty days after such delivery, or after due time for delivery, defts. should not be liable in any event :—*Held :* failure to make such claim in writing within the time specified did not relieve defts. from liability resulting from breach of their contract to deliver the wheat to the holder of the bill of lading & to no one else.—TOLMIE *v.* MICHIGAN CENTRAL RY. CO. (1909), 19 O. L. R. 26 ; 14 O. W. R. 32 ; 9 Can. Ry. Cas. 336.—CAN.

x. —— —— —— ——.]—NEWMAN *v.* PERE MARQUETTE RY. Co. & GRAND TRUNK RY. Co. (1910), 15 O. W. R. 845 : 21 O. L. R. 72.—CAN.

y. —— —— —— ——.]—M. delivered goods to the C. Govt. Rys. for carriage, subject to a condition which excluded the liability of the railway for total loss of goods, unless complaint were made within 14 days of the approximate date of delivery :—*Held :* that, though the regulation was not attached or set out in the document signed, nor promulgated, M. was bound by it, & the railway was not liable for goods totally lost, the claim having been made two years after the approximate date of delivery.—COLONIAL GOVERNMENT *v.* MILLS & SONS (1907), 24 S. C. 136.—S. AF.

z. —— —— *As to loss or damage —Limitation of value.*]—Pltf. shipped a trunk by defts., a receipt was given, but no statement was made at the time as to the value of the contents ; the trunk was lost. The receipt, which was in accordance with statutory provisions, contained a condition limiting defts.' liability to $50 in respect of any article lost :—*Held :* as the value of the contents of the trunk had not been declared according to the conditions on the receipt, defts.' liability was limited to $50.—DOMINION EXPRESS CO. *v.* RUTENBERG (1908), 5 E. L. R. 314.—CAN.

a. —— —— ——.]—ALLEN *v.* CANADIAN PACIFIC RY. Co. (1910), 16 O. W. R. 512 ; 21 O. L. R. 416 ; 1 O. W. N. 897 ; 10 Can. Ry. Cas. 424.—CAN.

b. —— —— *Effect of alternative rates.*]—A special contract in itself is just & reasonable, which offers the shipper with sufficient clearness the option of a higher rate under which the carrier would insure the goods from damage caused by their own neglect or default.—TAYLOR *v.* RAILWAY COMRS. (1904), 4 S. R. N. S. W. 524.—AUS.

c. —— —— ——.] — In an action to recover damages for the loss through negligence of defts.' goods forwarded by defts.' railway from M. to T., carried under a shipping bill absolving in consideration of a reduced rate defts. from liability for negligence : —*Held :* having received the goods as a common carrier, the co. in the circumstances could not contract themselves out of liability for proved negligence even where an alternative or reduced rate was offered & accepted.—COBBAN *v.* CANADIAN PACIFIC RY. Co. (1896), 23 A. R. 115.—CAN.

d. —— —— ——.]—A contract whereby, in consideration of goods being carried by a ry. co. at a reduced rate, the consignor agrees that the co. shall be free of all responsibility for any loss or damage to the goods, is valid & legal within 1890 Act, s. 72.—EAST INDIAN RY. Co. *v.* BUNYAD ALI (1895), I. L. R. 18 All. 42.—IND.

e. —— —— —— *Makes risk condition reasonable.*]—A condition at owner's risk is reasonable where an alternative rate is given.—WATSON BROTHERS *v.* COLONIAL GOVERNMENT (1906), 10 H. C. 79.—S. AF.

f. —— *Particular conditions — Owner's risk—Whether negligence included.*]—There was a verbal contract between the shippers & a ry. co. to carry oil in covered cars with dispatch. The oil was forwarded in open cars & delayed in different places & in consequence a large quantity was lost. The bill of lading said nothing about covered cars, & stated that the oil was carried at the owner's risk :—*Held :* the loss did not result from risks imposed on the owners, but from the wrongful act of the carriers in placing the oil on open cars, which was inconsistent with the contract, & in contravention of their duty to provide fit & proper transport.—GRAND TRUNK RY. Co. *v.* FITZGERALD (1881), 5 S. C. R. 204.—CAN.

g. —— —— —— ——.] — Pltf. delivered a machine to defts. to be carried between two stations. In placing it on board a car for that purpose defts.' servants injured the machine by negligence or want of proper appliances :—*Held :* defts. were liable notwithstanding the special contract that the machinery was to be carried at the owner's risk.—WHITMAN *v.* WESTERN COUNTIES RY. Co. (1884), 5 R. & G. 405.—CAN.

h. —— —— —— ——.]—In an action brought for non-delivery of sawn lumber delivered to defts. at P. to be carried by them to B., defts. pleaded a condition that the co. would not be responsible for loss or deficiency in weight, number or measure of the lumber carried by the car load. There was no evidence as to how the loss occurred :—*Held :* defts. were precluded by 42 Vict. c. 9, s. 25 (4), from setting up the condition, when a loss was charged as happening through their own negligence.—HENRY *v.* CANADIAN PACIFIC RY. Co. (1884), 1 Man. L. R. 210.—CAN.

k. —— —— —— ——.]—A special contract that goods are to be carried at the owner's risk does not relieve the carrier from liability for loss through his negligence.—COMMERCIAL UNION ASSURANCE CO. *v.* HEYS & CO. (1897), 4 O. R. 414. —S. AF.

l. —— —— —— ——.] — A contract to carry "at owner's risk" does not free the carrier from liability arising from gross negligence or wilful misconduct. But it does free him from liability for damage caused by error of judgment on the part of his servants.—CENTRAL SOUTH AFRICAN RYS. *v.* ADLINGTON & CO. (1906), T. S. 964.—S. AF.

m. —— —— —— ——.]—A carrier who contracts to carry "at owner's risk" is not required to show more than such diligence as an ordinary owner is expected to show when transporting or handling his own goods, & an error in judgment on the part of the carrier's servant is a condition to which an owner who carries his own goods may reasonably be considered to be exposed. —FARM IMPLEMENT CO. OF KROONSTAD *v.* MINISTER OF RAILWAYS (1916), O. P. D. 183.—S. AF.

n. —— —— —— ——.] — Where goods are booked for carriage by railway under a "risk note" & are lost in transit, it lies upon pltf. to show that the loss was occasioned by the theft or wilful neglect of the co.'s servants.—EAST INDIAN RY. Co. *v.* NATHMAL BEHARI LAL (1917), I. L. R. 39 All. 418.—IND.

oo. —— —— —— *Implied undertaking as to condition of goods.*]—When goods are tendered for carriage at owner's risk, the consignee impliedly gives a certificate to the railway that the goods are of an undamageable nature, & therefore cannot be damaged unless there is some malfeasance or gross negligence, the *onus* of proving which lies upon the consignee.—WATSON BROTHERS *v.* COLONIAL GOVERNMENT (1906), 10 H. C. 79.—S. AF.

pp. —— —— —— *Goods carried at "station to station rates"—Railway company not liable for short delivery.*]—SOUTH AFRICAN RYS *v.* MERCHISTON PLAINS BLACK WATTLE CO., LTD. (1921), 42 N. L. R. 165.—S. AF.

qq. —— —— *Wilful misconduct —What is.*]—Goods were delivered to deft., to be consigned "at owner's risk" to pltf. "care A. at M."; A. had a river steamship which traded to M. Deft.'s clerk, in making out the consignment note, omitted "care A. at M." In consequence of this omission the goods were handed to another steamship which was sunk & the goods lost :—*Held :* the omission of the words "care A. at M." was not wilful misconduct.—WHITE *v.* SOUTH AUSTRALIAN RAILWAYS COMR., [1919] S. A. L. R. 44.—AUS.

rr. —— —— *Detention or delay —Railway Act, s.* 284.]—LAURIE *v.* CANADIAN NORTHERN RY. Co. (1910), 16 O. W. R. 139 ; 21 O. L. R. 178 ; 10 Can. Ry. Cas. 431.—CAN.

Part V.—Carriage of Persons.

SECT. 1.—DUTY TO CARRY.

463. As common carriers—Railway company.]—DICKSON *v.* GREAT NORTHERN RY. CO., No. 18, *ante*.

464. —— Corporation tramway.]—CLARKE *v.* WEST HAM CORPN., No. 14, *ante*.

465. —— Corporation omnibus—Over dangerous section of route.]—BAKER *v.* ELLISON, No. 763, *post*.

466. Contract to carry—Evidence of—Omnibus stopping.]—In an action for negligence, the declaration stated that pltf. "had agreed to become a passenger" by deft.'s omnibus, & that deft. "received pltf. as such passenger." Plea, that pltf. did not become a passenger, & that deft. did not receive him as such. It appeared that pltf. held up his finger to the driver of the omnibus, who stopped to take him up, & that just as pltf. was putting his foot on the step of the omnibus, the driver drove on, & pltf. fell on his face on the ground:—*Held:* evidence to go to the jury in support of the declaration, as the stopping of the omnibus implied a consent to take pltf. as a passenger.—BRIEN *v.* BENNETT (1839), 8 C. & P. 724, N. P.

467. —— —— Tickets issued in bulk to employer.]—COOKE *v.* MIDLAND RY. CO., No. 660, *post*.

468. —— —— Ticket issued by & bearing name of omnibus company—Although omnibus owned by third party—Company liable.]—MIDDLETON *v.* LONDON GENERAL OMNIBUS CO. (1892), 8 T. L. R. 675, C. A.

469. —— For whole journey—Right of passenger to join at any stage.]—A person paying the whole fare of a stage coach, may take his place at any stage of the journey; *aliter* if he pays only a deposit.—KER *v.* MOUNTAIN (1793), 1 Esp. 27, N. P.

470. —— Seats booked in coach—"Together"—Statutory number of passengers exceeded.]—(1) A declaration stated that deft., being owner of a stage-coach, undertook to carry pltf., her children, & servants, together, in & by a certain stage-coach:—*Held:* evidence that the whole inside of the coach was taken for pltf. & her three daughters, & two outside places for her servants, supported the declaration.

(2) Deft. sent a double-bodied coach, & refused to take them, unless one of them would travel in one body & the other in the other body:—*Held:* a breach of the agreement.

(3) Stage Coaches Act, 1810 (c. 48), enacting that double-bodied coaches should only carry eight outside passengers:—*Held:* a breach of the agreement that there were eight other outside passengers permitted to go by the coach, if pltf.'s servants refused to go by it on that account.—LONG *v.* HORNE (1825), 1 C. & P. 610, N. P.

471. —— Coach overcrowded—Passenger's right to rescind contract.]—If more than the number of passengers for which the coach is licensed are allowed to go by it, the other passengers are entitled to rescind the contract, & may leave the coach without payment of any part of the fare.—PICKFORD *v.* LACON (1847), 8 L. T. O. S. 139, 389.

472. —— By advertised train—Lack of accommodation.]—Pltf., intending to go to L. & back by defts.' railway, paid for & received from them the following ticket at B., & went to L. with it: "B. to L. & back. Excursion ticket. To return by the trains advertised for that purpose on any day not beyond fourteen days after date hereof." Morning & evening return excursion trains were advertised on the Saturdays, but they were not advertised to go to B. On a Saturday morning within the fourteen days pltf. presented himself at L. station in time for the morning return train. It became full so that pltf. could not find room in it, & it would have been dangerous to have added other carriages to it. The co. refused to let him go by an ordinary train, but kept him waiting until the evening return train, in which he found a place. That train took him only to D., where it arrived on Sunday morning. No trains ran from D. to B. on Sundays. The line from D. to B. belonged not to defts., but to another co. Pltf. hired a carriage to take him from D. to B., and brought an action to recover the expense from the defts.:—*Held:* (1) he was entitled to recover; (2) by the terms of the excursion ticket & advertisements defts. contracted to carry pltf. back to B. on any day within the fourteen days, that he might choose, & by any of the advertised trains that he might select; (2) not sending him by the morning train was a breach of contract; (3) taking him only to D. instead of to B. without previous notice

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PART V. SECT. 1.

s. As common carriers — Steamship company.]—Defts. advertised that they ran a regular steamer from L. to B. at definite dates & hours:—*Held:* they were common carriers of passengers by sea, & as such there was an obligation on their part to receive & carry any person as a passenger who was willing to pay the usual fare, provided there was sufficient room on board, & the intending passenger was a proper person to be carried.—PITCAITHLY *v.* THACKER (1903), 23 N. Z. L. R. 783.—N Z.

t. Contract to carry — Right to travel in particular car.]—Defts. had placed a number of extra cars on a portion of their line to carry persons who had assembled to view a regatta. The cars in question were to run from the suburbs, where the regatta was held, to the centre of the city, & were to discharge their passengers there, those passengers desiring it being given transfers entitling them to carriage on other cars to their destinations in other parts of the city. Pltf., who had been attending the regatta, entered a car expecting to be carried to a point on the line near his residence, but was informed at the central point that the car in which he was went no further, & that he would have to transfer:—*Held:* (1) outside of the cars performing the regular service, there was no obligation on part of defts. to carry pltf. through to his destination in any particular car; (2) the only contract was to carry passengers in accordance with the usual methods of running defts.' cars.—O'CONNOR *v.* HALIFAX TRAMWAY CO., LTD. (1905), 38 N. S. R. 212; 37 S. C. R. 523.—CAN.

u. —— ——.]—A passenger holding a second class ticket on a railway cannot be compelled to travel in a smoking car. He is entitled to the accommodation usually furnished such passengers.—JONES *v.* GRAND TRUNK RY. CO. (1905), 9 O. L. R. 723; 5 O. W. R. 611.—CAN.

v. —— Right to travel in particular seat.]—Pltf. entering the train at a station took a seat which appeared to be vacant but which he was told was occupied by some one who was temporarily elsewhere. On the return of the passenger in question pltf. refused to make way & the conductor being summoned took pltf. by the lapels of the coat & placed him in the passage way, pointing out to him other seats:—*Held:* pltf. had no right to any particular seat & the conductor was entitled to determine what seat he might occupy.—BRAZEAU *v.* CANADIAN PACIFIC RY. CO. (1908), 11 O. W. R. 136.—CAN.

w. —— ——.]—A ry. co. gave orders that holders of third class composition season tickets should be restricted to particular compartments. One of these ticket holders, after having taken his seat unnoticed in the compartment in which he had usually travelled previously, was ordered by an official of the co. to move. He complied under protest, but, being unwilling to occupy the compartment assigned to him, did not travel by the train, & brought an action of damages for breach of contract against the ry. co.:—*Held:* (1) a ry. co. had a right to assign the compartments & seats which passengers should occupy; (2) defenders were not barred from exercising this right, as they had not acquiesced in pursuer choosing a seat for himself.—SCOTT *v.* GREAT NORTH

was a second breach, & consequently the action was maintainable.

(4) *Semble:* a railway co. are not excused from carrying passengers according to their contract, upon the ground that there is no room for them in the train; but, in order to avail themselves of this answer, they should make their contract conditional upon there being room.—GREAT NORTHERN RY. Co. *v.* HAWCROFT (1852), Cox, M. & H. 597; 21 L. J. Q. B. 178; 16 J. P. 681; *sub nom.* HAWCROFT *v.* GREAT NORTHERN RY. Co., 18 L. T. O. S. 288; 16 Jur. 196, D. C.

See, further, Sect. 3, *post*.

473. —— Passenger with dog—Contract to carry passenger in carriage & dog in van unless permission to contrary given—No contract to allow passenger to take dog with him so long as passenger willing to expose himself to risk of breaking bye-laws.]—LAWTON *v.* GREAT WESTERN RY. Co. (1921), 37 T. L. R. 934, D. C.

474. Refusal to carry—After tender of fare—Postmaster.]—Though a postmaster cannot be compelled to hire a chaise, if he does hire it, & the passenger takes his seat in it, the postmaster must proceed if his fare is tendered.—MASSITER *v.* COOPER (1803), 4 Esp. 260, N. P.

475. —— No other passengers—Contract made on Sunday.]—Pltf. booked a place & paid half the fare to go by a common stage coach from C. to L. on a Sunday; the coach proprietor refused to carry him because there were no other passengers, whereupon pltf. hired a post-chaise to go to his destination:—*Held:* the coach proprietor was liable for the chaise hire, notwithstanding the contract was made on a Sunday.—SANDIMAN *v.* BREACH (1827), 7 B. & C. 96; 9 Dow. & Ry. K. B. 796; 5 L. J. O. S. K. B. 298; 108 E. R. 661.

Annotations:—**Expld.** R. *v.* Nevill (1846), 8 Q. B. 452. **Refd.** Begbie *v.* Levi (1830), 1 Cr. & J. 180; Whitmore *v.* Wenlock Town Clerk, Russell *v.* Downes, Bowen *v.* Williams (1843), 13 L. J. C. P. 55; R. *v.* Cleworth (1864), 4 B. & S. 927. **Mentd.** Peate *v.* Dicken (1834), 1 Cr. M. & R. 422; Kitchen *v.* Shaw (1837), 6 Ad. & El. 729; Elliott *v.* Bishop (1854), 10 Exch. 496; R. *v.* Silvester (1864), 33 L. J. M. C. 79; R. *v.* Payne (1866), 14 W. R. 661; Knutsford S. S. *v.* Tillmanns (1908), 99 L. T. 399.

See, also, No. 677, *post*.

476. —— False statement by omnibus conductor.]—(1) Where the conductor of an omnibus, by means of a fraud, or making use of a false statement, induces a person not to persist in his attempt to be carried as a passenger, this does not amount to a "refusal to carry" him, such as will entitle the person so deceived to maintain an action against the proprietor of the omnibus.

(2) An allegation in a declaration that an omnibus plies between D. & C. will not be supported by evidence which shows that the omnibus, although running from D. to C., yet starts from a point beyond D. & runs to a point beyond C.—MARSHALL *v.* MATSON (1867), 15 L. T. 514.

—— Measure of damages.]—*See* Sect. 5, *post*.

477. —— Passenger of bad character.]—COPPIN *v.* BRAITHWAITE, No. 726, *post*.

See, also, No. 14, *ante*.

478. Reasonable accommodation—Government restriction.]—Although a railway co. is under an obligation to provide reasonable accommodation for passengers, nevertheless in considering whether reasonable accommodation has been provided the ct. is entitled to take into consideration the restriction of facilities by Government action owing to the European War.—JONES *v.* GREAT NORTHERN RY. Co. (1918), 34 T. L. R. 467, D. C.

See, further, Sect. 2, sub-sect. 3, *post*.

SECT. 2.—DUTY TO TAKE CARE.

SUB-SECT. 1.—IN GENERAL.

479. Due care—Whether carrier insurer.]—If the declaration, in an action on the case against coach-proprietors, for an injury received by the over-turning of a coach, states that it was their duty to carry pltf. safely, for a certain hire, it does not mean to carry safely at all events, but will be sufficiently supported by proof of the want of due care.—HARRIS *v.* COSTAR (1825), 1 C. & P. 636, N. P.

Annotations:—**Apld.** Ross *v.* Hill (1846), 2 C. B. 877. **Refd.** Curtis *v.* Drinkwater (1831), 9 L. J. O. S. K. B. 175.

480. —— ——.]—The contract made by a general carrier of passengers for hire with a passenger, is to take due care, including in that term the use of skill & foresight, to carry the passenger safely; it is not a warranty that the carriage in which he travels shall be in all respects perfect for its purpose, that is, free from all defects likely to cause peril although those defects were such that no skill, care, or foresight could have detected their existence.—READHEAD *v.* MIDLAND RY. Co. (1869), L. R. 4 Q. B. 379; 38 L. J. Q. B. 169; 17

OF SCOTLAND RY. Co. (1895), 22 R. (Ct. of Sess.) 287; 32 Sc. L. R. 218.—**SCOT.**

x. *Intoxicated person.*]—Pltf., a drunken man, attempted to enter defts.' tram car when in motion: the conductor sought to prevent him getting further than the lower step. After being dragged three yards, the man fell to the road:—*Held:* the conductor was within his rights in keeping him out with reasonable force.—DELANY *v.* DUBLIN UNITED TRAMWAY Co. (1892), 26 I. L. T. 122.—**IR.**

PART V. SECT. 2, SUB-SECT. 1.

a. *General rule.*]—Where a ry. co. is charged with a statutory duty to take precautions for the safety of persons lawfully travelling in its carriages, crossing its line, or frequenting its premises, the co. is responsible in damages to any member of any one of these classes who is injured by the neglect of the co. or its servants to discharge such statutory duty. On the other hand, even where there is a breach by the co. of its statutory duty, if the injury is the result of pltf.'s own folly & recklessness & not of the co.'s breach of its statutory duty, then pltf. cannot recover.—GRAND TRUNK RY. Co. *v.* MCALPINE, [1913] A. C. 838; 83 L. J. P. C. 44; 109 L. T. 693; 29 T. L. R. 679; 13 E. L. R. 187.—**CAN.**

479 i. *Due care—Whether carrier insurer.*]—In an action against proprietors of a car drawn by horses, for an accident by the driver's carelessness, an averment that the contract was to carry pltf. safely, does not mean safely at all events, & it is sufficient to prove the driver's want of care & skill.—THOMPSON *v.* MACKLEM (1846), 2 U. C. R. 300.—**CAN.**

479 ii. —— ——.]—GUNN *v.* DICKSON (1853), 10 U. C. R. 461.—**CAN.**

479 iii. —— ——.]—The contract of coach proprietors is to carry from one place to another all persons who become passengers by their coach, the law implying an undertaking to carry safely.—JONES *v.* ANDERSON (1824), 2 Fox & S. Ir. 167.—**IR.**

479 iv. —— ——.]—There is no such duty imposed upon carriers of passengers as to carry them safely & securely; common carriers are not insurers of passengers.—NEILL *v.* DUBLIN, WICKLOW, & WEXFORD RY. Co. (1872), I. R. 6 C. L. 224.—**IR.**

479 v. —— ——.]—There is no general obligation upon a ry. co. to carry passengers who have taken tickets "safely."—SHIAM NARAIN TIKKOO *v.* BOMBAY BARODA & CENTRAL INDIA RY. (1919), I. L. R. 41 All. 488.—**IND.**

479 vi. —— ——.]—Passenger carriers are not insurers. They do not insure passengers against injury arising from causes wholly out of their control, as for instance from a latent defect in the machinery employed, which no amount of skill or diligence would have enabled them to discover.—PACKMAN *v.* GIBSON BROTHERS (1887), 4 H. C. 410.—**S. AF.**

479 vii. —— —— *Government railway.*]—The Crown is not liable as a common carrier for the safety & security of passengers using govt. railways.—R. *v.* MCLEOD (1882), 8 S. C. R. 1.—**CAN**

b. *Effect of special contract.*]—The contract, for carriage of passengers imposes on a general carrier the duty to take due care to carry passengers safely, but that liability may be modified by special contract.—ROWE *v.* AUSTRALIAN UNITED STEAM NAVIGATION Co., LTD., [1909] St. R. Qd. 1.—**AUS.**

Sect. 2.—Duty to take care: Sub-sect. 1.]

W. R. 737; *sub nom.* REDHEAD *v.* MIDLAND RY. Co., 9 B. & S. 519; 20 L. T. 628, Ex. Ch.

Annotations:—**Consd.** Francis *v.* Cockrell (1870), L. R. 5 Q. B. 501; John *v.* Bacon (1870), L. R. 5 C. P. 437; Wright *v.* Mid. Ry. (1873), L. R. 8 Exch. 137. **Distd.** Thorn *v.* London Corpn. (1874), 43 L. J. Ex. 115. **Consd.** Searle *v.* Laverick (1874), L. R. 9 Q. B. 122; Kopitoff *v.* Wilson (1876), 1 Q. B. D. 377. **Apld.** Randall *v.* Newsom (1876), 45 L. J. Q. B. 364; The Virgo (1876), 35 L. T. 519. **Distd.** Randall *v.* Newson (1877), 2 Q. B. D. 102. **Consd.** Steel *v.* State Line S.S. Co. (1877), 3 App. Cas. 72; Hyman *v.* Nye (1881), 6 Q. B. D. 685; Robertson *v.* Amazon Tug & Lighterage Co. (1881), 7 Q. B. D. 598; Jackson *v.* Mumford (1902), 8 Com. Cas. 61; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858; Maclenan *v.* Segar, [1917] 2 K. B. 325. **Reid.** Buxton *v.* N. E. Ry. (1868), 9 B. & S. 824; Stanton *v.* Richardson, Richardson *v.* Stanton (1872), L. R. 7 C. P. 421; Richardson *v.* G. E. Ry. (1875), L. R. 10 C. P. 486; Pounder *v.* N. E. Ry., [1892] 1 Q. B. 385; Smiton *v.* Orient Steam Navigation Co. (1907), 23 T. L. R. 359; Wing *v.* London General Omnibus Co., [1909] 2 K. B. 652; Newberry *v.* British Tram & Carriage Co. (1912), 107 L. T. 801; Cox *v.* Coulson, [1916] 2 K. B. 177; Liebigs Extract of Meat Co. *v.* Mersey Docks & Harbour Board & Nelson, [1918] 2 K. B. 381; Brannigen *v.* Harrington (1921), 37 T. L. R. 349. **Mentd.** The Duero (1869), 38 L. J. Adm. 69; Maori King *v.* Hughes, [1895] 2 Q. B. 550; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94; The West Cock (1911), 80 L. J. P. 97.

See, also, Nos. 492, 494, 633, *post.*

481. ——.]—The male pltf. hired from deft., a livery stable keeper, a landau with a horse & driver for the purpose of taking a drive. His wife accompanied him in the carriage. The horse showed considerable signs of restiveness when meeting motor cars, & when passing a traction engine shied & became unmanageable, & the carriage was upset, & both husband & wife were injured. In an action by the husband & wife to recover damages for the injuries the jury found that deft. ought to have known, if he had used proper care, that the horse was unsafe to be sent out with the carriage, but that the driver was not negligent. Deft. upon these findings, while admitting liability to the husband, contended that he was not liable to the wife:—*Held:* deft. was liable to the wife upon the ground that, as he kept control of the carriage & accepted her as a passenger therein, he was under a duty to use reasonable care to carry her safely & for that purpose to provide a proper horse.—WHITE *v.* STEADMAN, [1913] 3 K. B. 340; 82 L. J. K. B. 846; 109 L. T. 249; 29 T. L. R. 563.

Annotation:—**Consd.** Bates *v.* Batey, [1913] 3 K. B. 351.

482. —— **Railways (Conveyance of Mails) Act, 1838 (c. 98).**]—Declaration, in case, alleged that defts. were the proprietors of The London & North Western Ry., & of certain carriages, etc. used by them on the same; that the mails from L. to T., among others, had been required to be, & were, carried by defts. on the railway, pursuant to Railways (Conveyance of Mails) Act, 1838; that pltf. was an officer of the Post Office whom the Postmaster General had reasonably required defts. to carry, & defts. were then carrying pltf., as such officer, in the carriage conveying the mails, etc.; & thereupon it became the duty of defts. to use proper care & skill in carrying pltf.; yet defts. did not use due & proper care & skill in carrying pltf., but neglected so to do, etc., so that the carriage in which he then was received a concussion, whereby pltf. was injured, etc.:—*Held:* by Railways (Conveyance of Mails) Act, 1838 a duty was imposed on defts. to use proper care & skill in conveying pltf., as alleged in the declaration, & they were liable to him in an action on the case for injury sustained by him through their neglect to use such care & skill.—COLLETT *v.* LONDON & NORTH WESTERN RY. Co. (1851), 16 Q. B. 984; 20 L. J. Q. B. 411; 17 L. T. O. S. 123; 15 Jur. 1053; 117 E. R. 1158.

Annotation:—**Expld.** East Indian Ry. *v.* Kalidas Mukerjee, [1901] A. C. 396.

483. Not liable for mere accident—Apart from negligence or misconduct.]—(1) Coach owners are not liable for injuries happening to passengers, from accident or misfortune, where there has been no negligence or default in the driver.

(2) Where there is no other carriage on the road, the driver may keep in the middle of the road, & is not bound to keep on the left hand side of the road, even though the accident might have proceeded from the coach not being on the proper side.—ASTON *v.* HEAVEN (1797), 2 Esp. 533, N. P.

Annotations:—*As to* (1) **Distd.** G. W. Ry. *v.* Blake (1862), 7 L. T. 94. **Reid.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379.

484. —— ——.]—CHRISTIE *v.* GRIGGS, No. 515, *post.*

485. —— ——.]—The proprietor of a stage-coach is not liable for an injury sustained by a passenger in consequence of the accidental overturning of the coach, unless such accident be occasioned by the negligence or misconduct of the driver.

The cause of the accident was the removal, since the coach had passed, of one of two cottages that had previously stood on an angle of the road, by which means the driver was deceived as to the course of the road, it being night, though moonlight:—*Held:* it should have been left to the jury to say whether or not the driver had been guilty of negligence.—CROFTS *v.* WATERHOUSE (1825), 3 Bing. 319; 11 Moore, C. P. 133; 4 L. J. O. S. C. P. 75; 130 E. R. 536.

Annotations:—**Consd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379. **Reid.** Francis *v.* Cockrell (1870), L. R. 5 Q. B. 184.

486. —— —— **Passenger injured by overhanging tree.**]—Where the route of an omnibus lies along a road lined by trees, which, by permission of the owner, the omnibus co. have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the co. liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging.—TRINDER *v.* GREAT WESTERN RY. Co. (1919), 35 T. L. R. 291.

See, also, Nos. 492, 503, *post.*

487. —— —— **Starting signal given by passenger on tram.**]—The mere fact that a tramway car has been started from an optional stopping place through the bell being pulled by a passenger in the absence of the conductor does not render the tramway owners responsible for injury thereby occasioned, unless it is shown that in the circumstances the non-control of the bell by the conductor amounted to negligence.—WAGNER *v.* WEST HAM CORPN. (1920), 37 T. L. R. 86, D. C.

488. —— **Caused by act of stranger.**]—Assuming it is *primâ facie* evidence of negligence in a railway co. that a train has got off the line, such evidence is entirely rebutted by proof that the accident arose from the wilful & wrongful act of a stranger.—LATCH *v.* RUMNER RY. Co. (1858), 27 L. J. Ex. 155.

489. —— ——.]—(1) Where works are going on over a line of railway, with which works the railway co. has nothing to do, & the execution of such works is entrusted to contractors who are entirely independent of the railway co., it is not the duty of the railway directors to assume that such works will be negligently conducted by those who have contracted for their execution, & to take precautions against possible negligence on the part of persons who are not in their employment nor under their control.

The City of London Corpn. was authorised by

an Act of Parliament to execute certain works over the line of the Metropolitan Ry. Co. These works consisted partly in placing heavy iron girders upon the walls running along the line of railway, & were therefore works in the execution of which danger was involved, but which were often executed elsewhere without mischief. The railway co. had no control over these works, which were executed by contractors engaged by the corpn. Several girders had been safely put in their places by manual labour, but, on this occasion, the contractors brought into use for one of the girders a monkey steam-engine which moved the girder with a jerk, & so caused it to overbalance & fall. It fell on a passing train, & injured pltf. :—*Held :* this was not a mischief the occurrence of which the railway co. was bound to anticipate, & against which it was bound to take precautions, & the railway co. was not liable in damages.

(2) If the operation which the contractors were performing was one which, according to previous knowledge & experience, was, however carefully performed, likely to lead to mischief, it would be incumbent on the railway co. to foresee & take precautions against it (LORD COLONSAY).

(3) If railway directors undertake to carry passengers over their own line, & also over another line, they would be bound to see that their own was in perfect order, & would be responsible for any negligence occurring on the other line, over which they had contracted to carry passengers, whether under their control or not, but would not be responsible for matters altogether extraneous to the work in which they were engaged, unless there was reasonable ground for apprehending that extraordinary precautions were required (LORD HATHERLEY, C.).—DANIEL *v.* METROPOLITAN RY. Co. (1871), L. R. 5 H. L. 45 ; 40 L. J. C. P. 121 ; 24 L. T. 815 ; 35 J. P. 708 ; 20 W. R. 37, H. L.

Annotations :—As to (1) **Consd.** The Secret (1872), 26 L. T. 670 ; The Maid of the Mist (1873), 21 W. R. 310 ; Williams *v.* G. W. Ry. (1874), L. R. 9 Exch. 157. **Reid.** Simson *v.* London General Omnibus Co. (1873), 21 W. R. 595 : Cohen *v.* Met. Ry. (1890), 6 T. L. R. 146 ; Pounder *v.* N. E. Ry., [1892] 1 Q. B. 385. *As to* (3) **Reid.** Wright *v.* Mid. Ry. (1873), 42 L. J. Ex. 89.

See, also, No. 699, *post.*

490. —— Caused by other passengers.]—EAST INDIAN RY. CO. *v.* KALIDAS MUKERJEE, No. 496, *post.*

Compare Nos. 527–529, *post.*

—— Caused by other company with running powers.]—*See* Sect. 4, *post.*

491. Standard of care required—In emergency.]—If, when danger occurs, the driver of a stage-coach does not take the safest course, the coach owner is responsible for the mischief which ensues. —JACKSON *v.* TOLLETT (1817), 2 Stark. 37, N. P.

—— —— Embankment destroyed by flood.]—*See* Sub-sect. 8, *post.*

492. —— Electric tramway.]—(1) Pltf. was a passenger on the outside of an uncovered tramway car belonging to defts. which was propelled by means of overhead electric traction. The wheel at the head of the trolly arm was detached from the electric wire & the trolly arm was plucked away from the standard at its socket & fell upon pltf.'s head. Such an occurrence was extremely rare, & no contrivance had been discovered to prevent it. The system of electric traction adopted by defts. was the best & most widely used ; the apparatus on that particular car on which the accident occurred was in perfect order ; & there was no negligence on the part of defts.' servants. An action was brought by pltf. against defts. claiming damages in respect of the injuries sustained by him. The jury having been directed that pltf. could only be entitled to recover damages if there was negligence on the part of defts. in carrying him as a passenger ; that the defts. were not insurers ; & that they were bound to take every reasonable precaution that could be taken to secure the safety of their passengers, but not as insurers, found for pltf., but stated that no one of the alleged acts of negligence of defts. was established to their satisfaction :—*Held :* the verdict of the jury showed that defts. discharged the burden which rested upon them ; & the only negligence alleged was disproved notwithstanding pltf.'s *primâ facie* case.

(2) As to the standard of care required in the case of a carrier of passengers, it is sufficient that the carrier should adopt the best known apparatus, kept in perfect order, & worked without negligence by the servants he employed. If he does that he ought not to be responsible for the consequences of an extremely rare & obscure accident which cannot in a business sense be prevented by any known means (COZENS HARDY, M.R.).—NEWBERRY *v.* BRISTOL TRAMWAYS & CARRIAGE CO., LTD. (1912), 107 L. T. 801 ; 29 T. L. R. 177 ; 57 Sol. Jo. 172 ; 11 L. G. R. 69, C. A.

Annotation :—As to (1) **Follď.** Hood *v.* Walthamstow U. D. C. (1915), 79 J. P. Jo. 161.

493. —— ——.]—Pltfs. claimed damages for personal injuries sustained by the female pltf. owing to the negligence of defts.' servants & consequent thereon. The female pltf. was, on May 20, 1913, a passenger for hire on a tramcar owned & worked by defts. While seated on the top of the car an overhead wire snapped or fell owing to the negligence of defts. or their servants, & came with great force against the head of the female pltf. whereby she was injured. The particulars of

490 i. *Not liable for mere accident—Caused by act of passenger—Interference with brakes.*]—Interference by a passenger, with the brakes, rendering a tramcar unmanageable & causing an accident, would relieve the carrier from responsibility.—PACKMAN *v.* GIBSON BROTHERS (1887), 4 H. C. 410.—**S. AF.**

491 i. *Standard of care required.*]—The measure of care to be exercised by carriers towards their passengers, individually & collectively, is what is reasonably needed for the protection of average capacity, & in an ordinary condition ; & where passengers are in an exceptional condition, physical or mental, arising from natural causes, or from others, such as intoxication, brought about by their own conduct, no additional obligation is imposed, under the ordinary contract of carriage, to exercise such an especial degree of care as might be so exceptionally needed in order to save them from injury, even although, when the passengers are being conveyed, their condition is known to the carriers.—CAHILL *v.* GREAT SOUTHERN & WESTERN RY. CO. (1891), 26 I. L. T. 17.—**IR.**

491 ii. —— *Meaning of due care.*]—Carriers of passengers are required to take all due care, having regard to the nature of the contract to carry. The words " due care " mean a high degree of care ; in other words that degree of care which is reasonable under the circumstances.—STEELE *v.* CAPE BRETON ELECTRIC CO., LTD. (1918), 52 N. S. R. 61 ; 39 D. L. R. 609.—**CAN.**

491 iii. —— *Passenger specially susceptible to injury.*]—A person suffering from any complaint who travels by railway must take the risks that any person in his condition would be likely to incur through a railway journey, & if the railway authorities take reasonable care, measured by the standard of care reasonably necessary for the safety of the average passenger, & such person suffers by reason of some ordinary incident of a railway journey, he cannot recover. If, however, there is a want of such reasonable care, then there is a breach of the contract of carriage, & if any person, whatever his condition of health, suffers through such breach of contract, he is entitled to recover the damages he has suffered by the breach, though a person in ordinary health might have suffered little or nothing.—LINKLATER *v.* THE MINISTER FOR RAILWAYS (1900), 18 N. Z. L. R. 536.—**N.Z.**

491 iv. —— *In emergency.*]—STANTON *v.* WELLER (1843), 1 Ont. Dig. 901.—**CAN.**

491 v. —— *Government railway.*]—Where a govt. railway contracts to carry passengers its duty is to exercise reasonable care.—HALL *v.* MCFADDEN (1880), 21 N. B. R. 586.—**CAN.**

Sect. 2.—*Duty to take care: Sub-sects.* 1 & 2.]

negligence set out that defts. were negligent in not providing a proper wire &/or in not seeing that the wire was properly secured &/or in allowing the wire to break while a car was passing under it:—*Held:* the proper questions had been left to the jury, but the language of their answers as to defts.' negligence was so ambiguous & indeterminate that the verdict & judgment could not stand, & a new trial must be ordered.—HOOD *v.* WALTHAMSTOW URBAN DISTRICT COUNCIL (1915), 79 J. P. Jo. 161, C. A.

494. —— Railway company.] — In an action against a railway co. for an injury alleged to have been caused by the negligence of their servants:—*Held:* (1) a railway co. is bound to use the best precautions in known practical use to secure the safety of their passengers, but not every possible precaution which the highest scientific skill, according to speculative evidence, might have suggested; (2) if there are several grounds of negligence suggested, the jury must be satisfied that some one or other of them existed, & caused damage to the party injured, though they need not be able to ascribe the whole injury to either.—FORD *v.* LONDON & SOUTH WESTERN RY. CO. (1862), 2 F. & F. 730, N. P.

Annotation:—As to (1) **Consd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379.

495. —— ——.] — DANIEL *v.* METROPOLITAN RY. CO., No. 489, *ante*.

496. —— ——.]—(1) Railway cos. are bound to use proper care & skill in carrying their passengers; they are not liable as common carriers of passengers independently of negligence.

(2) A passenger was killed in a railway carriage by an explosive illegally introduced into it:—*Held:* the railway co. was not liable in damages unless guilty of negligence in permitting the fireworks to be brought into the carriage. As it was not the duty of the co. to search every parcel carried by a passenger, the *onus* was on pltf. to show that the parcels containing the fireworks suggested danger.—EAST INDIAN RY. CO. *v.* KALIDAS MUKERJEE, [1901] A. C. 396; 70 L. J. P. C. 63; 84 L. T. 210; 17 T. L. R. 284, P. C.

Annotation:—As to (1) **Refd.** Maclenan *v.* Segar, [1917] 2 K. B. 325.

—— —— As to vehicles.]—*See* Sub-sect. 2, *post*.

497. Conduct amounting to negligence—Neglect to warn passengers of danger.]—DUDLEY *v.* SMITH, No. 513, *post*.

498. —— Not stopping when required — For passenger to alight.]—A person travelling by a stage-coach wished to alight before the end of the stage. As he called to the coachman, he began to descend. While getting down the side of the coach, he was hurled, by the motion of it, to the ground, & severely hurt:—*Held:* it was the duty of the coachman to stop immediately that he was desired by a passenger, & pltf. was entitled to damages in an action for negligence.—GRIFFIN *v.* IRONMONGER (1825), 4 L. J. O. S. K. B. 28.

See, further, Sub-sect. 4, *post*.

499. —— —— For passenger to board.] — BRIEN *v.* BENNETT, No. 466, *ante*.

500. —— Explosives taken into carriage by other passenger.]—EAST INDIAN RY. CO. *v.* KALIDAS MUKERJEE, No. 496, *ante*.

501. —— Passenger injured by sudden stopping of train—To avoid running over passenger leaving station by level crossing.]—ANGUS *v.* LONDON, TILBURY & SOUTHEND RY. CO. (1906), 22 T. L. R. 222, C. A.

502. —— Omnibus driven close to kerb — Passenger injured by projection on lamp-post.]—Pltf. was a passenger on the top of one of defts.' omnibuses. The driver of the omnibus, in turning out of one street into another, drove the omnibus close to the kerb to avoid an electric tramcar which was passing in the same direction, & while passing an electric light standard, which was on the pavement, the jolt of the omnibus grating round the kerb caused pltf.'s arm to come in contact with a fire alarm finger-post fixed to & standing out from the electric standard. Pltf.'s arm was at the time projecting from the omnibus, but the fire alarm finger-post did not project over but came flush with the kerb. There was no evidence that the driver either saw or knew of the fire alarm finger-post:—*Held:* as it was not shown that there was an obstruction of such a nature that with reasonable care the driver ought to have seen it & ought to have realised the fact that it would or might hit a passenger on the omnibus, there was no evidence of negligence.—SIMON *v.* LONDON GENERAL OMNIBUS CO., LTD. (1907), 23 T. L. R. 463, D. C.

Annotation:—**Folld.** Trinder *v.* G. W. Ry. (1919), 35 T. L. R. 291.

503. —— —— ——.]—Pltf. was a passenger on the top of one of the defts.' omnibuses. In consequence of the road along which the omnibus usually travelled being closed, the driver of the omnibus had to pass through side streets, & in turning the corner of one of the side streets the omnibus was driven close to the kerb, so that the top of the omnibus, owing to the camber of the road, projected over the foot pavement. A street lamp stood at the corner with a small iron arm projecting from it, but not sufficiently far to extend over the roadway. While the omnibus was being driven round the corner the iron arm struck pltf. on the chest & injured him. There was no traffic which prevented the omnibus from being driven further away from the kerb:—*Held:* there was evidence to support a finding that the driver did not see the projecting arm, & that he was not guilty of negligence in not having seen it & in having driven close to the kerb.—HASE *v.* LONDON GENERAL OMNIBUS CO., LTD. (1907), 23 T. L. R. 616, D. C.

Annotation:—**Refd.** Walton *v.* Vanguard Motor Bus Co. (1908), 72 J. P. 505.

See, also, No. 486, *ante*.

504. —— Letting carriage with restive horse.]—WHITE *v.* STEADMAN, No. 481, *ante*.

See, further, Sub-sect. 11, *post*.

505. —— Failure to provide proper means to

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497 i. *Conduct amounting to negligence—Neglect to warn passengers of danger.*]—It is the duty of a ry. co. to warn intending passengers of the existence of a block on the line, or of other circumstances inferring unusual risk in the journey, before entering into the contract of carriage, & if they fail so to do they may render themselves liable to such passengers for injury caused by accidents for which otherwise the co. would not have been responsible.—JARVIE *v.* CALEDONIAN RY. CO. (1875), 2 R. (Ct. of Sess.) 623; 12 Sc. L. R. 434.—**SCOT.**

504 i. —— *Use of unsuitable horses.*]—It is negligence in a street ry. co. carrying passengers in a closed vehicle, to use horses which are skittish & frightened of a train, where the route passes over a much-used railway by a bridge, though the horses have been driven for eighteen months many times a day, over the route, & have never run away before.—RAINNIE *v.* ST. JOHN CITY RY. CO. (1892), 31 N. B. R. 582.—**CAN.**

c. —— *Running train over unsafe bridge.*]—KENNY *v.* CANADIAN PACIFIC RY. CO. (1902), 5 Terr. L. R. 420.—**CAN.**

d. —— *Neglect to prevent assault on passenger.*]—If a passenger on a railway train is in danger of injury from a fellow passenger, & the conductor knows, or has an opportunity of knowing, of such danger, it is his duty to prevent it, & if he neglects so to do the co. is liable if the threatened injury is inflicted.—CANADIAN PACIFIC RY. CO. *v.* BLAIN (1903), 34 S. C. R. 74; 36 S. C. R. 159.—**CAN.**

enable passengers to descend from berths.]—ANDREWS *v.* LITTLE (1887), 3 T. L. R. 544, C. A.

506. —— **Question for jury.**]—CROFTS *v.* WATERHOUSE, No. 485, *ante*.

507. Liability for misconduct or negligence of servant.]—The proprietors of a mail coach are answerable for any injury happening to a passenger through the misconduct of their driver.—WHITE *v.* BOULTON (1791), Peake, 113, N. P.

508. ——.]—ASTON *v.* HEAVEN, No. 483, *ante*.

509. ——.]—DUDLEY *v.* SMITH, No. 513, *post*.

510. ——.]—CROFTS *v.* WATERHOUSE, No. 485, *ante*.

511. —— **Act done in course of employment — Invitee — Passenger by adjoining railway.**]—TEBBUTT *v.* BRISTOL & EXETER RY. CO., No. 643, *post*.

512. —— ——.]—WARD *v.* GENERAL OMNIBUS CO., No. 630, *post*.

See, further, AGENCY, Vol. I., pp. 594 *et seq.*; MASTER & SERVANT.

513. Duration of liability.]—(1) The proprietor of a stage coach is answerable for the negligence of the driver, from the usual place of taking up passengers, not only till the coach arrives at its place of destination, but till the passengers are there safely set down.

(2) The driver of a stage coach, before passing through any place that is dangerous, is bound to inform the passengers of the full extent of the danger; if he proceeds without giving them this information, the proprietor is liable for any injury they may thereby suffer, which they might have escaped by alighting.—DUDLEY *v.* SMITH (1808), 1 Camp. 167, N. P.

Liability to persons other than passengers.]—*See* NEGLIGENCE; RAILWAYS & CANALS.

SUB-SECT. 2.—SOUNDNESS OF VEHICLE.

514. Duty to provide sound vehicle.]—Though there are no more outside passengers on a coach than are allowed by statute, for an accident arising from a want of strength in any part, the owners are liable.—ISRAEL *v.* CLARK (1803), 4 Esp. 259, N. P.

Annotation:—**Refd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379.

515. —— **Breakdown primâ facie proof of negligence.**]—(1) In an action against the proprietor of a stage coach for negligence, whereby the coach broke down, & pltf., travelling by it as a passenger, was hurt; to prove negligence, it is *primâ facie* enough to give evidence of the coach having broken down, from which negligence will be inferred.

(2) The proprietor of a stage coach is not answerable for any damage that may happen to a passenger, from the coach being overturned by a mere accident.—CHRISTIE *v.* GRIGGS (1809), 2 Camp. 79, N. P.

Annotations:—*As to* (1) **Distd.** Manzoni *v.* Douglas (1880), 6 Q. B. D. 145; Wing *v.* London General Omnibus Co., [1909] 2 K. B. 652. **Apld.** Lilly *v.* Tilling & L. C. C. (1912), 57 Sol. Jo. 59. **Refd.** Perren *v.* Monmouthshire Ry. & Canal Co. (1853), 11 C. B. 855; Dawson *v.* M. S. & L. Ry. (1862), 5 L. T. 682; Francis *v.* Cockrell (1870), L. R. 5 Q. B. 184; Hyman *v.* Nye (1881), 6 Q. B. D. 685. *As to* (2) **Distd.** Sharp *v.* Grey (1833), 9 Bing. 457. **Consd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379. *Generally* **Mentd.** Scott *v.* London Dock Co. (1864), 34 L. J. Ex. 17; Macrow *v.* G. W. Ry. (1871), 19 W. R. 873.

516. —— **Leap to avoid danger.**]—If through the default of a coach proprietor, in neglecting to provide proper means of conveyance, a passenger be placed in so perilous a situation as to render it prudent for him to leap from the coach, whereby his leg is broken, the proprietor will be responsible in damages, although the coach was not actually overturned.—JONES *v.* BOYCE (1816), 1 Stark. 493, N. P.

Annotations:—**Distd.** Adams *v.* L. & Y. Ry. (1869), L. R. 4 C. P. 739. **Consd.** Robson *v.* N. E. Ry. (1875), L. R. 10 Q. B. 271. **Refd.** Wilson *v.* Newport Dock Co. (1866), L. R. 1 Exch. 177; Maclenan *v.* Segar, [1917] 2 K. B. 325. **Mentd.** The George & Richard (1871), L. R. 3 A. & E. 466; The City of Lincoln (1889), 15 P. D. 15; Wilkinson *v.* Downton, [1897] 2 Q. B. 57; Dulieu *v.* White, [1901] 2 K. B. 669; Janvier *v.* Sweeney, [1919] 2 K. B. 316; Weld-Blundell *v.* Stephens, [1920] A. C. 956; Wilson *v.* United Counties Bank, [1920] A. C. 102.

517. ——.]—In an action for negligence against the proprietor of a coach which travelled from O. to W., on which pltf. became an outside passenger for hire, the judge directed the jury to find for pltf. if they were of opinion that the injury sustained was occasioned by the negligence of deft. The jury found for the pltf., & stated that they so found on account of the improper construction of the coach, & of the luggage being on the seat:—*Held*: (1) the case was properly submitted to the jury; (2) the facts found specially by them amounted to negligence in deft.—CURTIS *v.* DRINKWATER (1831), 2 B. & Ad. 169; 9 L. J. O S. K. B. 175; 109 E. R. 1106.

Annotation:—*Generally* **Mentd.** Collins *v.* Jenkins (1838), 4 Bing. N. C. 225.

518. —— **Duty to make reasonable examination.**]—Every stage coach proprietor impliedly

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507 i. *Liability for misconduct or negligence of servant.*]—BARKER *v.* POLLOCK (1906), 4 W. L. R. 327.—CAN.

507 ii. ——.]—The motorman of an electric car allowed the conductor to drive, & through his negligence or incompetence a collision occurred with another car by which pltf. was injured:—*Held*: defts. were liable, although the conductor, whose act was the immediate cause of the accident, was not acting within the scope of his employment at the time.—WINNIPEG ELECTRIC RY. CO. *v.* HILL (1913), 22 W. L. R. 628.—CAN.

507 iii. ——.]—BARTLETT *v.* WINNIPEG ELECTRIC RY. CO. & CANADIAN NORTHERN RY. CO., [1918] 3 W. W. R. 483; 43 D. L. R. 326; *on appeal*, [1920] 1 W. W. R. 95.—CAN.

513 i. *Duration of liability.*]—A passenger on a tramcar, being near the front of the car, on reaching his destination, alighted from the front steps on the side next to a parallel track, upon which another car was coming at considerable speed in the opposite direction, & was injured. The space between the crossing cars was about 44 inches & there was no rule of the co. to prevent passengers alighting from the front steps. The passenger was not aware of the car approaching from the opposite direction when he alighted & the motorman of the car which struck him had neglected to observe a rule of the co. requiring that speed should be slackened:—*Held*: the co. was obliged to take proper precautions for the safety of passengers, even after they had alighted upon the street beside the tracks.—WINNIPEG ELECTRIC STREET RY. CO. *v.* BELL (1906), 37 S. C. R. 515.—CAN.

PART V. SECT 2, SUB-SECT. 2.

514 i. *Duty to provide sound vehicle.*]—Although a carrier of passengers does not warrant their safety or due arrival at their destination, yet he warrants that the vehicle in which he conveys them is, at the commencement of the journey, free from all defects of construction, & roadworthy, so far as human care & foresight can provide.—BURNS *v.* CORK & BANDON RY. CO. (1863), 13 I. C. L. R. 534.—IR.

515 i. —— *Breakdown primâ facie proof of negligence.*]—In an action of damages by a passenger against a coach proprietor for injury sustained from the breaking down of a stage-coach:—*Held*: the presumption is against the proprietor, & he must show that the carriage & machinery were sufficient, & that there was no negligence.—LYON *v.* LAMB (1838), 16 Sh. (Ct. of Sess.) 1138; 34 Fac. Coll. 799.—SCOT.

516 i. —— *Leap to avoid danger.*]—K. was a passenger on defts.' railway when the connection-rod of the engine broke. The compartment in which K. was travelling was filled with smoke, & some pebbles were dashed against the windows. K. jumped out & was injured:—*Held*: the injury to pltf. was not the result of negligence by defts.—KEARNEY *v.* GREAT SOUTHERN & WESTERN RY. CO. (1886), 18 L. R. Ir. 303.—IR.

518 i. —— *Duty to make reasonable*

Sect. 2.—Duty to take care: Sub-sects. 2 & 3.]

undertakes that his coach shall be sufficiently secure to perform the journeys it undertakes; & he ought to examine its sufficiency previous to each journey; if he does not, & by the insecurity of the coach a passenger is injured, an action is maintainable against the coach proprietor for negligence, though the coach had been examined previous to the second journey before the accident, & though it had been repaired at the coach-maker's only three or four days before.—BREMNER *v.* WILLIAMS (1824), 1 C. & P. 414, N. P.

Annotations:—**Refd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379; Hyman *v.* Nye (1881), 6 Q. B. D. 685. **Mentd.** Benett *v.* Peninsular Steamboat Co. (1848), 6 C. B. 775.

519. —— —— **Latent defect.**]—A coach proprietor is bound to provide a safe carriage for the conveyance of his passengers; & he is responsible as well for an accident that happens in consequence of a defect in the original construction of the carriage, though the defect is of a nature not to be discovered upon an examination such as is usual and ordinary, as for such as happens through his own negligence & want of proper care in looking to the security of the coach.—SHARP *v.* GREY (1833), 9 Bing. 457; 2 Moo. & S. 620; 2 L. J. C. P. 45; 131 E. R. 684.

Annotations:—**Consd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379. **Distd.** Wing *v.* London General Omnibus Co., [1909] 2 K. B. 652. **Refd.** Grote *v.* Chester & Holyhead Ry. (1848), 2 Exch. 251; Hyman *v.* Nye (1881), 6 Q. B. D. 685. **Mentd.** M'Manus *v.* L. & Y. Ry. (1858), 2 H. & N. 693; Francis *v.* Cockrell (1870), L. R. 5 Q. B. 501.

520. —— —— —— **Not insurers.**]—READHEAD *v.* MIDLAND RY. CO., No. 480, *ante*.

521. —— —— —— **Foreign truck.**]—An accident [to a passenger] happened on a railway co.'s line owing to a latent defect in a foreign truck which could not have been detected by the ordinary examination:—*Held:* as the facts proved were as consistent with the exercise of due & reasonable care as with negligence, pltf. must be nonsuited.—GILBERT *v.* NORTH LONDON RY. CO. (1883), Cab. & El. 31.

522. —— —— —— ——.]—It is the duty of a railway co. to see that trucks coming on their line to be forwarded are in such a state as to travel safely; but a minute examination of such trucks would defeat the purposes of through traffic, &, therefore, cannot be required. Nor does it become the duty of the co. to make a minute examination of the whole of a truck merely because a defect has been discovered in it.

A co. discovered two defects in a truck, & caused the only one which was of any importance to be remedied by the owners, & examined the truck in the usual way after the owners had sent it back. An accident was caused by another defect, in no way connected with or to be expected from either of the two discovered defects, & which could only have been found out by a minute examination:—*Held:* (1) the co. were not liable for negligence to a passenger injured by the accident.

At the trial the jury found that the co., on receiving the truck from the owners after it had been repaired, should have required from them some distinct assurance that it had been thoroughly examined and repaired:—*Held:* (2) no such duty was incumbent on the co.—RICHARDSON *v.* GREAT EASTERN RY. CO. (1876), 1 C. P. D. 342; 35 L. T. 351; 41 J. P. 36; 24 W. R. 907, C. A.

Annotation:—*As to* (1) **Distd.** Gilbert *v.* N. L. Ry. (1883), Cab. & El. 31.

523. —— —— ——.]—From an imperfect weld in the formation of a driving-wheel used to one of the carriages on defts.' line of railway, the wheel gave way & caused serious injury to pltf., a passenger. When that wheel was new, & before using it, it had been properly & regularly tested by hammering it all round & all over, & although this was a test not absolutely fixed & certain to discover defect, yet it was the best known & usual course pursued; no defect was then discoverable. The wheel was afterwards much used, & by it reduced in thickness & considerably worn; after this, & after the tire had been returned, it was not again tested or hammered all round; if it had been after it had been so worn, according to the evidence the defect which in fact existed in the wheel would in all probability have been discovered. The jury by their verdict found that the co. should have again tested the wheel after it had been so worn & re-turned, & were, in the circumstances, guilty of negligence & liable for not doing so:—*Held:* (1) the question of the co.'s liability was properly left to the jury upon the evidence given; (2) there was evidence to go to the jury in favour of pltf.'s case, & a rule for a new trial was refused.—MANSER *v.* EASTERN COUNTIES RY. CO. (1860), 3 L. T. 585.

524. —— —— ——.]—In an action against a railway co. for an injury alleged to have been caused [to a passenger] by the negligence of defts. or their servants, the negligence suggested being the use of engines or machinery with a flaw or defect which ought to have been observed, the question is not whether, according to evidence of a scientific & speculative nature, it might possibly have been detected, but whether practically & by the use of ordinary & reasonable care it ought to have been observed.—STOKES *v.* EASTERN COUNTIES RY. CO. (1860), 2 F. & F. 691, N. P.

Annotation:—**Consd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379.

525. —— **Vehicle manufactured by carrier—Burden of proof.**]—The duty of a carrier who manufactures his own carriages towards passengers whom he carries is to use due skill & care in the manufacture. If injury occur through imperfect construction, the *onus* is on the carrier to show that such due skill & care has in fact been

examination.]—Pltf. brought this action for injury sustained by her owing to the breaking of a flange in the hind wheel of a car of defts.' on which she was a passenger. The flange broke because of an inherent defect in the shape of an air hole at the time of the manufacture of the wheel. Defts. did not show what tests had been applied by the manufacturers of the wheel, or what could be done to detect the flaw; neither did they show that they themselves made any proper examination of the wheel before using it:—*Held:* defts. had failed adequately to discharge their duty of examining thoroughly & skilfully the equipment furnished them & were liable.—GAISER *v.* NIAGARA ST. CATHERINES & TORONTO RY. CO. (1909), 19 O. L. R. 31; 14 O. W. R. 42.—CAN.

518 ii. —— —— ——.]—Defts. used, on their car, a "rebuilt controller" not properly inspected by them: the controller exploded & pltf., a passenger on the car, was injured owing to the panic caused by the explosion:—*Held:* defts. were liable.—FLEMING *v.* TORONTO RY. CO. (1912), 23 O. W. R. 335; 4 O. W. N. 323; 27 O. L. R. 332; 8 D. L. R. 507; *affd.* 47 S. C. R. 612.—CAN.

519 i. —— —— *Latent defect.*]—If a common carrier of passengers builds a coach for himself or has it built under his own inspection, & provides for it an axletree supplied by a firm of good standing, he is not responsible for an injury sustained by a passenger in that coach in consequence of the axletree having broken owing to a defect therein incapable of being discovered by the most careful examination by himself or his servants.—WEBB *v.* CASSIDY (1907), 27 N. Z. L. R. 489.—N.Z.

525 i. —— *Vehicle built by manufacturer.*]—A railway co. which has purchased its rolling stock from competent manufacturers in the due course of business, is responsible for the negligence of those manufacturers in the construction of that stock, to the same extent as they would be in case they were themselves the manufacturers.—BURNS *v.* CORK & BANDON RY. CO. (1863), 13 I. C. L. R. 543; 15 Ir. Jur. 71.—IR.

exercised.—HOLTON *v.* LONDON & SOUTH WESTERN RY. CO. (1885), Cab. & El. 542.

526. —— Duty to provide communication cord—Regulation of Railways Act, 1868 (c. 119).]—*Held:* (1) Regulation of Railways Act, 1868, s. 22, applies to every passenger train which is intended to travel more than twenty miles without stopping.

In an action for personal injuries, brought against a railway co. by a passenger in a train which was within the Act, it appeared that there were no such means of communication as were prescribed by the Act; that the adoption of such means of communication had been recommended by the Board of Trade, & that they were in fact adopted & used by other railway cos., & also by defts. themselves in other trains. Some evidence was also given that if such means of communication had existed, the accident might have been prevented:—*Held:* (2) in determining whether, in the case of a passenger train intended to run more than twenty miles without stopping, the co. was guilty of negligence in not providing means of communication between the passengers & the co.'s servants, the provision contained in s. 22 was to be taken into account.

(3) *Qu.:* whether this would be so in the case of a train not intended to run twenty miles without stopping.—BLAMIRES *v.* LANCASHIRE & YORKSHIRE RY. CO. (1873), L. R. 8 Exch. 283; 42 L. J. Ex. 182, Ex. Ch.

Annotations:—Generally **Mentd.** Gorris *v.* Scott (1874), L. R. 9 Exch. 125; Thorley *v.* Glossop (1876), 34 L. T. 169; Baddeley *v.* Granville (1887), 19 Q. B. D. 423.

Window falling.]—*See* No. 553, *post.*

Door imperfectly fastened.]—*See* cases in Sub-sect. 4, *post.*

Absence of footboard.]—*See* No. 585, *post.*

SUB-SECT. 3.—OVERCROWDING.

527. What is natural result of—Assault.]—Pltf. had been employed in the eviction of pitmen from their houses, & had thereby incurred the ill-will of the pitmen in the neighbourhood in which he was travelling; when he took his ticket defts.' servants had no notice that he was exposed to greater danger than one of the ordinary travelling public; before the train started he was threatened, in the hearing of some of defts.' servants, with violence by a number of pitmen at the station, & got into the guard's van for safety, but was removed & placed in a third-class carriage by defts.' servants, who at this time knew that he had been engaged in the evictions & feared violence from the pitmen; pitmen crowded into the compartment in which he was, thereby greatly overcrowding it; defts.' servants, when applied to by him, did nothing towards attempting to get the pitmen out, or to get pltf. a seat in another carriage; he was assaulted & injured by the pitmen during the journey to the first station at which the train stopped; at that station the pitmen got out of the compartment & others got in, & repeated the assaults upon him; this happened at each station at which the train stopped, & at each station he complained of the assaults to the guard who did nothing to secure his safety. In an action for damages for the assaults:—*Held:* there was no evidence of a breach by defts. of any duty to pltf. arising out of the contract of carriage, & defts. were not liable.—POUNDER *v.* NORTH EASTERN RY. CO., [1892] 1 Q. B. 385; 61 L. J. Q. B. 136; 65 L. T. 679; 56 J. P. 247; 40 W. R. 189; 8 T. L. R. 64; 36 Sol. Jo. 62, D. C.

Annotation:—**Distd.** Cobb *v.* G. W. Ry., [1894] A. C. 419.

528. —— Robbery.]—A statement of claim alleged in substance that pltf. while a passenger in a train of deft. co., which was then stopping at a railway station, was robbed by a gang of men who entered the carriage where he was then seated; that pltf. forthwith complained of the robbery to the station-master, but he refused to detain the train to permit pltf. to give the men into custody & have them searched, & immediately upon pltf.'s complaint being made to him gave the signal for the train to leave, & it started, whereby pltf. was prevented from having the men searched & his property recovered; that there was in & about the station, as the station-master well knew, a large force of police ready & willing to effect the arrest for pltf. & to search those arrested, but they were prevented from doing so by the action of the station-master in starting the train; that pltf.'s money was still in the carriage when pltf. made his complaint, & might & would then have been recovered had the station-master afforded time for the necessary search; that deft. co. was negligent in permitting the carriage to be overcrowded & so facilitating the hustling & robbing of pltf. Pltf. claimed as damages the amount of money of which he had been robbed:—*Held:* the statement of claim disclosed no breach of duty on the part of deft. co., & no cause of action.—COBB *v.* GREAT WESTERN RY. CO., [1894] A. C. 419; 63 L. J. Q. B. 629; 71 L. T. 161; 58 J. P. 636; 10 T. L. R. 508; 6 R. 203, H. L.

Annotations:—**Distd.** Abraham *v.* Bullock (1902), 86 L. T. 796. **Mentd.** No. 7 Steam Sand Pump Dredger *v.* Greta Holme, [1897] A. C. 596; Weld-Blundell *v.* Stephens, [1920] A. C. 956.

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526 i. —— *Duty to provide communication cord.*]—Pltf. was a passenger in defts.' train, on which a fire broke out. Pltf. pulled the bell rope which would not work & he was seriously burned before the train stopped:—*Held:* the omission to have a bell rope as required by statute was negligence on defts.' part.—HAY *v.* GREAT WESTERN RY. CO. (1875), 37 U. C. R. 456.—**CAN.**

526 ii. —— —— *& air brake.*]—*Held:* though passenger trains were required by statute to be equipped with bell signal cords & air brakes, it was a question of evidence whether the absence of these appliances on freight trains was negligence.—MAKARSKY *v.* CANADIAN PACIFIC RY. CO. (1904), 15 Man. L. R. 53.—**CAN.**

e. *Stool in gangway — Foreign car.*]—Pltf. was holder of a ticket entitling him to travel to W., & in order to get to his own car entered a Pulman car belonging to Pulman Car Co. which was coupled to his car; in passing through the Pulman car he tripped & fell over a stool used by the porter of the Pulman car & in his charge:—*Held:* the Pulman car was in charge of persons who must be regarded as agents & servants of the ry. co.—DECUE *v.* WABASH R. R. CO. (1904), 3 O. W. R. 102.—**CAN.**

f. *Defective strap—Res ipsa loquitur.*]—BRAWLEY *v.* TORONTO RY. CO. (1919), 15 O. W. N. 308; *revsd.* 46 O. L. R. 31.—**CAN.**

g. *Defective brake gear—Failure of motorman to ask for inspection—Street railway liable.*]—VAUGHAN *v.* TORONTO & YORK RADIAL RY. CO. (1920), 18 O. W. N. 44.—**CAN.**

h. *Needless aperture.*]—Pltf. in boarding a car caught one foot in an opening on what is called the "step riser" & the bone of his foot was fractured:—*Held:* pltf.'s injury was due to the faulty design of the step of the car.—BLACK *v.* CALGARY (1915), 31 W. L. R. 191; 8 W. W. R. 646.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

527 i. *What is natural result of—Assault.*]—Drunken men rushed into a carriage containing its full complement of passengers, & insisted on getting seats, with a result that there was a fight between them & other occupants of the carriage. Pltf. fainted & suffered from great prostration:—*Held:* ry. co. not liable as the injury was not the direct result of the overcrowding.—KERR *v.* BELFAST & COUNTY DOWN RY. CO. (1897), 31 I. L. T. Jo. 177.—**IR.**

i. —— *Fall from outside platform.*]—Pltf., standing on the front platform of one of defts.' cars, which was crowded, was thrown off by a jolt & injured; it did not appear

Sect. 2.—Duty to take care: Sub-sects. 3 & 4.]

529. —— Injury from drunken person falling against passenger.]—MURGATROYD *v.* BLACKBURN & OVER DARWEN TRAMWAY CO. (1887), 3 T. L. R. 451, C. A.

530. —— Injury in alighting.]—A boy thirteen years old was employed at a mine & travelled to his work by a colliers' train. On Nov. 30, 1917, the train was crowded, as was often the case, & the boy was told to get into the guard's van, where there were already some thirty men & boys standing. There was, however, room for a few more. It was the practice for men to travel in the guard's van when the train was full. On the arrival of the train at the station for the colliery, the men made a rush, as they generally did, to get out of the train before it stopped; & in the rush from the guard's van the boy was pushed on to the line while the train was still in motion & severely injured. The boy brought an action against the railway co. for negligence:—*Held:* (1) there was no evidence of negligence on the part of the railway co.; (2) even if there was negligence in respect of overcrowding, there was no evidence of any casual connection between the overcrowding & the accident.—MACHEN *v.* LANCASHIRE & YORKSHIRE RY. CO. (1918), 88 L. J. K. B. 371; 120 L. T. 356, C. A.

See, generally, Sub-sect. 5, *post.*

—— Hand injured in slammed door.]—*See* Nos. 540 *et seq.*, *post.*

531. Reasonable accommodation—Government restriction of traffic.]—JONES *v.* GREAT NORTHERN RY. CO., No. 478, *ante.*

532. Statutory limitation of number of passengers—Excess booking.]—LONG *v.* HORNE, No. 470, *ante.*

Overcrowded platform.]—*See* No. 594, *post.*

SUB-SECT. 4.—DOORS AND WINDOWS.

533. Door—Imperfectly shut.]—Pltf., in company with his brother, was travelling by an underground railway. While the train was in motion he got up for the purpose of looking out of the window, in order to point out some object to his brother, & placed his hand against a bar which went across the carriage window, when the door flew open, & he fell out & was injured:—*Held:* (1) there was evidence of negligence to go to the jury.

(2) Assuming that the question of contributory negligence could be taken into account in considering whether pltf. had established a *primâ facie* case, there was no evidence of contributory negligence on the part of pltf. (KELLY, C.B.).—GEE *v.* METROPOLITAN RY. CO. (1873), L. R. 8 Q. B. 161; 42 L. J. Q. B. 105; 28 L. T. 282; 21 W. R. 584, Ex. Ch.

Annotations:—As to (1) **Folld.** Richards *v.* G. E. Ry. (1873), 28 L. T. 711. **Expld.** Benson *v.* Furness Ry. (1903), 88 L. T. 268. **Refd.** Hogan *v.* S. E. Ry. (1873), 28 L. T. 271; Robson *v.* N. E. Ry. (1875), L. R. 10 Q. B. 271.

534. —— ——.]—The fact of the door of a railway carriage being imperfectly fastened, is evidence of negligence on the part of the co., even when the train was not in a state of motion at the time when the accident happened.

Pltf.'s wife, on arriving at a station at which it was her intention to alight, left her seat for the purpose of taking up her child, which was sitting on the seat opposite to her. In turning round to sit down again & wait till the porter should open the door, she "touched" the door which flew open, & she fell out & injured herself:—*Held:* evidence of negligence on the part of the railway co., proper for the consideration of the jury.—RICHARDS *v.* GREAT EASTERN RY. CO. (1873), 28 L. T. 711.

535. —— ——.]—Pltf. had got into one of defts.' trains at A., where he was put into a second class carriage which was hastily attached to the back of a cattle train. On the arrival of the train at the next station the carriage door was found open & pltf. was picked up on the line between the two stations, dreadfully injured. He was taken to a hospital where, on account of the injuries he had received, morphia was given to him, & he was for two or three days insensible. Pltf. had told two of defts.' servants who sat up with him on the same night as the accident, that he had gone to sleep in the train, & that he woke up suddenly, & finding the train oscillating very much, & thinking the train was running back again, he opened the door & jumped out. The medical man who attended him heard the words, but thought that he could not have been in a state to have understood what he said. At the trial pltf. stated that he could not recollect what he said, & his account of the accident was that, finding the train oscillating very greatly, he looked out of the window & his hat was blown off, & then leaning out a little the door flew open & he fell out. The porter who put pltf. in the carriage said the door was in good condition as far as he knew, & several of defts.' servants said the lock was in good order & that it could be & was locked & fastened when found open at the next station. Pltf. having brought an action for negligence against defts., the jury found for pltf. for £300:—*Held:* the case was entirely one for a jury to decide, & the verdict could not be disturbed.—HAMER *v.* CAMBRIAN RY. CO. (1886), 2 T. L. R. 508, C. A.

536. —— —— Contributory negligence—Attempt to shut door.]—The door of a carriage, in which pltf. was being carried as a passenger, on defts.' railway, flew open several times through the negligence of defts. There was room in the carriage for pltf. to sit away from the door, & the train would have stopped at a station in three minutes. Pltf. shut the door three times. The door opened a fourth time, & in endeavouring to shut it again pltf. fell out & was hurt. The train stopped at three stations between the time when the door first opened & the occurrence of the whether, at the time of the accident, he was holding on to the iron rail on the platform or not:—*Held:* the fact of pltf. not proving affirmatively that he was so holding on was not a ground for nonsuit.—CORNISH *v.* TORONTO STREET RY. CO. (1873), 23 C. P. 355.—**CAN.**

k. —— ——.]—BURGESS *v.* PERE MARQUETTE RY. CO. (1904), 4 O. W. R. 510.—**CAN.**

l. —— *Fall from steps.*]—Pltf. jumped upon the steps of an overcrowded car, & stood there. The car was backed up, & pltf. was thrown off & injured. He sued for damages for his injuries:—*Held:* defts were liable.—WILLIAMS *v.* BRITISH COLUMBIA ELECTRIC RY. CO. (1913), 25 W. L. R. 77.—**CAN.**

530 i. —— *Injury in alighting from moving car.*]—SETTERINGTON *v.* SANDWICH, WINDSOR & AMHERSTBURG RY. (1919), 16 O. W. N. 123.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

533 i. *Door—Imperfectly shut—Injury from shock.*]—In an action against a ry. co., pursuer averred that a door of the compartment in which she was seated swung open, & almost at the same moment the motion of a passing train caused the open door to swing back & forward with great violence against the carriage; that the glass of the window was broken into fragments & the woodwork of the door was splintered, & that the occurrence was caused by the fault of defts.' servants in not seeing that the door was properly fastened:—*Held:* pursuer had stated a relevant case.—COOPER *v.* CALEDONIAN RY. CO. (1902), 4 F. (Ct. of Sess.) 889; 39 Sc. L. R. 660.—**SCOT.**

accident :—*Held :* as the inconvenience that pltf. would have suffered if he had not shut the door was slight, & the peril incurred in his attempt to shut it considerable, the injury he suffered was not the necessary or natural result of the co.'s negligence, & they were not liable for such injury. —ADAMS *v.* LANCASHIRE & YORKSHIRE RY. CO. (1869), L. R. 4 C. P. 739 ; 38 L. J. C. P. 277 ; 20 L. T. 850 ; 17 W. R. 884.

Annotations :—**Consd.** Gee *v.* Met. Ry. (1873), L. R. 8 Q. B. 161 ; Robson *v.* N. E. Ry. (1875), L. R. 10 Q. B. 271. **Refd.** The George & Richard (1871), L. R. 3 A. & E. 466 ; Lee *v.* Nixey (1890), 63 L. T. 285 ; Dulieu *v.* White, [1901] 2 K. B. 669. **Mentd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316.

537. —— —— —— Leaning against door.]—A railway co. ought to take reasonable care to see that the handles of the carriage doors are fastened, & if they neglect that they are guilty of negligence. But if a passenger lean too heavily upon a door & meet with an accident by its opening, he is guilty of contributory negligence.—WARBURTON *v.* MIDLAND RY. CO. (1870), 21 L. T. 835, N. P.

538. —— —— —— Falling against door.]—Pltf. & C. were travelling on defts.' line, & were playing in the railway carriage. Pltf., to avoid a blow from C., jumped up against the carriage door, which opened, & pltf. fell on to the line & was injured :—*Held :* the jury were justified in saying that pltf. was not guilty of contributory negligence.—DUDMAN *v.* NORTH LONDON RY. CO. (1886), 2 T. L. R. 365, C. A.

Annotation :—**Consd.** Hamer *v.* Cambrian Ry. (1886), 2 T. L. R. 407.

539. —— Left open—Train in motion.]—In an action of damages for personal injuries brought by a passenger against a railway co. pursuer averred that while standing on the platform of their station [after alighting from a train] he was struck & injured by an open carriage door ; that it was the duty of defenders & the invariable practice of railway cos. to close the doors of compartments before a train was allowed to leave the station, but this they negligently failed to do on the occasion of this accident, & thereby an open door caused the injury to pursuer :—*Held :* there was a relevant averment of negligence by defenders, inasmuch as facts were averred from which a jury might infer negligence, & pursuer was entitled to a trial by jury.—TOAL *v.* NORTH BRITISH RY. CO., [1908] A. C. 352 ; 77 L. J. P. C. 119 ; 99 L. T. 173 ; 24 T. L. R. 673, H. L.

—— Opened by passengers—Preparatory to alighting.]—*See* Nos. 580, 581, *post.*

540. —— Slammed by porter.]—A porter closing the door of a compartment so as to touch a passenger who had just got inside, & crushing the fingers of a child who was just seating himself, between the hinges :—*Held :* evidence of negligence.—COLEMAN *v.* SOUTH EASTERN RY. CO. (1866), 4 H. & C. 699 ; 31 J. P. 23 ; 12 Jur. N. S. 944.

541. —— —— Contributory negligence—Placing hand on door or in hinge.]—A passenger got into a railway carriage which was full, & remained about half a minute standing inside it with his hand on the door. The guard called out to the passengers to take their seats, & shut the door, thereby crushing pltf.'s hand :—*Held :* there was no evidence of negligence on the part of the guard, & there was evidence of contributory negligence on the part of pltf.—RICHARDSON *v.* METROPOLITAN RY. CO. (1868), L. R. 3 C. P. 374, n. ; 37 L. J. C. P. 300 ; 18 L. T. 721 ; 16 W. R. 909.

Annotations :—**Refd.** Fordham *v.* L. B. & S. C. Ry. (1869), L. R. 4 C. P. 619 ; Siner *v.* G. W. Ry. (1869), 20 L. T. 114.

542. —— —— —— ——.]—Pltf., a passenger by defts.' railway, in getting into a railway carriage at a station, placed his left hand on the back of the open door to aid him in mounting the step. There was conflicting evidence as to whether there was a proper handle affixed to the carriage, to the right hand of the door. The night was dark, & pltf. did not see any handle. He had a parcel in his right hand. Before he had completely entered the carriage, the guard, without any previous warning, closed the door, & crushed his hand between the back of the door & the doorpost. In an action for the injury thus sustained :—*Held :* there was evidence of negligence on the part of the co.'s servant, & no evidence of such contributory negligence on the part of pltf. as to entitle defts. to a nonsuit.—FORDHAM *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1869), L. R. 4 C. P. 619 ; 38 L. J. C. P. 324 ; 17 W. R. 896, Ex. Ch.

Annotations :—**Distd.** Richardson *v.* Met. Ry. (1868), 37 L. J. C. P. 300 ; Maddox *v.* L. C. & D. Ry. (1878), 38 L. T. 458. **Refd.** Siner *v.* G. W. Ry. (1869), 20 L. T. 114.

543. —— —— —— ——.]—Pltf. was a passenger on defts.' railway, booking at one of the metropolitan stations, accompanied by his son. On the arrival of the train at the platform, the son entered a carriage first, followed by the father. After pltf. had completely entered the carriage, but before he had taken his seat, or passed the passenger sitting next the door, a servant of the company shut the door without warning. Pltf.'s thumb was in the hinge, & received injuries, to recover damages for which the action was brought : —*Held :* there was no evidence of negligence to go to the jury.—MADDOX *v.* LONDON, CHATHAM & DOVER RY. CO. (1878), 38 L. T. 458.

Annotations :—**Distd.** Atkins *v.* S. E. Ry. (1885), 2 T. L. R. 94. **Refd.** Delaney *v.* Met. Ry. (1920), 89 L. J. K. B. 878.

544. —— —— —— ——.]—Pltf. had entered a railway carriage & while in the act of sitting down, & with her hand upon the door, a porter, who pltf. said was coming along & could see her, slammed the door, causing an injury to her thumb. At the trial the porter was not called, & pltf. obtained a verdict :—*Held :* there was evidence of negligence on the part of the porter, & the verdict must stand.—ATKINS *v.* SOUTH EASTERN RY. CO. (1885), 2 T. L. R. 94, D. C.

Annotation :—**Distd.** Drury *v.* N. E. Ry., [1901] 2 K. B. 322.

545. —— —— —— ——.]—CATHERALL *v.* MERSEY RY. CO. (1887), 3 T. L. R. 508, D. C.

546. —— —— —— ——.]—*Held :* defts. were not liable.—COHEN *v.* METROPOLITAN RY. CO. (1890), 6 T. L. R. 146, D. C.

Annotation :—**Distd.** Delaney *v.* Met. Ry. (1920), 89 L. J. K. B. 878.

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537 i. —— —— *Left open—Leaning against door.*]—A passenger was injured by a fall from a train in consequence of the carriage door against which he was leaning flying open ; neither the injured party nor any one else in the compartment opened the door :—*Held :* defts. were liable.—CASSIDY *v.* NORTH BRITISH RY. CO. (1873), 11 Macph. (Ct. of Sess.) 341 ; 45 Sc. Jur. 232.—**SCOT.**

539 i. —— —— *Train in motion.*]—Pursuer, while walking along one of the platforms of deft.'s station, was struck by an open door of a train which entered the station from behind her ; it was not proved how the door came to be open :—*Held :* there was evidence on which the jury might infer negligence on the part of defts.—BURNS *v.* NORTH BRITISH RY. CO., [1914] S. C. 754.—**SCOT.**

540 i. —— *Slammed by porter.*]—Pltf. entrained at a station on deft. co.'s line : she was saying good-bye to her friends from the carriage door, at the side of which she had her hand, when a porter opened it to introduce passengers, & before she had time to withdraw her hand he shut the door, crushing pltf.'s hand. The train was in motion when this occurred :—*Held :* no cause of action was shown.—TAYLOR *v.* GREAT SOUTHERN & WESTERN RY CO., [1909] 2 I. R. 330.—**IR.**

Sect. 2.—Duty to take care: Sub-sects. 4 & 5.]

547. —— —— —— ——.]—D., a passenger from G. to H., at S., another passenger having alighted, put out his hand & the door of the railway carriage shut on it. There was nothing to indicate the train was about to start, & no warning was given before the door was shut. It was closed by an official who came from behind where D. was sitting:—*Held:* there was no evidence of negligence on the part of the servant of the co.—DRURY *v.* NORTH EASTERN RY. CO., [1901] 2 K. B. 322; 70 L. J. K. B. 830; 84 L. T. 658, D. C.

Annotation:—**Folld.** Benson *v.* Furness Ry. (1903), 88 L. T. 268.

548. —— —— —— ——.]—B., a passenger from D. to U., at L., some people getting into the carriage, put his hand in the doorway. While the train was moving, the door was banged to by a servant of deft. co. without any notice or warning, & B.'s hand was injured:—*Held:* there was no evidence of negligence on the part of the co.—BENSON *v.* FURNESS RY. CO. (1903), 88 L. T. 268; 47 Sol. Jo. 257, D. C.

549. —— —— **Overcrowded carriage.**]—(1) Whether there is reasonable evidence to be left to the jury of negligence occasioning the injury complained of, is a question for the judge. It is for the jury to say whether, & how far, the evidence is to be believed.

(2) J. was a passenger by a railway; the carriage in which he rode was full. At G. three persons forced themselves in, & were obliged to stand. There was no evidence that a complaint on this matter had been made to the railway officials, or that they knew of the fact. At P. some other persons opened the door of the carriage, shut it again, & went away. There was, afterwards, a rush on the platform, & other persons opened the door of the carriage. J. stood up to prevent their entering, the train moved, & J., to save himself from falling, put his hand upon the edge of the door of the carriage; at that moment a railway porter came up, pushed away the persons trying to get in, & slammed the door to, in doing which J.'s thumb was caught & crushed:—*Held:* this evidence did not establish such negligence on the part of the co. as could be said to have occasioned the mischief.—METROPOLITAN RY. CO. *v.* JACKSON (1877), 3 App. Cas. 193; 47 L. J. Q. B. 303; 37 L. T. 679; 42 J. P. 420; *sub nom.* JACKSON *v.* METROPOLITAN RY. CO., 26 W. R. 175, H. L.

Annotations:—*As to* (1) **Distd.** Dublin, Wicklow, & Wexford Ry. *v.* Slattery (1878), 3 App. Cas. 1155. **Consd.** Leaver *v.* Pontypridd U. D. C. (1910), 75 J. P. 25. **Refd.** Finegan *v.* L. & N. W. Ry. (1889), 53 J. P. 663; Brearley *v.* L. & N. W. Ry. (1899), 15 T. L. R. 237; Banbury *v.* Bank of Montreal, [1918] A. C. 626. *As to* (2) **Consd.** Maddox *v.* L. C. & D. Ry. (1878), 38 L. T. 458; Dublin, Wicklow & Wexford Ry. *v.* Slattery (1878), 3 App. Cas. 1155; Wright *v.* Mid. Ry. (1884), 51 L. T. 539. **Expld.** Bullner *v.* L. C. & D. Ry. (1885), 1 T. L. R. 534; Murgatroyd *v.* Blackburn & Over Darwen Tram Co. (1886), 3 T. L. R. 180. **Distd.** Catherall *v.* Mersey Ry. (1887), 3 T. L. R. 508. **Consd.** Cobb *v.* G. W. Ry., [1893] 1 Q. B. 459. **Folld.** Benson *v.* Furness Ry. (1903), 88 L. T. 268. **Consd.** Bradley *v.* Wallaces, [1913] 3 K. B. 629; Papworth *v.* Battersea B. C. (1914), 79 J. P. 105. **Refd.** Davey *v.* L. & S. W. Ry. (1883), 11 Q. B. D. 213; Esdaile *v.* Payne (1889), 40 Ch. D. 520; Pounder *v.* N. E. Ry., [1892] 1 Q. B. 385; Toronto Ry. *v.* King, [1908] A. C. 260; Canadian Pacific Ry. *v.* Fréchette, [1915] A. C. 871. *Generally* **Mentd.** Jones *v.* Canadian Pacific Ry. (1913), 83 J. P. 13; Everett *v.* Griffiths, [1921] 1 A. C. 631.

550. —— —— ——.]—A passenger being put into an overcrowded compartment by a porter, & receiving a push from a fellow passenger, put out his hand to save himself, & in so doing received an injury to his finger, caused by the carriage door being closed by the porter:—*Held:* there was no evidence of negligence causing the accident, as it was the consequence of the passenger's own act.—BULLNER *v.* LONDON, CHATHAM & DOVER RY. CO. (1885), 1 T. L. R. 534, D. C.

Annotation:—**Consd.** Benson *v.* Furness Ry. (1903), 88 L. T. 268.

551. —— ——.]—Pltf. got into a railway carriage where there were two vacant places. He took his seat next the door, & had his arms up holding something in his hand at the side of the carriage, the door being open. He had been three minutes in the carriage when suddenly a whistle was blown, the train moved, & the porter violently slammed the door, injuring pltf.'s arm:—*Held:* there was evidence of negligence, & pltf. was entitled to recover.—JONES *v.* GREAT WESTERN RY. CO. (1885), 1 T. L. R. 333; 49 J. P. Jo. 180, D. C.

Annotations:—**Distd.** Benson *v.* Furness Ry. (1903), 88 L. T. 268. **Consd.** Delaney *v.* Met. Ry. (1920), 89 L. J. K. B. 878.

552. —— **Sliding door closed by train starting—No warning of starting.**]—Pltf., who had been for some months in the habit of travelling daily on defts.' railway, arrived at A. station. The train was standing at the platform. He got on at the rear end of a carriage, & was going to a seat when the train started more suddenly than usual with a jerk, & he was thrown off his balance. To save himself he put out his hand, which was caught & injured by the closing of the sliding door, with which the carriage was provided, the door being closed by the momentum of the train in starting. No warning was given before the train started. No evidence was given by defts.:—*Held:* there was evidence of negligence, & pltf. was entitled to judgment.—METROPOLITAN RY. *v.* DELANEY (1921), 90 L. J. K. B. 721; 125 L. T. 472; 37 T. L. R. 520; 65 Sol. Jo. 453, H. L.; *affg.* S. C. *sub nom.* DELANEY *v.* METROPOLITAN RY. CO. (1920), 89 L. J. K. B. 878, C. A.

—— **Passenger injured through difficulty in opening.**]—*See* No. 578, *post.*

553. Window—Falling.]—The mere fall of a railway carriage window from the ledge upon which it rests, while closed, into the receptacle it occupies when lowered, is not evidence of negligence which will support an action against the railway for personal injury caused to a passenger in the carriage by the sudden descent of the window.—MURRAY *v.* METROPOLITAN DISTRICT RY. CO. (1873), 27 L. T. 762.

SUB-SECT. 5.—BOARDING AND ALIGHTING FROM VEHICLE.

554. Duty to stop—To allow passenger to alight—Stage-coach.]—GRIFFIN *v.* IRONMONGER, No. 498, *ante.*

555. —— **To allow passenger to board—Omnibus.**]—BRIEN *v.* BENNETT, No. 466, *ante.*

556. —— —— —— **Omnibus starting with jerk—Omnibus company liable.**]—GEEVES *v.* LONDON GENERAL OMNIBUS CO., LTD. (1901), 17 T. L. R. 249, C. A.

PART V. SECT. 2, SUB-SECT. 5.

554 i. *Duty to stop—To allow passenger to alight.*]—A ry. co. which has undertaken to carry a passenger to a station on its line must stop its train at that station long enough to give the passenger a reasonable opportunity of getting off. If the train stops, & the passenger, after making reasonable efforts is unable to get off before it starts again, jumps off & is injured, the co. is liable in damages; provided, however, that, when the passenger jumps off, the train is not moving at such rate of speed as to make the danger of jumping obvious to a person of reasonable intelligence.—KEITH *v.* OTTAWA & NEW YORK RY. CO. (1902), 5 O. L. R. 110.—**CAN.**

554 ii. —— ——.]—WILLIAMS *v.* TORONTO & YORK RADIAL RY. CO (1919), 16 O. W. N. 197.—**CAN.**

557. Train stopping short of platform—Invitation to alight—Passenger told to alight.]—On the arrival of a train at the railway terminus, there not being room for all the carriages to be drawn up to the platform, some of the passengers were required to alight upon the line beyond it, the depth from the carriage to the ground being about three feet. In so alighting, a lady, instead of availing herself of the two steps, with the assistance of a gentleman jumped from the first step to the ground, & sustained a spinal injury from the concussion :—*Held :* (1) there was evidence to warrant a finding that the co. were guilty of negligence in not providing reasonable means of alighting, & that the lady had not by any misconduct on her part contributed to the injury; (2) the jury having awarded her £500, the ct. declined to interfere with the amount of damages.—FOY *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1865), 18 C. B. N. S. 225 ; 5 New Rep. 247 ; 11 L. T. 606 ; 13 W. R. 293 ; 144 E. R. 429.

Annotations :—Generally **Distd.** Siner *v.* G. W. Ry. (1869), L. R. 4 Exch. 117. **Refd.** Robson *v.* N. E. Ry. (1875), L. R. 10 Q. B. 271.

558. —— —— Name of station called out.]—A long train of defts. was stopped at a platform so that part of it was alongside the parapet of a bridge ; in the dark pltf. after the train had stopped, & defts.' servants had called out the name of the station, stepped upon the parapet believing it was the platform, & fell over :—*Held :* (1) the judge was right in leaving the jury to determine whether the circumstances amounted to an invitation to pltf. to alight ; (2) there was evidence of negligence on defts.' part to justify the verdict which the jury found for pltf.—WHITTAKER *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1870), L. R. 5 C. P. 464, n. ; 22 L. T. 545.

*Annotation :—***Refd.** Cockle *v.* L. & S. E. Ry. (1870), L. R. 6 C. P. 457.

559. —— —— ——.]—Pltf., who had for many years been a frequent traveller on defts.' line of railway, on arriving, on a winter evening, at the station at which he was to alight, heard the name of the station called out two or three times, by one of the railway porters. The part of the train, in which pltf. was, was drawn up at a place about 35 ft. from the end of the platform. There were no lights there, & pltf. in stepping out fell upon his head & was injured :—*Held :* there was evidence of negligence on the part of defts. to go to the jury.—GILL *v.* GREAT EASTERN RY. CO. (1872), 26 L. T. 945, Ex. Ch.

560. —— —— ——.]—B. was in the last carriage of a railway train. Before reaching the station at which he was to alight the train had to pass through a tunnel. In that tunnel there was, first, a heap of hard rubbish lying by the side of the rails, irregular in form & height, then a short sloping piece of ground, then a piece of flat platform, like the main platform, but narrower & within the tunnel. Beyond these was the main platform itself. The train only partially went up to the main platform, leaving the last two carriages within the tunnel, which had no light within it, & on the occasion in question was filled with steam. The last carriage but one came opposite the narrow platform, the last carriage was opposite the hard rubbish. A passenger in the last carriage but one, who was called as a witness at the trial, heard the name of the station called out in the usual way & got out upon the narrow platform. He then heard a groaning, & proceeding farther back into the tunnel found B. lying on the rubbish with his legs between the wheels of the last carriage, but neither of them had touched him. B.'s leg was broken, & he had received other injuries, from the effects of all of which he died. The witness heard the warning, " Keep your seats," & shortly afterwards the train moved on :—*Held :* (1) the evidence furnished matter on which it was necessary to take the opinion of a jury.

(2) *Qu. :* whether calling out the name of a station is an invitation to the passengers, going to that station, to alight there.—BRIDGES *v.* NORTH LONDON RY. CO. (1874), L. R. 7 H. L. 213 ; 43 L. J. Q. B. 151 ; 30 L. T. 844 ; 38 J. P. 644 ; 23 W. R. 62, H. L. ; *revsg.* (1871), L. R. 6 Q. B. 277, Ex. Ch.

Annotations :—As to (1) **Consd.** Robson *v.* N. E. Ry. (1876), 2 Q. B. D. 85. **Foll.** Rose *v.* N. E. Ry. (1876), 2 Ex. D. 248. **Expld.** Met. Ry. *v.* Jackson (1877), 3 App. Cas. 193. **Consd.** Watkins *v.* G. W. Ry. (1877), 46 L. J. Q. B. 817. **Refd.** Dublin, Wicklow, & Wexford Ry. *v.* Slattery (1878), 3 App. Cas. 1155 ; Maddox *v.* L. C. & D. Ry. (1878), 38 L. T. 458 ; Clarke *v.* Mid. Ry. (1880), 43 L. T. 381. *Generally* **Refd.** Whittaker *v.* M. S. & L. Ry. (1870),

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557 i. *Train stopping short of platform—Invitation to alight—Customary stopping place.*]—A railway carriage was pulled up 150 yards from the platform as was usual, & pltf. in taking the direct & usual road to the platform fell over a switch-bar & broke his knee-cap :—*Held :* there was evidence of invitation to alight.—PRICE *v.* RAMSAY (1882), 16 S. A. L. R. 95.—**AUS.**

557 ii. —— —— *From moving train.*]—Pltf. travelled by defts.' line to E. When the train stopped at E. the baggage car was at the station platform. The rear passenger car, in which pltf. travelled, was some distance from the end of the platform. Defts.' conductor in charge of the train, who was standing on the ground, put up his hand to assist pltf. to get off ; she took his hand & jumped down from the lowest step of the car to the ground ; the distance was too great for her to step down. The train began to move either as she jumped or just before. Immediately after jumping down, pltf., who was pregnant, felt great pain & had a miscarriage :—*Held :* defts. were bound to bring their passenger cars up to the platform to permit a passenger to step down on it in alighting. The conductor's act was an invitation to pltf. to get off when she did.—GUAY *v.* CANADIAN NORTHERN RY. CO. (1904), 24 C. L. T. 277 ; 15 Man. L. R. 275.—**CAN.**

557 iii. —— —— *Parapet mistaken for platform.*]—In an action of damages against a ry. co. pursuer averred, that when some yards from the station to which he was travelling, the train stopped, & he stepped out, in the belief that the train had arrived at the station. The ry. co. were in the habit of leaving the station unlit, & at the point where the train stopped there was a parapet wall in a line with & abutting the coping of the platform, the top of which in the darkness resembled the platform : on discovering his mistake he was about to re-enter the train when it started again without warning, with the result that he was precipitated over the parapet, & sustained injuries :—*Held :* these averments were irrelevant, nothing being alleged which could be reasonably construed as an invitation to alight.—MCAULAY *v.* GLASGOW & SOUTH WESTERN RY. CO. (1896), 23 R. (Ct. of Sess.) 845 ; 33 Sc. L. R. 666.—**SCOT.**

557 iv. —— —— *Reasonable interval before alighting—No warning given.*]—A passenger brought an action of damages for personal injury against a ry. co., in which she averred that on arrival at her destination, the carriage in which she was seated was not able owing to the length of the train to be brought up opposite the platform, that she waited a quarter of an hour or thereby, & as no one appeared to assist her to alight, proceeded so to do herself, in the course of which pursuer fell & was injured. She averred further that the stationmaster was on the platform & saw the passengers alighting but gave no instructions :—*Held :* the action was irrelevant.—ABBOT *v.* NORTH BRITISH RY. CO. (1915), 53 Sc. L. R. 244.—**SCOT.**

557 v. —— —— *Defective lighting.*]—Where a train stopped at a station in such position that one of the end carriages was not on a level with the platform & a passenger in alighting from the carriage stepped into a drain, which could not be seen owing to the darkness of the night, & was seriously injured :—*Held :* there was negligence in not stopping the train in such position that the passengers could alight in safety.—M'ALEESE *v.* NORTHERN COUNTIES RY. CO. (1897), 31 I. L. T. 140.—**IR.**

557 vi. —— —— —— *No warning given.*]—Pursuer received injuries in alighting from a train at a railway station ; the carriage in which he was seated had been stopped short of the platform, &, in consequence of the darkness of the night & the absence of artificial light, he had not observed this & had fallen :—*Held :* it was the duty of the ry. co. to have given the passengers some notice or warning of the danger, or assistance in alighting.—POTTER *v.* NORTH BRITISH RY. CO. (1873), 11 Macph. (Ct. of Sess.) 664.—**SCOT.**

Sect. 2.—Duty to take care: Sub-sect. 5.]

L. R. 5 C. P. 464, n.; Cockle *v.* L. & S. E. Ry. (1872), L. R. 7 C. P. 321; Gill *v.* G. E. Ry. (1872), 26 L. T. 945; L. & N. W. Ry. *v.* Hellawell (1872), 26 L. T. 557; Gee *v.* Met. Ry. (1873), L. R. 8 Q. B. 161; Weller *v.* L. B. & S. C. Ry. (1874), 43 L. J. C. P. 137. **Mentd.** Pearson *v.* Cox (1877), 2 C. P. D. 369; Woodley *v.* Met. Dist. Ry. (1877, 2 Ex. D. 384.

—— **Passenger travelling in guard's van.**]—*See* No. 641, *post.*

561. Train overshooting platform.] — Upon a train on defts.' line of railway arriving at a station, the two or three foremost carriages, in one of which pltf. was a passenger, overshot the platform of the station, & where the carriages stopped the line of railway was on an embankment some height above a roadway. The night was rather dark & there was no light in the carriage, & no stationary light on the platform, nor was there any fence on the top of the embankment between it & the roadway beneath. Upon the train stopping, pltf., knowing that the carriage had overshot the platform & without waiting to see whether it would be backed to the platform, got out of the carriage in the dark, & in doing so missed his footing & fell forward over the embankment into the roadway beneath:—*Held:* on the facts stated the co. were not guilty of negligence, & were not liable.

There is no duty in a railway co. to fence their line of railway as towards passengers or persons already on the line. The duty in them to fence is towards persons off the line, to prevent the latter from getting or straying upon it (BRAMWELL, B.).—HARROLD *v.* GREAT WESTERN RY. CO. (1866), 14 L. T. 440.

Annotations:—**Consd.** Siner *v.* G. W. Ry. (1869), L. R. 4 Exch. 117. **Foll.** Plant *v.* Mid. Ry. (1870), 21 L. T. 836. **Refd.** Cockle *v.* L. & S. E. Ry. (1870), L. R. 5 C. P. 457.

562. ——.]—An excursion train, in which the pltfs., husband & wife, were passengers to R., arrived at R. station, &, the train being a long one, the carriage in which they were overshot the platform. It was then daylight. The passengers were not warned to keep their seats, nor was any offer made to back the train to the platform, nor was it, in fact, ever so backed, nor did it move until it started for B. After waiting a short time, the husband, following the example of other passengers, alighted, without any request to the co.'s servants to back the train, or any communication with them. The wife, standing on the iron step of the carriage, took both his hands & jumped down, & in so doing strained her knee. There was a footboard between the iron step & the ground, which she did not use, but there was no evidence of any carelessness or awkwardness in the manner of descent, except such as might be inferred from the above facts:—*Held:* there was no evidence for the jury of negligence in defts.; the accident was entirely the result of pltfs.' own acts.—SINER *v.* GREAT WESTERN RY. CO. (1869), L. R. 4 Exch. 117; 38 L. J. Ex. 67; 20 L. T. 114; 17 W. R. 417, Ex. Ch.

Annotations: **Distd.** Adams *v.* L. & Y. Ry. (1869), L. R. 4 C. P. 739. **Foll.** Plant *v.* Mid. Ry. (1870), 21 L. T. 836. **Distd.** Praeger *v.* Bristol & Exeter Ry. (1871), 24 L. T. 105. **Consd.** Robson *v.* N. E. Ry. (1876), 2 Q. B. D. 85. **Distd.** Wharton *v.* L. & Y. Ry. (1888), 5 T. L. R. 142; L. T. & S. Ry. *v.* Paterson (1913), 29 T. L. Bridges *v.* N. L. Ry. (1871), L. R. 6 Q. B. L. & S. E. Ry. (1872), L. R. 7 C. P. 327; D & Wexford Ry. *v.* Slattery (1878), 3 A Wright *v.* Mid. Ry. (1881), 51 L. T. 553.

563. —— **Invitation to alight—Nan called out.**]—The carriage of a train i travelled overshot the platform of the which it stopped. The name of the st called out. The train was not back descended from the carriage in a dark a alighting on rough ground, sprained his had not been requested to alight ther action against the company for negli *Held:* on the facts stated, the co. liable.—PLANT *v.* MIDLAND RY. C 21 L. T. 836.

Annotation:—**Refd.** Cockle *v.* L. & S. E. Ry. (5 C. P. 457.

564. —— —— —— **Momentary sto** (1) The mere stopping of a train, & callin name of a station is no evidence of an i to alight.

(2) Pltf. was a passenger by defts.' r B. As the train arrived there, she heard called out several times. The train wa to a standstill, but not before it had partly the platform. As pltf. was in the act out, & when her foot was on the step of th the train was put back, with a jerk, & s the platform. The period occupied by the was little more than momentary, & pltf. station well:—*Held:* there was no ev negligence on the part of defts. to go to t LEWIS *v.* LONDON, CHATHAM & DOVE (1873), L. R. 9 Q. B. 66; 43 L. J. Q. L. T. 397; 38 J. P. 103; 22 W. R. 153.

Annotations:—*As to* (2) **Distd.** Brearley *v.* L. & (1899), 15 T. L. R. 237. *Generally* **Distd.** L. B. & S. C. Ry. (1874), L. R. 9 C. P. 126. **Re** *v.* N. E. Ry. (1875), L. R. 10 Q. B. 271.

565. —— —— ——.]—Pltf. was a by defts.' railway, & as the train rea station to which he was to be carried, he name of such station called out; the tra wards stopped, & he heard the opening of doors usual upon passengers alight then opened the door of the carriage in travelled, which was the second from the put one foot on the step & the other on expected to be the platform, but the pa train in which he was carried having ove platform he fell on to the embankment. dark night at the time & there was no lig forty feet of the spot, & pltf. was there to see whether the platform was or was side of the carriage. A passenger in carriage from the engine proved that he & alighted on the platform, & that after saw pltf. fall. No warning was given servants to any of the passengers not to le seats, & the train was never backed, but accident proceeded on its journey:—*Held* was evidence on which a jury might re find negligence on the part of defts., contributory negligence of pltf.—WEL LONDON, BRIGHTON & SOUTH COAST R.

m. *Train overshooting platform—Invitation to alight—No caution given.*]—A train in which pltf. was travelling, having arrived at the end of the journey, was drawn up so as to leave some of the carriages, including that in which she was travelling, beyond the platform. She waited some time, & looked out for assistance, & was seen by the station-master, who was then helping passengers out of the other carriages, & gave her no caution; whereupon she alighted, &, doing so, received the injuries complained of:—*Held:* there was evidence of negligence which ought to be submitted to the jury.—THOMPSON *v.* BELFAST, HOLYWOOD & BANGOR RY. CO. (1871), I. R. 5 C. L. 517.—**IR.**

563 i. —— —— *Name of station called out—Reasonable interval before alighting.*]—Where that part of a railway train including the carriage in which the pltf. rode overshot the platform in daylight, & a porter called out several times the name of the stations, & let out some of the passengers, who were departing from the stat reasonable time for backing had elapsed, & there was no intention to back it; & at hand no servant of the pltf. could request to have backed; & pltf., though attempting to alight, fell injured in the attempt:—*Held* was negligence on the part of NICHOLLS *v.* GREAT SOUTH W. 10 Ir.

74), L. R. 9 C. P. 126; 43 L. J. C. P. 137; 29 . 888; 22 W. R. 302.

Annotations:—**Consd.** Anthony *v.* Mid. Ry. (1908), 100 L. T. . **Refd.** Robson *v.* N. E. Ry. (1875), L. R. 10 Q. B. 271.

566. —— —— ——.]—BREARLEY *v.* LONDON NORTH-WESTERN RY. CO. (1899), 15 T. L. R. . C. A.

567. —— —— **Reasonable interval before nting.**]—In an action against a railway co. by assenger for personal injury, where there was idence that the train stopped at a platform, ich was too short to receive all the carriages at , & that pltf., after waiting some time, got out rough fear of being carried beyond her destina- n, & sustained injury in so doing:—*Held:* this s evidence to go to the jury of negligence on the rt of the co.—ROBSON *v.* NORTH EASTERN RY. . (1876), 2 Q. B. D. 85; 46 L. J. Q. B. 50; 35 T. 535; 41 J. P. 294; 25 W. R. 418, C. A.

Annotations:—**Consd.** Rose *v.* N. E. Ry. (1876), 2 Ex. D. . **Refd.** Met. R. v. Jackson (1877), 3 App. Cas. 193; Watkins *v.* G. W. Ry. (1877), 46 L. J. Q. B. 817.

568. —— —— —— **Warning inaudible.**]—In an action for negligence the question whether e facts amount to negligence is for the jury.

(2) Pltf. was a passenger by defts.' railway. e train in which she was overshot the platform. e porters called to the passengers to keep their ats, but not so that pltf. could hear. The train s not backed. Pltf. waited some time, & then out, & was injured in alighting:—*Held:* there s evidence to go to the jury of negligence on the rt of defts.—ROSE *v.* NORTH EASTERN RY. CO. 876), 2 Ex. D. 248; 46 L. J. Q. B. 374; 35 T. 693; 41 J. P. 532; 25 W. R. 205, C. A.

Annotation:—*As to* (1) **Refd.** Jackson *v.* Met. Ry. (1877), 26 . R. 175.

569. —— —— **Immediate steps to give warning -injury before warning received.**]—Pltf. was a assenger on defts.' railway from A. to B. He as a season ticket holder, & was accustomed to ake the journey daily. On a foggy evening the ain overshot the platform at B., where pltf. esired to alight, by 130 yards. The engine-driver, pon discovering that he had overshot the platform, lew his whistle & sent the fireman to prevent the assengers from leaving the carriages. Im- ediately the train stopped & before receiving ny warning not to do so, pltf. stepped from the arriage & fell, receiving injuries:—*Held:* there as no evidence of negligence against defts.—NTHONY *v.* MIDLAND RY. CO. (1908), 100 L. T. 17; 25 T. L. R. 98, D. C.

570. —— **Station well known to passenger.**]—. was a passenger by railway, & in course of his urney had to change carriages at a certain station. he train consisted of six carriages, & the station latform could only accommodate five carriages. n reaching the station O.'s carriage stood not gainst the platform, but the slope leading from e end of it to the rails, & in getting out in day- ght she fell, & was injured. O. knew the locality ell:—*Held:* there was no *primâ facie* evidence negligence on the part of the co.—OWEN *v.* GREAT ESTERN RY. CO. (1877), 46 L. J. Q. B. 486; 36 . T. 850; 41 J. P. 630.

Annotation:—**Refd.** Wharton *v.* L. & Y. Ry. (1888), 5 T. L. R. 142.

571. —— ——.]—Pltf., a lady, was a passenger y one of defts.' trains to S. The train arrived at station, which is a terminus, & stopped in such position that pltf.'s carriage had gone beyond e level part of the platform. Pltf. did not notice is, & she got out supposing that she would alight n the platform in the ordinary way, but the result as that she was thrown down & injured. She dmitted in cross-examination that she did not look where she was stepping to. The jury found (1) defts. were guilty of negligence; (2) pltf. could have avoided the accident by looking before she stepped down: (3) it was not negligent for pltf. to step down without looking:—*Held:* there was evidence on which the jury might come to the conclusion at which they arrived.—LONDON, TILBURY, & SOUTHEND RY. CO. *v.* GLASSCOCK (1903), 19 T. L. R. 305, H. L.

572. **Train stopped at dangerous part of platform —Invitation to alight—Final standstill.**]—A train, in which pltf. was a passenger, arrived at Y. (a terminus), & was stopped fifteen or twenty feet short of the fixed buffers placed at the extreme limit to which it might have gone. The platform of the station, at the end which would be first reached by an arriving train, instead of having its edge parallel with the line of rails used by the arriving trains, was bevelled off into a curve so as to allow space for a siding which there joined that line of rails. Pltf. sat in the last compartment of the last carriage, which was drawn up opposite the curved part of the platform, so that a space of eighteen inches or two feet was left between the carriage & the platform. A guard opened the door but said nothing. It was a dark evening, & the station was dimly lighted. Pltf. stepped out, expecting to alight on the platform, & fell between the carriage & the platform, thereby sustaining injuries, in respect of which he brought his action against the co.:—*Held:* there was evidence to go to the jury of negligence on the part of defts., inasmuch as there was a clear invitation to pltf. to alight, & no warning given, although in consequence of the insufficiency of light the danger was not apparent.—PRAEGER *v.* BRISTOL & EXETER RY. CO. (1871), 24 L. T. 105, Ex. Ch.

Annotations:—**Folld.** Cockle *v.* L. & S. E. Ry. (1872), L. R. 7 C. P. 321. **Refd.** Bridges *v.* N. L. Ry. (1871), 40 L. J. Q. B. 188; Robson *v.* N. E. Ry. (1876), 2 Q. B. D. 85.

573. —— —— ——.]—(1) An invitation by a railway co. to a passenger to alight on the stopping of a train at a place of danger, the danger not being visible & apparent, without any warning, amounts to negligence.

Pltf. opened the door of a railway carriage in which she was travelling for herself, & stepping out in the dark upon what she thought was the platform fell in a space intervening between the carriage & the platform where the platform receded from the rails, & was injured. The rest of the train had been properly drawn up to the lighted part of the platform, & the train had stopped once for all to put down passengers there; but the name of the station had not been called out. Pltf. was not warned of the danger of alighting where she did:—*Held:* there was evidence for the jury of negligence on the part of the railway co.

(2) Bringing a train to a final standstill for the purpose of the passengers alighting amounts to an invitation to alight, at all events after the lapse of such a time that a passenger may reasonably infer that he is intended to alight if he mean to do so at the particular station.—COCKLE *v.* LONDON & SOUTH EASTERN RY. CO. (1872), L. R. 7 C. P. 321; 41 L. J. C. P. 140; 27 L. T. 320; 20 W. R. 754, Ex. Ch.; *affg.* (1870), L. R. 5 C. P. 457.

Annotations:—*As to* (1) **Folld.** Gill *v.* G. E. Ry. (1872), 26 L. T. 945. **Refd.** Bridges *v.* N. L. Ry. (1874), L. R. 7 H. L. 213; Rose *v.* N. E. Ry. (1876), 2 Ex. D. 248. *As to* (2) **Distd.** Lewis *v.* L. C. & D. Ry. (1873), L. R. 9 Q. B. 66. **Folld.** Robson *v.* N. E. Ry. (1876), 2 Q. B. D. 85. *Generally* **Refd.** Whittaker *v.* M. S. & L. Ry. (1870), 22 L. T. 545; Weller *v.* L. B. & S. C. Ry. (1874), L. R. 9 C. P. 126; Glasscock *v.* L. T. & S. Ry. (1902), 18 T. L. R. 295. **Mentd.**

Sect. 2.—Duty to take care: Sub-sects. 5 & 6.]

Mollett *v.* Robinson (1870), 39 L. J. C. P. 290; Johnson *v.* Emerson (1871), L. R. 6 Exch. 329; Sheffield Corpn. *v.* Barclay (1903), 89 L. T. 227.

574. —— Defective lighting — Fog.]—EWING *v.* SOUTH EASTERN RY. CO. (1892), 8 T. L. R. 679.

See, also, No. 592, *post.*

575. —— Platform too low.]—Pltf., a passenger on defts.' railway, when alighting from the train at a station injured herself. The height of the footboard of the carriage in which pltf. was travelling above the platform of the station was 22 ins., & pltf. alleged that this was an unreasonable height, & that defts. were negligent in not providing reasonably fit & safe facilities for her to alight. Defts. tendered evidence that the platforms at a large number of their other stations in the district were as low as the one in question, & that no accident had happened:—*Held:* the evidence was admissible.—MANNING *v.* LONDON & NORTH WESTERN RY. CO. (1907), 23 T. L. R. 222, C. A.

576. —— ——.]—WHARTON *v.* LANCASHIRE & YORKSHIRE RY. CO. (1888), 5 T. L. R. 142, C. A.

577. Train suddenly accelerating speed—Invitation to alight—Name of station called out—Doors opened.]—Pltf. was a passenger by applts.' railway from M. to H. Upon arrival at H., several porters who were servants of the co., ran up to the train before it stopped & unlocked & threw open the doors of the carriages & called out, "All out for H." Pltf., supposing that the train had come to a stand, began to get out, & had placed her left foot on the first step for that purpose, when the brake which had been applied to stop the train was suddenly taken off, which caused an increase of speed, whereby she fell on the platform of the station & broke her leg:—*Held:* these facts constituted actionable negligence on the part of applts.—LONDON & NORTH WESTERN RY. CO. *v.* HELLAWELL (1872), 26 L. T. 557.

578. Train beginning to move—Passenger unable to open door in time.]—Pltf. was travelling upon deft. co.'s railway, & upon arriving at the station for which she had taken a ticket she could not open the carriage door; she eventually succeeded in doing so, & while she was getting out of the carriage, the train moved on & threw her violently to the ground, causing a severe injury to her right arm. The jury found for pltf. for £300:—*Held:* there was evidence upon which the jury might reasonably have found for pltf., & the verdict must stand.—METROPOLITAN RY. CO. *v.* WRIGHT (1886), 11 App. Cas. 152; 55 L. J. Q. B. 401; 54 L. T. 658; 34 W. R. 746; 2 T. L. R. 553, H. L.

Annotations:—**Mentd.** Webster *v.* Friedeberg (1886), 17 Q. B. D. 736; Murtagh *v.* Barry (1890), 59 L. J. Q. B. 388; Phillips *v.* Martin (1890), 15 App. Cas. 193; Allcock *v.* Hall, [1891] 1 Q. B. 444; Ferrand *v.* Bingley Township L. B. (1891), 36 Sol. Jo. 58; Hampson *v.* Guy (1891), 64 L. T. 778; How *v.* L. & N. W. Ry., [1892] 1 Q. B. 391; Brazier *v.* Camp (1894), 63 L. J. Q. B. 257; Seaton *v.* Sheridan (1896), 12 T. L. R. 285; Jones *v.* Spencer (1897), 77 L. T. 536; Cox *v.* English, Scottish & Australian Bank, [1905] A. C. 168; Neville *v.* London Express Newspapers, [1917] 2 K. B. 564; Banbury *v.* Bank of Montreal, [1918] A. C. 626; Calmenson *v.* Merchants' Warehousing Co. (1921), 125 L. T. 129.

579. —— Passenger trying to enter moving train—Railway company not liable.]—AVIS *v.* GREAT EASTERN RY. CO. (1892), 8 T. L. R. 693, C. A.

580. Train pulling up with jerk—Passenger at open door.]—Pltf. was standing by the open door of a train in motion as it was drawing up at a platform. The train was pulled up with a jerk & pltf. thrown on the platform, & injured:—*Held:* there was no evidence of negligence on the part of the railway co.—FOLKES *v.* NORTH LONDON RY. CO. (1892), 8 T. L. R. 269.

Annotation:—**Dbtd.** Hall *v.* London Tram. Co. (1896), 12 T. L. R. 611.

581. —— ——.]—LANGTON *v.* LANCASHIRE & YORKSHIRE RY. CO. (1886), 3 T. L. R. 18, C. A.

582. Tram slowing down & suddenly accelerating speed with jerk—Whether invitation to alight.]—As a tramway car was approaching a point in V. where the car generally stopped, the car slackened speed, & the conductor called out "V." three times. Pltf. then attempted to get out, & as he was doing so the speed was increased, & he was thrown out & injured:—*Held:* there had been no invitation to alight, & the owners of the car were not liable.—BAIRD *v.* SOUTH LONDON TRAMWAYS CO. (1886), 2 T. L. R. 756.

Annotation:—**Overd.** Hall *v.* London Tram. Co. (1896), 12 T. L. R. 611.

583. —— Passenger waiting to alight—Conductor not on footboard.]—*Held:* (1) there was evidence of negligence on the part of the driver, in disregarding the signal to stop, & of the conductor, in leaving the footboard & going to the top of the car without waiting for the answer to the signal; (2) pltf. was not negligent in going on the footboard before the car stopped.—*Baird* v. *South London Tramways Co.*, No. 582, *ante*, overd.—HALL *v.* LONDON TRAMWAYS CO., LTD. (1896), 12 T. L. R. 611, C. A.

574 i. *Train stopping at dangerous part of platform—Defective lighting.*]—CURWIN *v.* WINDSOR & ANNAPOLIS RY. CO. (1875), 9 N. S. R. 493.—**CAN.**

574 ii. —— —— *No warning given.*]—Pltf., a passenger, travelling on defts.' railway, received injuries from a fall which he experienced in stepping upon the platform when the train stopped. The station was not properly lighted, & pltf. was not warned against alighting:—*Held:* defts. were liable.—WOODHOUSE *v.* CALCUTTA & SOUTH EASTERN RY. CO. (1868), 9 W. R. 73.—**IND.**

574 iii. —— —— *Inequality in pavement.*]—STEWART *v.* CALEDONIAN RY. CO. (1870), 7 Sc. L. R. 277.—**SCOT.**

n. —— *Duty to give warning.*]—In an action of damages against a ry. co. raised by a passenger for injuries received in alighting at night from a train at a railway station—not a terminus—it was proved that the train was of an unusual length, that the last carriage in which pursuer was travelling was stopped opposite the end of the platform which sloped down to the level of the rails; that pursuer had failed to observe this when she stepped out of the carriage. The guard deposed that he had shouted to the passengers to keep their seats before pursuer left the carriage:—*Held:* in the circumstances it was the duty of defenders to have given warning to the passengers to keep their seats.—AITKEN *v.* NORTH BRITISH RY. CO. (1891), 18 R. (Ct. of Sess.) 836; 28 Sc. L. R. 638.—**SCOT.**

o. *Car stopping at dangerous place in street—Not under control of street railway—Street railway company not liable.*]—BRUNSTERMAN *v.* WINNIPEG ELECTRIC RY. CO. (1920), 2 W. W. R. 600; 53 D. L. R. 668.—**CAN.**

p. *Car stopping between usual stopping places—Injury from third party's vehicle.*]—At pltf.'s request the motorman of a street car, contrary to a municipal bye-law, stopped the car between the usual stopping places, & as pltf. stepped off she was run down by a motor vehicle & injured:—*Held:* the street railway co. were liable.—ELLIS *v.* HAMILTON STREET RY. CO. (1920), 47 O. L. R. 527; 18 O. W. N. 226.—**CAN.**

577 i. *Car suddenly starting—Passenger about to alight.*]—WINNIPEG ELECTRIC RY. CO. *v.* SCHWARTZ (1913), 27 W. L. R. 139.—**CAN.**

578 i. *Train beginning to move—Passenger unable to reach exit in time.*]—MCDOUGALL *v.* GRAND TRUNK RY. CO. (1912), 23 O. W. R. 364; 4 O. W. N. 363; 27 O. L. R. 369; 8 D. L. R. 271.—**CAN.**

q. —— *Passenger trying to board moving car—No contributory negligence—Street railway company liable.*]—SQUIRES *v.* TORONTO RY. CO. (1920), 47 O. L. R. 613; 54 D. L. R. 575; 18 O. W. N. 294.—**CAN.**

r. —— —— *With conductor's permission—Street railway company liable.*]—LOCHEAD *v.* BRITISH COLUMBIA ELECTRIC RY. CO. (1920), 3 W. W. R. 417; 54 D. L. R. 254.—**CAN.**

582 i. *Car suddenly accelerating speed—Intention to alight notified.*]—BROWN *v.* TORONTO RY. CO. (1914), 26 O. W. R. 149.—**CAN.**

584. Tram stopping & starting with jerk while passenger alighting—No contributory negligence.]—HOLLAND *v.* NORTH METROPOLITAN TRAMWAYS CO. (1886), 3 T. L. R. 245.

585. Absence of footboard.]—CHURCHILL *v.* SOUTH EASTERN RY. CO. (1888), 4 T. L. R. 418.

Injury by open door of moving train.]—*See* No. 539, *ante*.

Injury in alighting—From overcrowded train.]—*See* No. 530, *ante*.

SUB-SECT. 6.—PLATFORMS, WAITING ROOMS, ETC.

586. Platform reasonably safe.]—On the platform of a railway station there were two doors in close proximity to each other, the one, for necessary purposes, had painted over it the words "For gentlemen," the other had over it the words "Lamp-room." Pltf., having occasion to go to the urinal, inquired of a stranger where he should find it, & having received a direction, by mistake opened the door of the lamp-room & fell down some steps & was injured:—*Held:* in the absence of evidence that the place was more than ordinarily dangerous, the Judge was justified in nonsuiting pltf., on the ground that there was no evidence of negligence on the part of the co.—TOOMEY *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1857), 3 C. B. N. S. 146; 27 L. J. C. P. 39; 30 L. T. O. S. 135; 6 W. R. 44; 140 E. R. 694.

Annotations:—**Apld.** Cornman *v.* Eastern Counties Ry. (1859), 4 H. & N. 781. **Consd** Cotton *v.* Wood (1860), 8 C. B. N. S. 568; Indermaur *v.* Dames (1866), L. R. 1 C. P. 274. **Apld.** Blackman *v.* L. B. & S. C. Ry. (1869), 17 W. R. 769. **Refd.** Crafter *v.* Met. Ry. (1866), Har. & Ruth. 164; Ryder *v.* Wombwell (1868), L. R. 4 Exch. 32; Gee *v.* Met. Ry. (1873), L. R. 8 Q. B. 161; Dublin, Wicklow, & Wexford Ry. *v.* Slattery (1878), 3 App. Cas. 1155; Hall *v.* Jupe (1880), 49 L. J. Q. B. 721. **Mentd.** Nicholson *v.* L. & Y. Ry. (1865), 34 L. J. Ex. 84; Smith *v.* G. E. Ry. (1866), L. R. 2 C. P. 4.

587. —— Projection — Base of weighing machine.]—Defts., a railway co., had on their platform, standing against a pillar which passengers passed in going to & coming from the trains, a portable weighing machine used for weighing passengers' luggage, the foot of which projected about six inches above the level of the platform. It was unfenced & had stood in the same position without any accident having occurred to persons passing it for about five years. Pltf., being at the station on Christmas Day inquiring for a parcel was driven by the crowd against the machine, caught his foot in it & fell over it:—*Held:* there was no evidence of negligence to go to the jury on the part of the co. the machine being in a situation in which it might have been seen, & the accident not being shown to be one which could have been reasonably anticipated.—CORNMAN *v.* EASTERN COUNTIES RY. CO. (1859), 4 H. & N. 781; 29 L. J. Ex. 94;

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584 i. *Car starting with jerk—Passenger jolted off—Invitation to alight—Name of next station called out.*]—BUCK *v.* CANADIAN PACIFIC RY. CO. (1906), 7 O. W. R. 71.—**CAN.**

584 ii. —— *Passenger about to alight.*]—JACOB *v.* TORONTO RY. CO. (1912), 22 O. W. R. 180; 3 O. W. N. 1255; 3 D. L. R. 818.—**CAN.**

584 iii. —— —— *Refusal of trial judge to put material questions as to negligence & contributory negligence—New trial ordered.*]—MYERS *v.* NOVA SCOTIA TRAMWAYS & POWER CO., LTD. (1920), 52 N. S. R. 466; 50 D. L. R. 484.—**CAN.**

584 iv. —— —— *Warned of danger.*]—Pltf., a passenger, got on the lower step of one of deft. co.'s tram cars, & was thrown off, by a jolt of the car, after having been warned by the conductor not to get off until the car stopped:—*Held:* pltf. was not entitled to recover damages for injuries sustained.—WHITFORD *v.* NOVA SCOTIA TRAMWAYS CO., LTD. (1918), 52 N. S. R. 105.—**CAN.**

s. Passenger jolted from car platform —Intention to alight.]—M., a passenger on a tramcar, told the conductor shortly after he entered the car that he wished to alight at B. When the car reached B., the conductor was on the roof collecting fares. The car was travelling at a rapid, but not excessive pace, & continued its course. M., in the absence of the conductor, left the interior of the car, & went out on the platform to stop the car by ringing the bell. While he was doing so, the car swerved, & he was jerked from the platform to the road, sustaining injuries. In an action for negligence:—*Held:* in the absence of reasonable notice to the conductor of pltf.'s wish to alight, there was no evidence of negligence on the part of the conductor.—MARTIN *v.* DUBLIN UNITED TRAMWAYS CO., [1908] 2 I. R. 13; 42 I. L. T. 278.—**IR.**

t. Jump from moving train — Risk voluntarily undertaken.]—HAY *v.* CANADIAN PACIFIC RY. CO., [1909] 1 W. W. R. 806.—**CAN.**

u. Steps in dangerous condition.]—The steps of an electric car, operated by deft. co., were in a slippery condition in consequence of exposure, while in use, to snow followed by rain, sleet & cold. The car had been thoroughly cleaned in the morning, before being sent out, & it would not have been practicable to operate it in such weather as that which prevailed at the time & to send it back constantly to the barn to have the snow & ice removed:—*Held:* (1) passengers boarding & leaving the car at such a time were bound to exercise more than ordinary caution; (2) it would not be reasonable to hold the co. accountable for injuries sustained by pltf., who, in getting off the car, slipped & fell.—MCCORMACK *v.* SYDNEY & GLACE BAY RY. CO. (1905), 37 N. S. R. 254.—**CAN.**

v. Steps not fulfilling statutory requirement.]—In an action for damages for injury sustained by pltf., in alighting from a closed double truck street-car of defts., the jury found that the height of the car steps did not comply with the regulation of the Ontario Railway & Municipal Board, that on closed double truck cars the height of the first step above the ground should be not less than 14 inches nor more than 16 inches. Upon the car from which pltf. alighted, the step was 21 inches above the platform at which the car purported to stop & 33 inches above the ground at the place where the car over-shot the platform where pltf. alighted:—*Held:* (1) it was the duty of defts. to see that the proper facilities for passengers to alight were provided—not a platform, but a step upon the car of the prescribed distance above the ground & they did not provide such steps; (2) defts. were liable.—DOWSON *v.* TORONTO & YORK RADIAL RY. CO. (1918), 43 O. L. R. 158; 43 D. L. R. 377.—**CAN.**

a. Invitation to alight — Opening exit door.]—REEVES *v.* TORONTO RY. CO. (1913), 25 O. W. R. 91.—**CAN.**

b. —— —— *Car in motion.*]—The opening of the door of a standing train or street-car, at a regular stopping place, is *primâ facie* an invitation to alight; opening it when the train or car is not at a stopping place & is moving so fast that the motion is perceptible to any reasonably careful passenger is not, without more, an invitation to alight; opening it at a stopping place & slowing down the train or car is some evidence to go to the jury of an invitation to alight: each case must depend on its own circumstances.—GAZEY *v.* TORONTO RY. CO. (1917), 40 O. L. R. 449; 38 D. L. R. 637; 22 Can. Ry. Cas. 233.—**CAN.**

c. —— —— ——.]—The act of the conductor in opening the door guarding the steps at the end of a car & allowing a passenger to go down these steps is not negligence on his part.—GRAND TRUNK RY. CO. *v.* MAYNE (1917), 56 S. C. R. 95; 39 D. L. R. 691.—**CAN.**

d. —— —— ——.]—JARVIS *v.* LONDON STREET RY. CO. (1919), 15 O. W. N. 421.—**CAN.**

e. —— *Side of car open.*]—JONES *v.* HAMILTON RADIAL ELECTRIC RY. CO. (1913), 25 O. W. R. 267; 5 O. W. N. 282.—**CAN.**

f. Defective lighting.]—A passenger sustained injuries by leaving a railway carriage while the train was entering a station at night. In an action of damages against the ry. co. he averred that defenders had not provided a sufficient number of lamps upon the platform, whereby he was unable to distinguish fixed objects & believed that the train had stopped:—*Held:* the action was relevant.—ROE *v.* GLASGOW & SOUTH WESTERN RY. CO. (1889), 17 R. (Ct. of Sess.) 59; 27 Sc. L. R. 38.—**SCOT.**

g. Alighting beyond station — Neglect to give warning of danger.]—FLEMING *v.* CANADIAN PACIFIC RY. CO. (1908), 11 O. W. R. 982.—**CAN.**

PART V. SECT. 2, SUB-SECT. 6.

586 i. *Platform reasonably safe.*]—Where passengers are impliedly invited by a ry. co. to make use of a platform as a means of access to the railway cars, it is the duty of the ry. co. to have the platform in a reasonably safe condition at all points or parts where such passengers are entitled to be or stand.—SWAN *v.* CANADIAN NORTHERN RY. CO. (1908), 1 Alta. L. R. 427; 8 W. L. R. 662; 9 W. L. R. 275.—**CAN.**

Sect. 2.—Duty to take care: Sub-sects. 6, 7 & 8.]

33 L. T. O. S. 302; 5 Jur. N. S. 657; 157 E. R. 1050.

Annotations:—**Consd.** Cowley *v.* Sunderland Corpn. (1861), 6 H. & N. 565; Smith *v.* G. E. Ry. (1866), 36 L. J. C. P. 22. **Distd.** Ayles *v.* S. E. Ry. (1868), L. R. 3 Exch. 146. **Apld.** Blackman *v.* L. B. & S. C. Ry. (1869), 17 W. R. 769. **Refd.** Crafter *v.* Met. Ry. (1866), Har. & Ruth 164; Watkins *v.* G. W. Ry. (1877), 46 L. J. Q. B. 317; G. W. Ry. *v.* Davies (1878), 39 L. T. 475. **Mentd.** Cotton *v.* Wood (1860), 8 C. B. N. S. 568; Giblin *v.* McMullen (1868), L. R. 2 P. C. 317.

588. —— —— ——.]—Pltf. being in the waiting room at a railway station at night, & being told by a porter that her train had just drawn up at the station, left the room with a great number of other passengers, &, as she went in the direction of the train which had drawn up past the door, she caught her foot against the edge of a weighing machine, the base of which was raised a few inches above the level of the platform, fell, & injured herself. The weighing machine was of the ordinary description for weighing luggage, & stood with its back to the ticket-office window, through which a light was thrown on the top of it. The machine was placed between two lamps, ten yards apart, which were suspended from the roof of the platform:—*Held:* there was no evidence of negligence to go to the jury.—BLACKMAN *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1869), 17 W. R. 769.

589. —— —— **Signal levers box.**]—Pltf. was a passenger by an excursion train on defts.' line, & had to pass over a platform with a crowd of other passengers. In doing so she stumbled against a box containing signal levers, which projected about two inches above the level of the platform, & received injuries:—*Held:* there was evidence of negligence, upon which a jury might reasonably act.—STURGES *v.* GREAT WESTERN RY. CO. (1892), 56 J. P. 278; 8 T. L. R. 231, C. A.

590. —— **Use in unreasonable manner.**]—A., a passenger, was running arm-in-arm with another man along a platform belonging to a railway co., & used as a footpath from the station to a steamboat pier. The platform was 4 ft. 3 in. broad, with a fence at the back, & a curb 9 in. high between it & the rails. A. fell on the rails & was run over by a train:—*Held:* there was no evidence of negligence on the part of the railway co. to go to the jury, inasmuch as the platform was reasonably safe for persons using it in a reasonable manner; the mere opinion of witnesses that it was dangerous, unsupported by any reasons, should not be left to the jury.—RIGG *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1866), 12 Jur. N. S. 525; 14 W. R. 834.

591. —— **Accident caused by workman not servant of carrier.**]—W., a passenger at a railway station, went by direction of a porter to examine a time table, when a man working on the roof caused a piece of wood to fall through the roof upon W., causing injury:—*Held:* there being no evidence that the man employed was a servant of the co., or that any negligence of the co. caused the accident, W. could not recover.—WELFARE *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1869), L. R. 4 Q. B. 693; 38 L. J. Q. B. 241; 20 L. T. 743; 33 J. P. 742; 17 W. R. 1065.

Annotation:—**Refd.** Kearney *v.* L. B. & S. C. Ry. (1870), L. R. 5 Q. B. 411.

See, further, Nos. 488, 489, *ante.*

592. —— **Defective lighting — Fog.**] — Pltf. sued deft. co. to recover damages for personal injuries sustained by her at one of their railway stations. She intended travelling from that station. The night was very foggy, & the lamps on the platform did not show through the fog. While walking along the platform pltf. fell on the rails and was injured. Several other people had fallen off the platform earlier on the same evening. The jury found that the accident was due to the negligence of the defts.:—*Held:* pltf. was entitled to recover as the circumstances imposed upon defts. a duty to take all reasonable precautions to protect pltf. effectively from the dangers besetting all movement on the platform on the night in question, & there was evidence which entitled the jury to find defts. had failed to discharge the duty that rested upon them.—LONDON, TILBURY & SOUTHEND RY. CO. *v.* PATERSON (1913), 29 T. L. R. 413, H. L.

Annotations:—**Refd.** Norman *v.* G. W. Ry., [1914] 2 K. B. 153; Brackley *v.* Mid. Ry. (1916), 114 L. T. 1150.

See, also, No. 574, *ante.*

—— **Liability to invitee—Not a passenger.**]—*See* No. 643, *post.*

—— **For alighting.**]—*See* Nos. 572–576, *ante.*

593. Platform frozen.]—Pltf., while waiting for a train on the defts.' railway, was walking by daylight up & down the platform of one of their stations; a strip of ice nearly an inch thick extended half-way across the platform, & pltf. slipping on the ice, fell, & sustained injuries. The presence of the ice was unexplained:—*Held:* there was evidence for the jury of negligence on the part of defts.—SHEPHERD *v.* MIDLAND RY. CO. (1872), 25 L. T. 879; 20 W. R. 705.

Annotation:—**Refd.** Brackley *v.* Mid. Ry. (1916), 85 L. J. K. B. 1596.

594. Platform overcrowded—Passenger forced on to rails.]—A crowd of excursion passengers, including pltf., assembled at a railway station awaiting the train drawing up alongside the

592 i. —— *Defective lighting—End of platform not protected.*]—In attempting to board a passenger car of deft. ry. co., pltf. fell over the unprotected end of the platform; the night was dark & the platform badly lighted:—*Held:* the co. were liable for negligence in not having the platform in a reasonably safe condition; *semble:* it made no difference whether the platform were well lighted or not.—SWAN *v.* CANADIAN NORTHERN RY. CO. (1908), 1 Alta. L. R. 427; 8 W. L. R. 662; 9 W. L. R. 275. —CAN.

594 i. *Platform overcrowded—Passenger forced on to rails.*]—A ry. co. is not bound to provide at a station, even when an unusually large number of passengers by a special & cheap train is expected, a staff of servants sufficient not merely for the guidance & assistance of passengers & the preservation of order amongst them, but adequate to control the violence of persons entering the station without permission & overcrowding the platform. In such case the co. is not liable if a passenger standing on the platform is pushed on to the line.—CANNON *v.* MIDLAND GREAT WESTERN RY. CO. (1879), 6 L. R. Ir. 199.—IR.

594 ii. —— ——.]—Pltf., endeavouring to pass from the platform of the railway station after leaving the train, was met by a crowd of ticket holders rushing to take their seats, & was unable to make progress, there being only one door; as a result of the conduct of the porter in attempting to push the crowd back from the edge of the platform, pltf. was knocked down between the carriages & injured:—*Held:* the ry. co. were not liable.—PLUNKETT *v.* DUBLIN, WICKLOW & WEXFORD RY. CO. (1894), 29 I. L. T. Jo. 153.—IR.

594 iii. —— ——.]—In an action for damages for personal injury against a ry. co. pursuer averred that defenders had, knowingly, & without taking any steps to prevent it, permitted a greater crowd of intending passengers, of whom pursuer was one, to congregate in a station than its platforms could accommodate, & had failed to provide a sufficient staff of servants to cope with the crowd, & that, by the pressure of the crowd, pursuer had been carried along & hurled from the platform on to the railroad & injured:—*Held:* pursuer had stated a relevant case.—FRASER *v.* CALEDONIAN RY. CO. (1902), 5 F. (Ct. of Sess.) 41.—SCOT.

594 iv. —— ——.]—Pltf. was standing at a station, waiting for additional carriages to be added to a train which was to leave a quarter of an hour later. Before the carriages were in position a crowd of passengers collected behind pltf., & as it pressed forward on the arrival of the carriages pltf. was pushed off the platform & injured. In an action for damages:—*Held:* the injuries were not due to negligence on the part of the ry. co. & defenders were entitled to judgment.—M'CALLUM *v.* NORTH BRITISH RY. CO., [1908] S. C. 415.—SCOT.

platform. As the train approached the crowd pressed towards the spot, & carried pltf. along with them, & thrust her off the platform on to the line, whereby she was injured. The passengers had been allowed to pass through the station gates without any precautions, & a greater number of excursionists had thereby collected than was consistent with the size of the platform. The consequence was a rush to secure seats when the train drew up:—*Held:* in the circumstances the case should have been left to the jury, as it was for them to say whether there was or was not negligence on the part of defts. in not taking precautions to prevent accidents.—HOGAN *v.* SOUTH EASTERN RY. CO. (1873), 28 L. T. 271; 37 J. P. 296.

Passenger bitten by dog on platform.]—*See* Sub-sect. 12, *post*.

SUB-SECT. 7.—STAIRCASES AND FOOTBRIDGES.

595. Stairs—Proof that stairs dangerous—& cause of accident.]—In an action against a railway co. for an injury sustained through falling down some stairs at their station:—*Held:* it was not enough to show that the stairs were of improper condition or construction unless the fall was caused thereby.—DAVIS *v.* LONDON & BRIGHTON RY. CO. (1861), 2 F. & F. 588, N. P.

596. —— ——.]—The staircase leading from a railway station to a highway, had at the edge of each step a strip of brass which originally had been roughened, but had from constant use become worn & slippery. The staircase, which was otherwise unobjectionable, was about six feet wide, & had a wall on each side, but no handrail. Pltf. a passenger by the railway, & a frequent traveller by the line, in ascending from the station slipped & fell upon the stairs, & was much hurt. In an action charging the co. with negligence in not providing a reasonable safe & convenient staircase, two witnesses for pltf. stated that in their opinion the staircase was unsafe, one of them, a builder, suggesting that brass nosings on the steps was improper, & that lead would have been better, because less slippery, & that there should have been a handrail:—*Held:* no evidence of negligence to go to the jury.—CRAFTER *v.* METROPOLITAN RY. CO. (1866), L. R. 1 C. P. 300; Har. & Ruth. 164; 35 L. J. C. P. 132; 14 W. R. 334; 12 Jur. N. S. 272.

Annotations:—**Consd.** Rigg *v.* M. S. & L. Ry. (1866), 12 Jur. N. S. 525. **Refd.** Giblin *v.* McMullen (1868), L. R. 2 P. C. 317; G. W. Ry. *v.* Davies (1878), 39 L. T. 475; Brackley *v.* Mid. Ry. (1916), 114 L. T. 1150; Cole *v.* De Trafford, [1918] 2 K. B. 523. **Mentd.** Griffiths *v.* L. & N. W. Ry. (1866), 14 L. T. 797.

597. —— Whether risk voluntarily incurred—Alternative stairway.]—Pltf., a season-ticket holder & intending passenger, was injured by falling on steps leading to the defts.' railway station, which defts. had allowed to be slippery & dangerous. There was no contributory negligence on the part of pltf., but there were other steps which he might have used, & he admitted that he knew that the steps were dangerous, & went down carefully holding the handrail:—*Held:* defts. had not shown that pltf. with a full knowledge of the nature & extent of the danger had voluntarily agreed to incur it, so as to make the maxim "*Volenti non fit injuria*" applicable, & therefore he was entitled to recover.—OSBORNE *v.* LONDON & NORTH WESTERN RY. CO. (1888), 21 Q. B. D. 220; 57 L. J. Q. B. 618; 59 L. T. 227; 52 J. P. 806; 36 W. R. 809; 4 T. L. R. 591, D. C.

Annotations:—**Distd.** Brackley *v.* Mid. Ry. (1916), 85 L. J. K. B. 1596. **Mentd.** Torrance *v.* Ilford U. D. C. (1909), 7 L. G. R. 554.

598. —— —— Invitee.]—Near a station on defts.' line of railway & passing over the line there was a level crossing, with gates for carriage traffic, which formed part of the highway, but which defts. were bound by statute to maintain. Defts. had voluntarily constructed close to the station & to the level crossing & parallel to the latter a footbridge, with staircases. The bridge stood entirely on defts.' land, & had been maintained by them, but the footway over it at each end communicated directly with the highway, & only indirectly by means of the highway with defts.' station premises. Defts. had never closed the footway or taken any steps to prevent the public from using it, & the public in fact used it without hindrance. Pltf. was crossing over the bridge with a view to catching a train at the further platform of defts.' station. On the morning of that day there had been a blizzard, & snow had fallen on the footway of the bridge, which in consequence of the traffic had become caked on the steps, rendering them slippery. As pltf. was descending the stair on the further side she warned her young daughter who accompanied her to be careful, & she herself made use of the handrail. She nevertheless slipped on a mass of frozen snow & fell, & was hurt. Pltf. brought an action against defts. for damages for personal injuries. It was found that there had been no contributory negligence on her part:—*Held:* if defts. owed any duty to persons using the footway [which was, in fact, held to have been dedicated to the public], it could not be higher than that of an inviter towards an invitee, which arises only in respect of dangers of which the invitee has no knowledge or notice; the facts showed that pltf. had knowledge of the danger; &, even on that view, defts. were not liable to pltf.—BRACKLEY *v.* MIDLAND RY. CO. (1916), 85 L. J. K. B. 1596; 114 L. T. 1150; 80 J. P. 369; 14 L. G. R. 632, C. A.

See, further, cases in Sub-sect. 11, *post*; NEGLIGENCE; RAILWAYS & CANALS.

599. Footbridge—Existence of safer bridge.]—A railway co., for the more convenient access for passengers between the two platforms of a station, erected across the line a wooden bridge, which the jury found to be dangerous:—*Held:* the co. were liable for the death of a passenger through the faulty construction of this bridge, although there was a safer one about a hundred yards further round, which deceased might have used.—LONGMORE *v.* GREAT WESTERN RY. CO. (1865), 19 C. B. N. S. 183; 35 L. J. C. P. 135; 144 E. R. 757.

Annotations:—**Distd.** Crafter *v.* Met. Ry. (1866), L. R. 1 C. P. 300. **Consd.** Norman *v.* G. W. Ry., [1914] 2 K. B. 153. **Refd.** Lay *v.* Mid. Ry. (1875), 34 L. T. 30; Brackley *v.* Mid. Ry. (1916), 114 L. T. 1150.

SUB-SECT. 8.—EMBANKMENTS AND BRIDGES.

600. Bridge—Breaking down—Employment of competent engineer—Use of best materials.]—In an

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PART V. SECT. 2, SUB-SECT. 7.

h. *Stairs — Unfenced.*]—In an action of damages for personal injury against a ry. co., pursuer averred that having got out of the train, on which he had been a passenger, at the station, he gave his ticket to the collector, & passed through an open unlighted wicket gate, near which the collector was standing, under the belief that it was the exit from the station, & fell over an unfenced stair whereby he received the injuries on account of which he sued:—*Held:* the action was relevant.—M'KEEVER *v.* CALEDONIAN RY. CO. (1900), 2 F. (Ct. of Sess.) 1085; 37 Sc. L. R. 816.—SCOT.

Sect. 2.—Duty to take care: Sub-sects. 8 & 9.]

action against a railway co., for compensation for injury received by pltf. by the breaking down of a bridge, over which he was passing in a passenger train:—*Held:* it was a proper question for the jury, whether defts. had engaged the services of competent engineers, who had adopted the best method & had used the best materials; if defts. had done so, they would not be liable; the mere fact of their having engaged the services of such a person would not relieve them from the consequence of an accident arising from a deficiency in the work.—GROTE *v.* CHESTER & HOLYHEAD RY. CO. (1848), 2 Exch. 251; 5 Ry. & Can. Cas. 649; 154 E. R. 485.

Annotations:—**Consd.** Readhead *v.* Mid. Ry. (1869), L. R. 4 Q. B. 379; Francis *v.* Cockrell (1870), L. R. 5 Q. B. 501. **Refd.** Thomas *v.* Rhymney Ry. (1870), L. R. 5 Q. B. 226; Norman *v.* G. W. Ry., [1914] 2 K. B. 153. **Mentd.** East Anglian Ry. *v.* Eastern Counties Ry. (1851), 7 Ry. & Can. Cas. 150.

601. Embankment — Giving way — Flood — Knowledge of state of line.]—In an action against a railway co. complaining that pltf. became a passenger by their line, & that they so carelessly conducted themselves "in the premises," that by their carelessness & improper conduct in that behalf, the carriage wherein pltf. was carried was thrown off the rails & broken, whereby pltf. was injured. By reason of an extraordinary flood, an embankment over which the line passed had been overrun with water, which had worn away the soil & left the sleepers unsupported, so that the rails gave way; there was conflicting evidence as to whether the drivers of the train, an express, could have seen that the water was over the line; they had driven the train at the ordinary express rate:—*Held:* the defts. would not be liable if the accident arose necessarily & entirely by reason of the suddenness & extraordinary violence of the flood; it was for the jury to consider whether there had not been negligence in not keeping a good look out, or in driving at such a speed in such circumstances.—WYBORN *v.* GREAT NORTHERN RY. CO. (1858), 1 F. & F. 162, N. P.

Annotation:—**Refd.** Withers *v.* North Kent Ry. (1858), 27 L. J. Ex. 417.

602. —— —— —— ——.]—In an action by a passenger against a railway co., for an injury sustained while travelling on their line, the declaration complaining that they kept & maintained their line in an insecure state, the evidence being, that the embankment ran through a country subject to floods, & had five years ago been constructed of sandy soil, with insufficient culverts to carry off water; that an extraordinary fall of rain had caused a flood, which had washed away the soil, or part of the embankment, leaving the sleepers unsupported, so that the earth gave way, & the train, an express, passing over it at night, at the ordinary express rate, went off the line; there being no evidence that the water was seen on the line, or that there had been anything to indicate danger, & no engineer or skilled witness having been called to prove that the nature of the soil of the embankment was such that water would wash it away in ordinary floods:—*Held:* although the evidence as to the construction & condition of the line, at the time of the accident, & of the rate of speed at which the trains had been going had been properly admitted, as these were circumstances which might have shown negligence, if it had been proved that the line was known or ought to have been known to be in an insecure state, yet that as there was nothing to show that it was so known, there was no evidence of negligence, or so little that the verdict was against the weight of evidence. —WITHERS *v.* NORTH KENT RY. CO. (1858), 27 L. J. Ex. 417; *sub nom.* WITHERS *v.* GREAT NORTHERN RY. CO., 31 L. T. O. S. 169.

Annotations:—**Consd.** G. W. Ry. of Canada *v.* Braid (1863), 1 Moo. P. C. C. N. S. 101. **Refd.** Madras Ry. *v.* Zemindar of Carvetinagarum (1874), 30 L. T. 770.

603. —— —— **Storm—Evidence of sufficiency of structure.**]—A railway embankment fell & caused the death of passengers whose representatives sued the railway co. for negligence; the defence was that the railway was properly constructed & was daily inspected, but that it was owing to the violence of a storm that the embankment gave way:—*Held:* (1) where an injury is alleged to have arisen from the improper construction of a railway the fact of its having given way will amount to *primâ facie* evidence of its insufficiency, & this evidence may become conclusive from the absence of any proof on the part of the railway co. to rebut it; (2) the judge ought to have called the attention of the jury to the evidence as to the extraordinary state of the weather, & asked them whether they were satisfied that the storm was so extraordinary that no experience could have anticipated its occurrence. If, owing to this non-direction, the jury had given a verdict against the evidence, the ct. would have ordered a new trial, but otherwise if, even without such direction, the verdict ought to have been the same.

(3) In judging of the sufficiency of a railway structure, the amount of precaution, which ought to be taken to guard against any external violence to which it may be exposed, cannot be the subject of a precise rule, but must necessarily vary according to the varying local circumstances of each case; but in such cases the railway co. ought to construct their works in such a manner as to be capable of resisting all the violence of weather which in the climate might be expected, though perhaps rarely, to occur.—GREAT WESTERN RY. CO. OF CANADA *v.* BRAID, GREAT WESTERN RY. CO. OF CANADA *v.* FAWCETT (1863), 1 Moo. P. C. C. N. S. 101; 1 New Rep. 527; 8 L. T. 31; 27 J. P. 596; 9 Jur. N. S. 339; 11 W. R. 444; 15 E. R. 640, P. C.

Annotations:—*As to* (1) **Consd.** Longmore *v.* G. W. Ry. (1865), 19 C. B. N. S. 183; Czech *v.* General Steam Navigation Co. (1867), L. R. 3 C. P. 14. **Refd.** Scott *v.* London Dock Co. (1864), 34 L. J. Ex. 17; The Hatfield *v.* The Glasgow (1914), 84 L. J. P. 161.

—— **Liability to fence—As against passengers.**]—*See* No. 561, *ante.*

—— —— **As against strangers.**]—*See* No. 701, *post*; BOUNDARIES, FENCES & PARTY-WALLS; RAILWAYS & CANALS.

SUB-SECT. 9.—PASSENGERS CROSSING RAILS AND LEVEL CROSSINGS.

604. Whether passenger guilty of negligence—Fall over switch-handle.]—In an action against a railway co. for negligence in the management of their railway at one of their stations, whereby pltf., a passenger, was injured, the defence was that the accident arose entirely from pltf.'s own want of caution, & that the co. were wholly blameless. Pltf. had arrived at the station about two minutes or less before the time of departure of the train, &, in running along the line, at a place where he ought not to have gone, in order to reach the train, which was some distance ahead on the opposite side of the railway, had fallen over a switch-handle, & was considerably hurt. The judge left it to the jury to say whether the injury to pltf. was occasioned by the negligence

& want of proper care of defts., or resulted entirely from pltf.'s own carelessness, as the co. contended. The jury having found for pltf. :—*Held :* the judge was, in the circumstances, warranted in leaving the case to the jury upon the only points raised by the parties ; the omission to call their attention to the intermediate case of the negligence of both parties being contributory to the accident, was no misdirection.

Qu. : whether the doctrine of contribution is applicable to a case of this sort, of tort founded upon contract.—MARTIN *v.* GREAT NORTHERN RY. Co. (1855), 16 C. B. 179 ; 24 L. J. C. P. 209 ; 1 Jur. N. S. 613 ; 3 W. R. 477 ; 3 C. L. R. 817 ; 139 E. R. 724.

Annotations :—**Consd.** Comman *v.* Eastern Counties Ry. (1859), 4 H. & N. 781. **Apprvd.** Browne *v.* Dunn (1893), 6 R. 67.

605. —— Child in charge of adult—Negligence of adult.]—Pltf., a child of five years of age, was under the charge of his grandmother, who purchased tickets for herself & the child, to go from one station to another on defts.' railway. In crossing the line previous to starting, defts.' train knocked down both the grandmother & child, severely injuring the child, & killing the grandmother. There was negligence both in defts. & in the grandmother :—*Held :* pltf. was identified with his grandmother, so that her negligence was the negligence of pltf., & the action in his name could not be maintained.—WAITE *v.* NORTH EASTERN RY. Co. (1859), E. B. & E. 728 ; 28 L. J. Q. B. 258 ; 32 L. T. O. S. 334 ; 5 Jur. N. S. 936 ; 7 W. R. 311 ; 120 E. R. 682, Ex. Ch.

Annotations :—**Consd.** Mills *v.* Armstrong, The Bernina (1888), 13 App. Cas. 1. **Refd.** Austin *v.* G. W. Ry. (1867), 36 L. J. Q. B. 201 ; Rooth *v.* N. E. Ry. (1867), L. R. 2 Exch. 173 ; Armstrong *v.* L. & Y. Ry. (1875), L. R. 10 Exch. 47. **Mentd.** Spaight *v.* Tedcastle (1881), 6 App. Cas. 217.

See, generally, NEGLIGENCE.

606. —— Railway company not objecting—Fall over hamper unloaded from train.]—The level crossing between the platforms at a railway station, which formed part of the way out for passengers arriving at the south platform, was blocked for more than ten minutes by the train in which pltf. arrived. In such circumstances, it was usual for the arriving passengers, & the railway co. did not object to the practice, to walk alongside & round the end of the train in order to cross the line. Pltf. so doing in the dark, stumbled over a hamper which had been taken out of the train, & placed at the side of the line, come distance from the platform :—*Held :* there was evidence of negligence on the part of the railway co.—NICHOLSON *v.* LANCASHIRE & YORKSHIRE RY. Co. (1865), 3 H. & C. 534 ; 34 L. J. Ex. 84 ; 12 L. T. 391 ; 29 J. P. 329 ; 159 E. R. 640.

Annotation :—**Consd.** Holmes *v.* N. E. Ry. (1869), L. R. 4 Exch. 254.

607. —— Whether invitation by company—Breach of statutory provisions as to carriage traffic.]—Defts.' line crossed a highway on a level ; the railway was guarded from the road by carriage gates, which, by statute & by defts.' rules, ought to have been kept locked, except while being used for the passage of vehicles across the line, & a turnstile for foot passengers. A gateman was accustomed to attend to the carriage gates, & warn passengers along the highway of the approach of trains. On a certain day the gateman was employed on other duties & one of the carriage gates was left open. Deceased, wishing to go to the station, had passed through one of the gates on the side on which the carriage gate was open, & was crossing the line when a train knocked him down & killed him :—*Held :* there was evidence of negligence to go to the jury.—STAPLEY *v.* LONDON, BRIGHTON & SOUTH COAST RY. Co. (1865), L. R. 1 Exch. 21 ; 4 H. & C. 93 ; 35 L. J. Ex. 7 ; 13 L. T. 406 ; 29 J. P. 824 ; 11 Jur. N. S. 954 ; 14 W. R. 132.

Annotations :—**Consd.** Lunt *v.* L. & N. W. Ry. (1866), L. R. 1 Q. B. 277 ; Skelton *v.* L. & N. W. Ry. (1867), L. R. 2 C. P. 631 ; N. E. Ry. *v.* Wanless (1874), 38 J. P. 420. **Refd.** Walker *v.* Mid. Ry. (1866), 14 L. T. 796.

608. —— —— Notices forbidding crossing disregarded.]—M., a married woman, was a passenger by defts.' line. After arriving at a station of defts., she was crossing the line in order to go by another co.'s railway, & was killed by the train backing upon her. Passengers had been allowed to cross at the spot where M. was run over, but notices had been put up forbidding passengers to cross, &, by a bridge at some distance, M. might have gone over in safety. No servant of defts. was at the tail of the train when it backed :—*Held :* defts. were guilty of negligence, & were liable to compensate the husband of M. for her death.—ROGERS *v.* RHYMNEY RY. Co. (1872), 26 L. T. 879 ; 21 W. R. 21.

609. —— —— ——.]—(1) Where there is conflicting evidence on a question of fact, whatever may be the opinon of the judge who tries the cause as to the value of that evidence, he must leave the consideration of it for the decision of the jury.

S. went to the station to accompany a relative who was going by the up train to D. It was necessary to cross the line in order to get the ticket. S. went through a gate, down a pathway, & across the line in front of the train going to D., which was then slowly approaching the station from K. The time was night. There were notice boards warning persons not to cross the line at that point, but there was evidence that the railway servants never interrupted any persons who did cross the line there. S. crossed in safety, & obtained a ticket for his relative, who, with two friends, was standing on the bank by the side of the up line. The train to D. had, in the meantime, arrived, & was standing still. S. having got the ticket began to recross the line, being then, not in front of the D. train, but behind it, in consequence of which that train prevented him seeing anything on the down line from D. ; & he moved on. As he was going on the down line, the down express caught him & he was killed. It was a rule of the railway that the express train should always sound a whistle on approaching the station, & the driver of that train swore that he whistled twice, & some other servants of the railway co. swore that they had heard the whistling. The friends of S. had, in their evidence for pltf., sworn that they were in a situation to hear the whistle if it had been sounded, & that they had not heard it ; and one of them, who could see the down train approaching, swore that he heard the " rumbling " of the approaching train, but heard no whistle :—*Held :* this was a case properly left to the jury ; where there is contradictory evidence on facts, the jurors & not the judge must decide upon them.

(2) Where notices have been put up by a railway co. forbidding persons to cross the line at a particular point, but these notices have been continually disregarded by the public, & the co.'s servants have not interfered to enforce their observance, the co. cannot, in the case of an injury occurring to any one crossing the line at that point, set up the existence of the notices by way of answer to an action for damages for such injury.—DUBLIN, WICKLOW & WEXFORD RY. Co.

Sect. 2.—Duty to take care: Sub-sects. 9 & 10.]

v. SLATTERY (1878), 3 App. Cas. 1155; 39 L. T. 365; 43 J. P. 68; 27 W. R. 191, H. L.

Annotations:—As to (1) **Consd.** Davey *v.* L. & S. W. Ry. (1883), 12 Q. B. D. 70; Wakelin *v.* L. & S. W. Ry. (1884), 65 L. J. Q. B. 224, n.; Bettany *v.* Waine (1885), 1 T. L. R. 588; Wright *v.* Mid. Ry. (1885), 1 T. L. R. 406, n.; Banbury *v.* Bank of Montreal, [1918] A. C. 626. **Reid.** Clarke *v.* Mid. Ry. (1880), 43 L. T. 381; Williams *v.* Whittall (1885), 2 T. L. R. 165; Bentley *v.* L. & Y. Ry. (1886), 3 T. L. R. 196; Wakelin *v.* L. & S. W. Ry. (1886), 56 L. J. Q. B. 229; Finegan *v.* L. & N. W. Ry. (1889), 53 J. P. 663; Cohen *v.* Met. Ry. (1890), 6. T L. R. 146; Toronto Ry. *v.* King, [1908] A. C. 260; Lowery *v.* Walker, [1910] 1 K. B. 173; Grand Trunk Ry. *v.* McAlpine, [1913] A. C. 838; Cutsforth *v.* Johnson, N. E. Ry. Third Parties (1913), 108 L. T. 138; Everett *v.* Griffiths, [1921] 1 A. C. 631. *As to* (2) **Consd.** Smith *v.* S. E. Ry., [1896] 1 Q. B. 178. *Generally* **Mentd.** McKay *v.* McNally (1879), 41 L. T. 230; Canadian Pacific Ry. *v.* Fréchette, [1915] A. C. 871; Norman *v.* G. W. Ry., [1915] 1 K. B. 584; Paul *v.* G. E. Ry. (1920), 36 T. L. R. 344.

610. —— —— Proper place for crossing provided.]—Pltf. was in the habit of travelling by the last train from K. to L., which departed from the up platform. Adjoining the down platform at the K. station was a booking office & waiting room; but there was no office or room or any shelter whatever on the up platform. In the middle of the station opposite the booking office the ground between the rails was covered with wood for the width of several feet, over which passengers used to cross when there was no train standing in the station. Near the south end of the station there was also a covered wooden bridge over the rails, the steps leading to which opened on to the causeway of a highway, so that any person who wished to cross over from one platform to another by the bridge would have to go from the station to the high road, ascend the steps, cross the bridge, descend again to the high road, & then re-enter the station. Pltf., having arrived in good time for his train, went to the waiting room. Shortly before his train approached the up platform a porter called out "All the other side for L." At that time there was no train in the station, so that passengers could safely use the middle crossing. Pltf., however, had not then taken his ticket, & by the time he had done so a train had entered the station, & was standing on the down line, thereby blocking up the middle crossing. Pltf., therefore, being in a hurry to catch his train, did not cross over the rails by the bridge, but walked along towards the end of the platform & then jumped on to the rails for the purpose of reaching the up platform. In doing so he sustained considerable injury, the ground between the rails at that point having been excavated, & the ballast removed. At the trial several witnesses were called to prove that when the middle crossing was blocked they were in the habit of getting across from one platform to the other as best they could, and did not make use of the bridge. The co.'s officials denied, however, that they had ever sanctioned such a proceeding:—*Held:* as a proper place had been provided for crossing, of which pltf. was aware, & there was no evidence of an invitation on the part of any servant of the railway co. to cross where he did, defts. were not liable for the injuries which pltf. had sustained.—WILBY *v.* MIDLAND RY. CO. (1876), 35 L. T. 244.

611. —— Crossing in daylight—No servant stationed to warn passenger.]—A passenger having arrived by a train at a station on defts.' line of railway, got out in safety & walked along the way which she was well acquainted with, & proceeded to cross the single line by the appointed level crossing, in order to leave the station. At the very moment that she stepped on the line a train which she could have seen if she had looked arrived at the same spot, & she was knocked down by it & killed:—*Held:* there was no evidence for the jury of any negligence on the part of defts., it not being negligence in them not to have a person stationed on the spot to warn passengers about to cross the line of the approach of a train, of which, if passengers used due care, they might inform themselves.—WALKER *v.* MIDLAND RY. CO. (1866), 14 L. T. 796; 30 J. P. 535.

Annotation:—**Reid.** Clarke *v.* Mid. Ry. (1880), 43 L. T. 381.

612. —— —— Passengers misled by station-master—Into thinking that advertised express train had passed—Railway company liable.]—CROWTHER *v.* LANCASHIRE & YORKSHIRE RY. CO. (1889), 6 T. L. R. 18, C. A.

613. —— —— Sharp curve—Omission of driver to whistle when coming round—No warning by porters—Railway company liable.]—COBURN *v.* GREAT NORTHERN RY. CO. (1891), 8 T. L. R. 31, n., C. A.

614. —— Crossing at night—Sharp curve.]—In an action of negligence, if pltf. gives evidence of negligence on the part of deft., & also gives evidence which may or may not be considered as amounting to contributory negligence on his own part, the case ought to be left to the jury.

Pltf., an intending passenger by defts.' railway, having received his ticket, was obliged to cross the line by a level crossing in order to get from the booking-office to the platform from which his train would start. While crossing he was knocked down & injured by a train which he was unable to see till it was about twenty yards from him, owing to a sharp curve on the line. The night was dark, & there was no one at the crossing to warn pltf. of the approaching train, which was a special train running through the station at a fast speed, & not mentioned in the time-tables. A nonsuit having been directed:—*Held:* the case ought not to have been withdrawn from the jury, & the nonsuit was wrong.—BROWN *v.* GREAT WESTERN RY. CO. (1885), 1 T. L. R. 614, C. A.

615. —— —— No warning.]—In an action brought under Fatal Accidents Act, 1846 (c. 93), by a widow for the loss of her husband, it was proved that deceased intended to travel on defts.' line to N. from W., by a train leaving to 9.50 p.m. On the up platform, from which he would have had to start, there was no waiting room, & the night being very cold, he had gone into that on the down platform. When the train was heard approaching, deceased went quickly along the down platform, so as to cross over to the up plat-

PART V. SECT. 2, SUB-SECT. 9.

614 i. *Whether passenger guilty of negligence—Crossing at night.*]—A passenger, travelling by railway, whose train, from which he had alighted at a junction on a dark night was shunted to an unusual siding, out of sight from the platform, was killed while crossing the main line:—*Held:* although there was no accommodation by a bridge for the passengers, & no servant of the co. at hand to direct them, there was no evidence of positive negligence on the part of the ry. co.—FALKINER *v.* GREAT SOUTHERN & WESTERN OF IRELAND RY. CO. (1871), I. R. 5 C. L. 213.—IR.

614 ii. —— ——.]—Pltf., an intending passenger by an up-train, sought to cross the line while a down-train was standing at the platform; he was unacquainted with the station, & was not warned against crossing. He passed through an open gate, at the end of the down platform. While running across he saw the up-train, but had not heard any whistle, &, in endeavouring to jump on the siding, he was struck by this train & hurt. The evening was dark & misty, & there was at the time much smoke & noise from the down-train standing in the station.—*Held:* there was no evidence of negligence on the part of defts. which could be legitimately connected with the accident.—WRIGHT *v.* GREAT NORTHERN RY. CO. (1881), 8 L. R. Ir. 257.—IR.

form, which he could only reach by going over a level crossing. In attempting to cross the line when the train was only about 20 yards from the level crossing he was knocked down by the engine & killed. At the approach of a train it was usual for a porter to stand at the level crossing & warn the passengers, but on the occasion in question there was no porter there, & no notice was given of the danger, either by any bell being rung or any whistling by the driver of the engine:—*Held:* there being evidence of the negligence of defts. the case had been properly allowed to go to the jury, as both the primary facts in the case & the inference of fact to be drawn from them were not so clear that the jury acting fairly & impartially had been bound to come to a conclusion conclusive against pltf.—WRIGHT *v.* MIDLAND RY. CO. (1885), 1 T. L. R. 406, C. A.

Annotation:—**Folld.** Brown *v.* G. W. Ry. (1885), 52 L. T. 622.

616. —— —— **Passing between goods trucks—Passenger killed by trucks moving.**]—BENTLEY *v.* LANCASHIRE & YORKSHIRE RY. CO. (1886), 3 T. L. R. 196, D. C.

617. —— —— **Omission of driver to whistle when approaching station—Passenger entitled to assume that he could cross lines in safety.**]—DALLAS *v.* GREAT WESTERN RY. CO. (1893), 57 J. P. 584; 9 T. L. R. 314, C. A.

See, further, NEGLIGENCE; RAILWAYS & CANALS.

SUB-SECT. 10.—PROOF OF NEGLIGENCE.

618. Happening of accident—Not conclusive.]—In an action against a railway co. for negligence, the fact of the occurrence of an injury not necessarily importing negligence, even if it be *primâ facie* proof, is not conclusive proof of negligence.—BIRD *v.* GREAT NORTHERN RY. CO. (1858), 28 L. J. Ex. 3.

Annotations:—**Refd.** Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412. **Mentd.** Simson *v.* London General Omnibus Co. (1873), 21 W. R. 595.

619. —— —— **Cabin door left open.**]—SELLO *v.* OCEANIC STEAM NAVIGATION CO., LTD. (1892), 8 T. L. R. 263.

620. —— —— **Omnibus skidding.**]—(1) A motor omnibus belonging to defts., in which pltf. was a passenger, skidded upon a road the surface of which was greasy from rain, & ran into an electric light standard, & pltf. was in consequence injured. No evidence was given for pltf. of anything, beyond the above-mentioned facts, in the nature of negligence on the part of any servant of defts. in the driving or management of the omnibus, or of any defect in the construction or condition of the particular omnibus, or that motor omnibuses generally were of such a character as to constitute a nuisance, but it was apparently assumed, & not disputed by defts., that motor omnibuses, however well constructed, had a tendency to skid when the road was greasy. Defts. called no witnesses except as to *quantum* of damage:—*Held:* upon the facts, there was no evidence for the jury that defts.' allowing the motor omnibus to run in the circumstances constituted a nuisance, & judgment was correctly entered for defts.

(2) *Qu.:* when the doctrine of "*res ipsa loquitur*" applies.—WING *v.* LONDON GENERAL OMNIBUS CO., [1909] 2 K. B. 652; 78 L. J. K. B. 1063; 101 L. T. 411; 73 J. P. 429; 25 T. L. R. 729; 53 Sol. Jo. 713; 7 L. G. R. 1093, C. A.

Annotations:—*As to* (1) **Apld.** Parker *v.* London General Omnibus Co. (1909), 101 L. T. 623. *As to* (2) **Refd.** Newberry *v.* Bristol Tram. & Carriage Co. (1912), 11 L. G. R. 69.

621. —— —— **Primâ facie evidence—Break-down of coach.**]—CHRISTIE *v.* GRIGGS, No. 515, *ante.*

622. —— —— **Collision.**]—SKINNER *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO., No. 635, *post.*

623. —— —— ——.]—A train of defts., by which pltf. was a passenger, was standing upon defts.' line of railway, when another train ran into it, & caused injury to the pltf. There was no evidence of negligence in the management of the train in which pltf. was:—*Held:* in the absence of evidence to the contrary, it might be presumed that the train which caused the mischief belonged to or was under the control of defts., & it lay upon them to rebut the presumption of negligence arising from the fact of the accident by showing the contrary.—AYLES *v.* SOUTH EASTERN RY. CO. (1868), L. R. 3 Exch. 146; 37 L. J. Ex. 104; 18 L. T. 332; 32 J. P. 407; 16 W. R. 709.

Annotation:—**Consd.** Jones *v.* Canadian Pacific Ry. (1913), 83 L. J. P. C. 13.

PART V. SECT. 2, SUB-SECT. 10.

618 i. *Happening of accident—Not conclusive.*]—DUBE *v.* R. (1892), 3 Exch. C. R. 147.—**CAN.**

618 ii. —— —— *Rail breaking.*]—Where the breaking of a rail is shown to be due to severity of the climate & sudden great variations of the degrees of temperature, & not to any want of care or skill upon the part of deft. in the selection, testing, laying, & use of such rail, deft. is not liable in damages to a passenger, injured by the derailment of a train, through the breaking of such rail.—CANADIAN PACIFIC RY. CO. *v.* CHALIFOUX (1888), 22 S. C. R. 721.—**CAN.**

618 iii. —— —— *Speed of train—Defective road bed.*]—While in a sleeping berth a passenger believing that she was riding with her back to the engine, tried to turn round in her berth &, the car going round a curve at the time, she was thrown out on to the floor & injured. The speed of the train was not excessive nor was there any defect in the road bed at the place where the accident occurred. In an action against the ry. co.:—*Held:* the accident could not be attributed to negligence of the servants of the co.—CANADIAN PACIFIC RY. CO. *v.* SMITH (1901), 31 S. C. R. 367. —**CAN.**

618 iv. —— —— *Starting train suddenly.*]—In an action of damages for personal injury at the instance of a passenger against a ry. co. pursuer averred that the train in which he was travelling stopped at the arrival platform of a terminal station; that he rose to leave the train; that while he was taking down his bag from the rack overhead, the train, without any warning having been given, gave a sudden & violent jerk, in consequence of which he was thrown on the floor of the compartment, & had his leg broken:—*Held:* pursuer's averments were not relevant to infer that defenders had failed to use reasonable skill & care.—GOLDBERG *v.* GLASGOW & SOUTH WESTERN RY. CO., [1907] S. C. 1035.—**SCOT.**

621 i. —— *Primâ facie evidence.*]—The fact of an accident, unexplained, affords sufficient evidence to launch a case against the carrier; the *onus* lies on him to show that the accident occurred through no default of his own.—PINK *v.* MELBOURNE TRAMWAY & OMNIBUS CO., LTD. (1880), 6 V. L. R. 136.—**AUS.**

621 ii. —— —— *Breakdown of coach.*]—In an action by a passenger for injuries sustained by reason of a wheel coming off a coach on which he was travelling, before the end of the journey, from some unknown cause, pltf.'s case is launched by proving the breakdown of the coach in a way which does not usually happen without negligence; the burden is then upon deft. to rebut the presumption against him, by satisfying the jury by evidence that he has not been guilty of negligence which was an efficient cause of the injury.—SMITH *v.* ROBERTSON, ANDERSON *v.* ROBERTSON (1832), 8 V. L. R. 256.—**AUS.**

622 i. —— —— *Collision.*]—Pltf., a passenger on defts.' railway, received injuries, the result of a head-on collision between 2 cars of defts., managed by defts.' servants:—*Held:* *primâ facie* evidence of negligence.—RYCKMAN *v.* HAMILTON, GRIMSBY & BEAMSVILLE ELECTRIC RY. CO. (1905), 6 O. W. R. 271; 10 O. L. R. 419.—**CAN.**

622 ii. —— —— ——.]—H. sued a ry. co. for damages on account of injury sustained by him in consequence of the train, in which he was, coming into collision with a waggon on the line. The ry. co. pleaded that the collision was not occasioned directly or indirectly by their fault or the fault of any one for whom they were responsible, & alleged that the waggon had been moved maliciously by some person unknown for whose acts they were not responsible:—*Held:* in the absence of explanation of how the truck came to be upon the line, it was reasonable to impute it to carelessness on defenders' part.—HAY *v.* NORTH BRITISH RY. CO. (1867), 4 Sc. L. R. 136.—**SCOT.**

Sect. 2.—Duty to take care: Sub-sect. 10.]

624. —— —— —— **With buffers.**]—A train, in running from one station to another at about 300 yards distance, & at the end of which there were two stationary buffers, suddenly jolted against something, & caused injury to the pltf., who was in the train. As soon as the jolt had taken place, the train became stationary close to the buffers. Evidence was given that the engine driver ought to bring the train up to the buffers in a way that no jolt ought to be felt:—*Held:* in the circumstances, the mere fact of this accident happening was evidence to go to the jury of negligence on the part of the co.—BURKE *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. Co. (1870), 22 L. T. 442; 18 W. R. 694.

625. —— —— **Carriage running off rails.**]—The London & Brighton Ry. Co., by their Act (7 Will. 4 & 1 Vict. c. cxix.), were empowered to make the railway, which all persons were to have liberty of using with carriages, &c., on payment to the co. of tolls regulated by the Act; the co. were also empowered to provide locomotive engines on the railway & charge for the use of them, & to use locomotive engines & carriages for the conveyance of passengers, goods, &c., & to charge for such conveyance, in addition to the toll, within a limited amount. It was enacted that no action or proceeding should be prosecuted against any person or corporation for anything done or omitted to be done in pursuance of the Act, or in the execution of the powers or authorities given by it, without twenty days' notice in writing.

A declaration in case against the co. charged that they were owners of the railway, & of carriages used by them for the conveyance of passengers along it, for reward; that, they being owners of the railway & carriages, pltf., at their request, became a passenger in one of the carriages, for reward to them, & they received him as such passenger; & it became their duty to use due care & skill in conveying him. Breach: that they did not use due care & skill in conveying him, but took so little care & so negligently & unskilfully conducted themselves in carrying him, & managing the carriage in which he was passenger, the train to which it was attached, & the engine whereby it was drawn upon the co.'s railway, that the carriage was thrown off the rails & pltf. injured:—*Held:* (1) no notice of action was necessary, the co. being sued in their capacity of carriers, & not for anything done or omitted under the special authority of the Act; although, for the purpose of showing that the accident occurred from a speed which was improper in the circumstances, evidence was given that the rails were defective at the spot. (2) Pltf. proved a *primâ facie* case of negligence against defts. by showing that, when the accident occurred, the train & railway were exclusively under their management. —CARPUE *v.* LONDON & BRIGHTON RY. Co. (1844), 5 Q. B. 747; 1 Dav. & Mer. 608; 3 Ry. & Can. Cas. 692; 13 L. J. Q. B. 133; 2 L. T. O. S. 401; 8 Jur. 464; 114 E. R. 1431.

Annotations:—*As to* (1) **Distd.** Kent *v.* G. W. Ry. (1846), 3 C. B. 714; Parker *v.* L. C. C., [1904] 2 K. B. 501. **Consd.** Lyles *v.* Southend-on-Sea Corpn., [1905] 2 K. B. 1; Myers *v.* Bradford Corpn., [1915] 1 K. B. 417. **Reid.** Vaughan *v.* Taff Vale Ry. (1860), 6 Jur. N. S. 899; Hammack *v.* White (1862), 31 L. J. C. P. 129; Byrne *v.* Boadle (1863), 33 L. J. Ex. 13; Bradford Corpn. *v.* Myers, [1916] 1 A. C. 242. *As to* (2) **Consd.** Scott *v.* London Dock Co. (1864), 34 L. J. Ex. 17. **Reid.** Skinner *v.* L. B. & S. C. Ry. (1850), 5 Exch. 787; Perren *v.* Monmouthshire Ry. & Canal Co. (1853), 11 C. B. 855; G. W. Ry. of Canada *v.* Braid (1863), 1 Moo. P. C. C. N. S. 101; Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412; Hanson *v.* L. & Y. Ry. (1872), 20 W. R. 297; Wing *v.* London General Omnibus Co., [1909] 2 K. B. 652.

626. —— —— ——.]—Where an accident happens to a passenger in a carriage on a line of railway, either by the carriage breaking down or running off the rails, that is *primâ facie* evidence for the jury of negligence on the part of the railway co. Such evidence, if not rebutted by evidence on deft's part, will justify a verdict against the co., & the ct. will not grant a rule to set aside the verdict or for a nonsuit.—DAWSON *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. Co. (1862), 5 L. T. 682.

627. —— —— —— **Caused by wrongful act of stranger.**]—LATCH *v.* RUMNER RY. Co., No. 488, *ante*.

628. —— —— **Collapse of embankment.**]—GREAT WESTERN RY. Co. OF CANADA *v.* BRAID, GREAT WESTERN RY. Co. OF CANADA *v.* FAWCETT, No. 603, *ante*.

629. —— —— **Horse kicking through omnibus panel.**]—Pltf., a passenger in a public omnibus of the deft. co., was hurt by a horse which drew the vehicle, suddenly, & without apparent cause, kicking its hoof through the front panel thereof against her back. She sued defts. for negligence in not providing a fit & safe horse, vehicle, & appliances, but at the trial she only proved the kick given, that other kickmarks were upon the panel, & that no kicking straps or boards which might have prevented the accident were used:—*Held:* this was *primâ facie* evidence of negligence on the part of defts. calling for explanation from them to remove their liability.

It is also true that the mere fact of the happening of an accident is not, as a general rule, even

625 i. —— —— *Carriage running off rails.*]—Pltf., a passenger upon a train of defts., was injured by reason of the car in which he was travelling having become derailed:—*Held:* the doctrine of *res ipsa loquitur* applied, & defts. were bound to show that they had not been guilty of negligence.—ASHBEE *v.* CANADIAN NORTHERN RY. Co. (1913), 25 W. L. R. 884.—**CAN.**

625 ii. —— —— ——.]—Pltf., a passenger on deft.'s train, was injured by derailment & capsizing of his coach when passing over a switch:—*Held:* the maxim *res ipsa loquitur* applied &, in the absence of explanation by deft., proof of the accident itself afforded evidence of negligence. —PYNE *v.* CANADIAN PACIFIC RY. Co., [1919] 3 W. W. R. 125; 48 D. L. R. 243.—**CAN.**

625 iii. —— —— ——.]—Pltf. sustained injuries, in consequence of a portion of the train in which she was travelling having left the rails; the railway, engine, & carriages, were under defts.' management:—*Held:* the fact of the accident was sufficient evidence to cast upon defts. the burden of showing that there was no negligence on their part; &, as they declined to afford any explanation of the cause of the accident, there was a case for pltf. proper to be submitted to the jury.—FLANNERY *v.* WATERFORD & LIMERICK RY. Co. (1877), I. R. 11 C. L. 30.—**IR.**

k. —— —— *Car upset.*]—Defts. were proprietors of a line of tramcars. Pltf., a passenger on one of the cars, was injured owing to the upsetting of the car:—*Held:* the upsetting of the car raised a presumption of negligence which defts. were bound to rebut.—PACKMAN *v.* GIBSON BROTHERS (1887), 4 H. C. 410.—**S. AF.**

l. —— —— *Invitation to board moving car.*]—Pltf. was crossing from the north side of a street to the south with the intention of becoming a passenger upon an east-bound car of defts., which had reached a stopping place & was standing still, & which he could not enter except by the rear-door on the south side. The car began to move when he was about half way across the street, but the motorman motioned him to go in front of the car, & stopped it; pltf. passed in front of the car & proceeded to the rear end of it; before he reached that end, the car had, without any signal from the conductor, begun to move slowly; pltf. attempted to step on; but, as he did so, the car gave a "sudden jolt forward," & he failed to get on the step of the platform, fell, & was injured:—*Held:* (1) pltf. was invited by the motorman to get on the car when it was in motion; (2) pltf.'s injuries were caused by negligence of defts.—HILL *v.* TORONTO RY. Co. (1917), 40 O. L. R. 393; 22 Can. Ry. Cas. 240; 40 D. L. R. 393.—**CAN.**

primâ facie evidence of negligence. But if the cause of the accident be shown, it may or may not, according to circumstances, be evidence for the jury (BOVILL, C.J.).—SIMSON *v.* LONDON GENERAL OMNIBUS CO. (1873), L. R. 8 C. P. 390; 21 W. R. 595; *sub nom.* SIMPSON *v.* LONDON GENERAL OMNIBUS CO., 42 L. J. C. P. 112; *sub nom.* SMITH *v.* LONDON GENERAL OMNIBUS CO., 28 L. T. 560.

Annotations:—**Expld.** Manzoni *v.* Douglas (1880), 6 Q. B. D. 145. **Refd.** Wing *v.* London General Omnibus Co., [1909] 2 K. B. 652.

630. ——— Passenger struck by driver's whip.]—The fact that a passenger in an omnibus is struck by the driver's whip is *primâ facie* evidence of negligence by the driver in the course of his employment; even if it appear that the blow was struck at the servant of another omnibus with whom there had been a dispute, & who had jumped on the omnibus step to get its number, it is a question for the jury whether the blow was struck by the driver in private spite or in supposed furtherance of his employer's interests.—WARD *v.* GENERAL OMNIBUS CO. (1873), 42 L. J. C. P. 265; 28 L. T. 850, Ex. Ch.

——— ——— Carriage door imperfectly fastened.]—*See* Sub-sect. 4, *ante*.

——— ——— Slamming carriage door.]—*See* Sub-sect. 4, *ante*.

——— ——— Train not stopping at platform.]—*See* Sub-sect. 5, *ante*.

——— ——— Defective platforms.]—*See* Sub-sect. 6, *ante*.

631. ——— ——— Wheel wrenched off omnibus by tramlines.]—A 'bus belonging to T. upset owing to a wheel being wrenched off by tramlines belonging to C. so that pltf., a passenger, was injured. In an action against T. & C. in the alternative the judge non-suited pltf. as against T., & the jury found in favour of C., after evidence had been called by pltf. to prove that the 'bus was sound & that the accident was due to a defect in the tramline:—*Held:* (1) there was some evidence of negligent driving.

The wheel came off. Is not this a case of *res ipsa loquitur*? (COZENS HARDY, M.R.).

(2) The onus lay on T. to prove that the 'bus was sound.

(3) The attempt of pltf. to prove in the first trial that the 'bus was sound was no objection to granting him a new trial.—LILLY *v.* TILLING (T.), LTD. & LONDON COUNTY COUNCIL (No. 1) (1912), 57 Sol. Jo. 59, C. A.

632. On whom burden of proof.]—In an action for an injury caused to a passenger on a railway, by alleged negligence of the railway co.'s servants, it is necessary for pltf. to make out that the injury arose from causes which involved negligence on their part. If the evidence leaves that point in doubt, the co. are entitled to the verdict.

A carriage broke from its fastenings & went off the line, & thus had caused the injury; it was a point in dispute upon the evidence whether this had arisen from insufficient fastening, or from a breakage caused by a latent flaw in the iron; the jury were directed that if they were in doubt upon this point the co. were entitled to the verdict.—PHELPS *v.* GREAT EASTERN RY. CO. (1869), 21 L. T. 443, N. P.

633. ———.]—A goods train & a passenger train met, & were passing each other on a double line of railway. Some timber on a truck in the goods train projected & struck the passenger train, injuring pltf., a passenger. The timber had been loaded on the truck without stanchions, & was secured by a chain only, which broke, & there was evidence that the breakage was caused by a latent flaw in the chain. There was also evidence that it would have been safer to load the timber with stanchions, but that the use of them for that purpose was comparatively recent, & there was no evidence of any accident having happened from not using stanchions:—*Held:* (1) it was for him to show that the accident was caused by defts.' negligence, & they were not bound to show how the accident happened.

(2) *Qu.:* whether defts. were bound to adopt stanchions at once if they were a new & safer invention.—HANSON *v.* LANCASHIRE & YORKSHIRE RY. CO. (1872), 20 W. R. 297.

Annotation:—*As to* (2) **Refd.** Toronto Power Co. *v.* Paskwan, [1915] A. C. 734.

See, also, Nos. 480, 492, 494, *ante*.

634. Accident not bound to have been foreseen—Alteration in working after accident—Whether evidence of antecedent negligence.]—At P. station on defts.' main line of railway, a few miles from M., there were sidings leading from the main line of rails to coaling & engine sheds, the points of which sidings were always open on to the main line. On the day in question, an engine had, in accordance with the usual practice, been taken by the servant of the co. appointed for that purpose to the coaling shed & been coaled, & was returning slowly therefrom on its way to the engine shed. In the ordinary course of things, the engine would have gone along the siding until it had passed the points of the siding leading to the engine shed, when it would have been reversed & backed over them into that shed; but at the moment that the man in charge of the engine should have reversed its action, he fell down in a

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m. ——— ——— *Car not braked.*]—Pltf. had her left foot on the lower step of one of deft. co.'s tram cars & was in the act of lifting her right foot to the second step when the car from some unexplained cause gave a sudden lurch or jolt forward throwing pltf. to her knees & breaking her leg:—*Held:* it was the duty of deft. to pltf., about to become a passenger, to have the car so securely braked that it could not move as it did at the time pltf. was boarding it.—JOHNSON *v.* HALIFAX ELECTRIC TRAMWAY CO., LTD. (1917), 51 N. S. R. 274; 36 D. L. R. 56.—**CAN.**

632 i. *On whom burden of proof.*]—Pltf., passenger for reward on defts.' motor-omnibus, was injured in a collision between the omnibus & another vehicle on the highway. In an action for damages:—*Held:* the *onus* of proving negligence on the part of defts. rested on pltf.—HANDASYDE *v.* MELBOURNE GENERAL MOTOR-BUS CO., LTD., [1916] V. L. R. 16.—**AUS.**

632 ii. ———.]—DUBE *v.* R. (1892), 3 Exch. C. R. 147.—**CAN.**

632 iii. ———.]—FERGUSON *v.* CANADIAN PACIFIC RY. CO. (1908), 12 O. W. R. 943.—**CAN.**

632 iv. ———.]—Passengers raised actions for compensation for injuries alleged to have been received by them in a railway accident. The ry. co. denied liability, on the ground that the cause of the accident was unknown, & that there was neither fault nor negligence on their part:—*Held:* the *onus* of proving fault or negligence lay with pursuers.—FERNS *v.* NORTH BRITISH RY. CO., MCCORMICK *v.* NORTH BRITISH RY. CO. (1872), 27 L. T. 173.—**SCOT.**

632 v. ——— *Falling overboard from steamboat.*]—STEELE *v.* CAPE BRETON ELECTRIC CO., LTD. (1918), 52 N. S. R. 61; 39 D. L. R. 609.—**CAN.**

634 i. *Accident not bound to have been foreseen.*]—A passenger travelling by night put her head out of the window of the railway carriage. She was struck by a mail bag hanging on an apparatus supplied & erected at the side of the railway by the Postmaster General, to whom the co. was bound by statute to give all reasonable facilities for the delivery of mails. The mail bag hung at a distance of eight or ten inches from the window. Apparatus of the same kind had been in use on all the principal railway lines for more than 30 years without accident having resulted from it. In an action of damages against the ry. co.:—*Held:* the arrangement was not one from which danger was to be anticipated; it was one to which the ry. co. were bound to consent as a reasonable facility for the delivery of mails & the co. were not liable.—PIRIE *v.* CALEDONIAN RY. CO. (1890), 17 R. (Ct. of Sess.) 1157; 27 Sc. L. R. 973.—**SCOT.**

Sect. 2.—Duty to take care: Sub-sects. 10 & 11.]

fit on the footboard of the engine, which consequently proceeded on towards the main line. At this same time a down express train from M., & an up express train from R. were approaching the station at full speed, & the pointsman in charge of the points at the spot seeing the runaway engine, with the man lying on the floor approaching, in order to prevent its getting on to the main line, & coming into collision with either of these express trains, deliberately, as a choice of evils, turned the points so as to send it on to a branch line of railway from A., which formed a junction at this station with the main line, at the platform of which branch line he knew that a train was stopping for tickets to be collected. The consequence was, that the, engine ran into the stationary branch train, & pltf. a second-class passenger in one of the carriages of that train, received bodily injuries from the collision, for which he sued the co. for compensation, on the ground of negligence, (1), in not having two men on the engine while coaling, & running it from the coaling to the engine shed; & (2) in having the points of the sidings so arranged that the engine must necessarily, in case of accident to the driver, pass on to the main line; the fact of an alteration having since this accident been made, so that a runaway engine would pass on to a supplementary siding leading up to a "dead end," was urged as evidence of their previous negligence in this respect. It was admitted, on all hands, that the pointsman had acted with great presence of mind, & for the best in the circumstances:—*Held:* (1) there was no evidence of negligence in defts. on which the verdict could be supported; (2) there being nothing dangerous or attended with peculiar risk in the operation of coaling the engines, & running them to & from the coaling & engine sheds, & it being an operation usually well performed by one man, the not employing two men to perform it was not negligence in defts.; (3) the arrangement of the sidings having been used for twenty years without accident, defts. could not be held bound to have foreseen the accident, or be held responsible for it upon its happening; (4) the subsequent alteration of the siding rails was not evidence of antecedent negligence on their part in that respect.—HART *v.* LANCASHIRE & YORKSHIRE RY. CO. (1869), 21 L. T. 261.

SUB-SECT. 11.—PERSONS TO WHOM CARRIER MAY BE LIABLE.

635. Person travelling lawfully — Member of excursion society—Ticket bought by society.]—A declaration against a railway co. alleged that pltf. at the request of defts. became a passenger for hire in one of their trains, for reasonable reward to defts. in that behalf; & that in consequence of the carelessness, etc. of defts. & their servants, the train ran against another train on the line, whereby pltf. was injured. Defts. pleaded the general issue, with a traverse of pltf. being a passenger, etc. The train in question was hired of the co. by a society for an excursion, the tickets for which were sold & distributed by the secretary of the latter body, from whom pltf. purchased his; the accident was occasioned by the train running, in the dark, against another train which was standing still at an intermediate station on the line:—*Held:* (1) the mere fact of the accident having occurred was *primâ facie* evidence of negligence on the part of defts.; (2) there was evidence to go to the jury in support of the allegation that pltf. became a passenger for hire with the co.—SKINNER *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1850), 5 Exch. 787; 15 Jur. 299; 155 E. R. 345.

Annotations:—As to (1) **Distd.** Perren *v.* Monmouthshire Ry. & Canal Co. (1853), 11 C. B. 855. **Refd.** Bird *v.* G. N. Ry. (1858), 28 L. J. Ex. 3; Hammack *v.* White (1862), 11 C. B. N. S. 588; G. W. Ry. of Canada *v.* Braid (1863), 1 Moo. P. C. C. N. S. 101; Byrne *v.* Boodle (1863), 3 New Rep. 162; Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412. *Generally* **Mentd.** The Hatfield *v.* The Glasgow (1914), 84 L. J. P. 161.

636. —— Post office servant.]—COLLETT *v.* LONDON & NORTH WESTERN RY. CO., No. 482, *ante*.

637. —— Bonâ fide holder of free ticket.]—In an action against a railway co. for injury to pltf. by negligence, the declaration alleged that pltf. at the time, etc., was lawfully in a certain carriage upon a certain public highway called the G. N. Ry. Defts. pleaded that pltf. at the time, etc., was unlawfully, & not lawfully in the carriage. The evidence went to show that a practice existed by which the reporters engaged on Bell's Life, of whom pltf. was one, when going to any races travelled free. Pltf., acting *bonâ fide* in his capacity as a reporter to the paper, was supplied with a ticket which bore the name of a person connected with the paper, but not pltf.'s; on it were the words "not transferable" & a memorandum that any other person than the one named using it would be liable to a penalty, or liable to pay the fare; pltf. showed this pass to the porter, whose business it was to examine them, who said it was all right, & put pltf. in the carriage. It was not distinctly proved that pltf. was personally known to the porter; but it was proved that pltf. & other reporters had on several occasions travelled with similar tickets to that used in this instance by pltf., & upon which their names did not appear, but those of other persons, & that some of those persons were personally known to the officers of the railway; but knowledge of such acts was not conclusively brought home to the co.:—*Held:* there was evidence for the jury to consider whether pltf. was lawfully in the carriage as alleged in the declaration; the issue raised was not as to the lawfulness of the carriage being on the highway, but whether pltf. was in the carriage in such circumstances as to be considered a trespasser.—GREAT NORTHERN RY. CO. *v.* HARRISON (1854), 10 Exch. 376; 23 L. J. Ex. 308; 23 L. T. O. S. 247; 18 Jur. 792;

PART V. SECT. 2, SUB-SECT. 11.

636 i. *Person travelling lawfully—Post office servant.*]—Pltf., a post office mail clerk, was injured by derailment of the car in which he was travelling with the mails under a contract for the carriage of mails:—*Held:* pltf. was a passenger for reward, & it was the duty of deft. co. to carry him safely.—KENNY *v.* CANADIAN PACIFIC RY. CO. (1902), 5 Terr. L. R. 420.—CAN.

637 i. —— *Bonâ fide holder of free pass.*]—An employee engaged as a mechanic in the workshops of a ry. co., was travelling thither to his work on one of the co.'s passenger cars, as a passenger, without payment of fare. A freight car collided with the passenger car, & he was killed. He held a permit or "pass" with no conditions in it, & not showing for what purposes it was to be honoured:—*Held:* (1) there was a presumption that he was lawfully on the passenger car; &, in the exercise of their business as common carriers of passengers, the co. were obliged to use a high degree of care in order to avoid injury being caused to him through negligence; (2) in the absence of any agreement, express or implied, or of some relationship between the co. & him which would exclude or limit liability, he was entitled to recover damages.—BRITISH COLUMBIA ELECTRIC RY. CO. *v.* WILKINSON (1911), 20 W. L. R. 258; 45 S. C. R. 263; 13 Can. Ry. Cas. 382.—CAN.

n. —— —— *Government official.*]—The railway administration must observe the same degree of care, diligence, & skill towards a passenger travelling under a free pass, issued to him as a govt. official, as it owes to ordinary passengers.—JAMESON'S MINORS *v.* CENTRAL SOUTH AFRICAN RYS., [1908] T. S. 575.—S. AF.

2 W. R. 626; 2 C. L. R. 1136; 156 E. R. 489, Ex. Ch.

Annotations :—**Refd.** Alton *v.* Mid. Ry. (1865), 19 C. B. N. S. 213; Grand Trunk Ry. of Canada *v.* Barnett, [1911] A. C. 361. **Mentd.** Sutton *v.* G. W. Ry., Sutton *v.* S. E. Ry. (1865), 3 H. & C. 800.

638. —— Child over three years old without ticket—No intent to defraud.]—By Railway Regulation Act, 1844 (c. 85), s. 6, railway cos. are bound to carry, by certain trains, children under three years of age without charge, & are entitled to half the fare charged for an adult in respect of all children between three & twelve years of age. Pltf.'s mother, carrying in her arms pltf., a child of three years & two months old, took a ticket for herself by one of these trains on defts.' railway, but did not take a ticket for pltf.; in the course of the journey an accident occurred through the negligence of defts., & pltf. was injured. At the time pltf.'s mother took her ticket no question was asked by defts.' servants as to the age of the child, & there was no intention on the part of the mother to defraud the co. :—*Held :* pltf. was entitled to recover against defts. for the injury he had received.—AUSTIN *v.* GREAT WESTERN RY. Co. (1867), L. R. 2 Q. B. 442; 8 B. & S. 327; 36 L. J. Q. B. 201; 16 L. T. 320; 31 J. P. 533; 15 W. R. 863.

Annotations :—**Consd.** Foulkes *v.* Met. Dist. Ry. (1880), 5 C. P. D. 157. **Refd.** Meux *v.* G. E. Ry. (1895), 14 R. 620; Taylor *v.* M. S. & L. Ry., [1895] 1 Q. B. 134; East Indian Ry. *v.* Kalidas Mukerjee (1901), 84 L. T. 210; Harris *v.* Perry, [1903] 2 K. B. 219; Lyles *v.* Southend-on-Sea Corpn., [1905] 2 K. B. 1; Shrimpton *v.* Hertfordshire County Council (1910), 74 J. P. 305. **Mentd.** Clarke *v.* Army & Navy Co-op. Soc., [1903] 1 K. B. 155.

—— **Ticket issued by other company.**]—*See* Sect. 4, *post*.

639. Servant—Action by master for loss of service—Contract.]—A master cannot maintain an action *per quod servitium amisit* against a railway co. for an injury to his servant, whilst a passenger on the co.'s railway, caused by neglect of their duty to safely carry the servant according to their contract with him as such passenger, unless the master was a party to the contract.—ALTON *v.* MIDLAND RY. Co. (1865), 19 C. B. N. S. 213; 34 L. J. C. P. 292; 12 L. T. 703; 11 Jur. N. S. 672; 13 W. R. 918; 144 E. R. 768.

Annotations :—**Distd.** Berringer *v.* G. E. Ry. (1879), 48 L. J. Q. B. 400; Meux *v.* G. E. Ry., [1895] 2 Q. B. 387. **Consd.** Taylor *v.* M., S. & L. Ry., [1895] 1 Q. B. 134. **Refd.** Bradshaw *v.* L. & Y. Ry. (1875), L. R. 10 C. P. 189; Potter *v.* Met. Ry. (1875), 32 L. T. 36. **Mentd.** Dickson *v.* Reuter's Telegraph Co. (1877), 2 C. P. D. 62; Leslie *v.* Sheill, [1914] 3 K. B. 607.

640. —— —— Tort.]—A servant to pltf. took a ticket & became a passenger in a train of co. A. Defts. supplied engines, drivers, etc., to co. A., & also men to work the signals at a junction. Owing to negligence on the part of defts.' signalman a train belonging to defts. ran into the train in which the servant was, he being thereby injured, & his services lost. Pltf. brought an action against defts. :—*Held :* the action was maintainable, as being against parties guilty of a tort, & independently of any contract.—BERRINGER *v.* GREAT EASTERN RY. Co. (1879), 4 C. P. D. 163; 48 L. J. Q. B. 400; 43 J. P. 511; 27 W. R. 681.

641. Invitee—Passenger allowed to travel in guard's van—Injury in alighting.]—Pltf. became a passenger by defts.' railway from H. to M. When she arrived at the station at H. there was a great crowd, & she got into the guard's van with several other persons, & with the guard's permission, who also showed her where to sit. When the train arrived at M. it stopped, but the van was not opposite the platform. Pltf. began to get out of the van, but before she could do so the train moved on, & pltf. fell, & was injured :—*Held :* (1) there was evidence of negligence on the part of defts.; (2) the co. were liable.—STOCKDALE *v.* LANCASHIRE & YORKSHIRE RY. Co. (1863), 2 New Rep. 135; 8 L. T. 289; 11 W. R. 650.

642. —— On ship's tender.]—A. was owner of a line of passenger steamers plying between M. & L. Passengers were taken from the shore at M. by a small steamer to a hulk moored in the river, which they boarded through one of the portholes, & thus got on to the lower deck. The sea-going steamers called at the hulk for passengers. A ladder led from the lower deck of the hulk to the upper deck, where the ticket-office was. The owner let the hulk to A. & other persons; it was fitted up according to A.'s satisfaction, whose duty it was to light it. A servant of the owner of the hulk looked after it. Tickets could also be taken on the steamers. B., who was a passenger from M. to L. having taken his ticket, went down the ladder on to the lower deck to get on board the sea-going vessel. About two feet from the bottom of the ladder there was a hole, through which he fell & injured himself :—*Held :* A. was liable on the contract to carry, & on the contract implied by the invitation to passengers to come on board the hulk.—JOHN *v.* BACON (1870), L. R. 5 C. P. 437; 39 L. J. C. P. 365; 22 L. T. 477; 18 W. R. 894; 3 Mar. L. C. 403.

Annotation :—**Consd.** Wright *v.* Mid. Ry. (1873), L. R. 8 Exch. 137.

643. —— Crossing platform between two other adjoining railways.]—The stations of defts. & of two other railway cos. at B. adjoined, & were open to one another, & the passengers of each co. were in the habit of passing directly from one to the other, the whole area being used as common ground by the passengers of all three cos. While pltf. was standing on defts.' platform, on his way from the terminus of one of the other cos. to the booking-office of the other co., waiting for his luggage, a porter of defts. negligently drove a truck laden with luggage, & a portmanteau fell off & injured pltf. :—*Held :* (1) as the negligence complained of was an act of misfeasance by a servant of defts.

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638 i. —— *Child over three years old without ticket.*]—LITTLE *v.* NORTH BRITISH RY. Co. (1877), 15 Sc. L. R. 12.—**SCOT.**

o. —— *Infant en ventre sa mère.*]—In an action against a ry. co. for damages caused to pltf. by the negligence of defts. the statement of claim alleged that at the date of the injuries complained of pltf.'s mother, A. W., was quick with child, namely, with pltf., to whom she afterwards gave birth; & averred that defts. so negligently & unskilfully conducted themselves in carrying the said A. W. & pltf., that pltf. was thereby injured :—*Held :* the statement of claim disclosed no cause of action; the child was a non-entity so far as any actual relation to the co. was concerned; their contract was with the mother alone, to whom, therefore, alone a duty existed.—WALKER *v.* GREAT NORTHERN RY. Co. OF IRELAND (1891), 28 L. R. Ir. 69.—**IR.**

p. —— *Without ticket—Not seeking to evade payment.*]—A person who had works at different stations along a railway line, & was in use to travel, as it suited his convenience, beyond the station for which he had taken out his ticket, was, when so travelling without a ticket, & not seeking to evade payment of his fare, a lawful passenger, & entitled to recover damages for injury from an accident which took place during the journey through the fault of the co.—HAMILTON *v.* CALEDONIAN RY. Co. (1857), 19 Dunl. (Ct. of Sess.) 457.—**SCOT.**

q. —— *Servant—Contract made with master.*]—JENNINGS *v.* GRAND TRUNK RY. Co. (1887), 15 A. R. 477; *affd.* 13 App. Cas. 800.—**CAN.**

r. —— *Carried gratuitously.*]—In the absence of evidence of gross negligence, a carrier is not liable for injuries sustained by a gratuitous passenger.—NIGHTINGALE *v.* UNION COLLIERY CO. OF BRITISH COLUMBIA (1904), 35 S. C. R. 65.—**CAN.**

s. —— ——.]—RYCKMAN *v.* HAMILTON, GRIMSBY & BEAMSVILLE ELECTRIC RY. Co. (1905), 6 O. W. R. 271; 10 O. L. R. 419.—**CAN.**

Sect. 2.—*Duty to take care: Sub-sects.* 11 *&* 12. *Sect.* 3: *Sub-sect.* 1.]

in the course of his employment, the maxim "*Respondeat superior*" applied; & in the circumstances defts. were liable.

(2) *Qu.:* whether defts. would have been liable if any injury to pltf. had resulted from the state & condition of the platform upon which pltf. had been allowed to enter.—TEBBUTT *v.* BRISTOL, & EXETER RY. CO. (1870), L. R. 6 Q. B. 73; 40 L. J. Q. B. 78; 23 L. T. 772; 35 J. P. 341; 19 W. R. 383.

Annotation:—*As to* (1) **Refd.** Tolhausen *v.* Davies (1888), 57 L. J. Q. B. 392.

644. —— Person accompanying passenger.]—Pltf., who had frequently accompanied passengers in the same way on previous occasions, in company with A., a passenger by defts.' railway, entered upon the premises of defts. for the purpose of seeing A. off. In order to get to the departure platform of the defts.' railway, it was necessary to cross a bridge approached by steep steps & turning to the right at the top of the steps. About six or ten feet from the top step a servant of defts. for the purpose of cleaning a lamp, was standing on a narrow plank placed across the bridge resting on the balustrades about 4 ft. 6 ins. from the ground. Pltf. walked against the plank & was injured. It was daylight at the time of the accident:—*Held:* (1) (*per* DENMAN, J.), there was no reasonable evidence of negligence on the part of defts. to go to the jury; (*per* LOPES, J.), there was reasonable evidence to go to the jury of negligence on the part of defts., the rule being that a judge should always leave a case to the jury if there is any evidence upon which a jury may reasonably act; (2) (*per* DENMAN, J.) pltf. was not a bare licensee, but was on defts.' premises by the invitation of defts. to the same extent as the passenger accompanied, who was there on lawful business in which the passenger & the co. had both an interest.—WATKINS *v.* GREAT WESTERN RY. CO. (1877), 46 L. J. Q. B. 817; 37 L. T. 193; 25 W. R. 905.

Annotation:—*As to* (2) **Refd.** Thatcher *v.* G. W. Ry. (1893), 10 T. L. R. 13.

645. —— ——.]—A railway co. is liable for personal injuries caused by a want of reasonable care on the part of their servants, to a person who has come to their station to see a friend off by the train.—THATCHER *v.* GREAT WESTERN RY. CO. (1893), 10 T. L. R. 13, C. A.

Annotations:—**Refd.** Coldrick *v.* Partridge, Jones, [1909] 1 K. B. 530. **Mentd.** Berg *v.* Rotterdamsche Lloyd (1918), 34 T. L. R. 272.

646. Licensee—Steamer hired by ferryman—Fare paid to ferryman.]—H., the lessee of a ferry, hired of defts. for the day a steamer, with a crew, to carry his passengers across. Pltf., having paid his fare to H. passed across on the steamer, & while on board was injured by the breaking of a rope, owing to negligence of the crew in the manner of mooring:—*Held:* the crew remained the servants of defts., who were liable for their negligence, &, as the negligence was such as would have made defts. liable to a mere stranger, & pltf. was on board with their consent, it was immaterial that he was a passenger under a contract with H.—DALYELL *v.* TYRER (1858), E. B. & E. 899; 28 L. J. Q. B. 52; 31 L. T. O. S. 214; 5 Jur. N. S. 335; 6 W. R. 684; 120 E. R. 744.

Annotations:—**Refd.** Foulkes *v.* Met. Dist. Ry. (1880), 5 C. P. D. 157. **Mentd.** Farrant *v.* Barnes (1862), 11 C. B. N. S. 553.

See, also, Nos. 481, 605, 608, *ante, &, generally,* NEGLIGENCE; RAILWAYS & CANALS.

Contributory negligence of passenger.]—*See* Nos. 537, 538, 541–548, 579, 583, 584, 604–617, *ante.*

Persons rendering assistance—To injured passengers—At request of company's servant.]—*See* AGENCY, Vol. I., p. 354.

When right of action survives to deceased's representative.]—*See* EXECUTORS & ADMINISTRATORS.

—— Under Fatal Accidents Act, 1846 (c. 96).]—*See* NEGLIGENCE.

SUB-SECT. 12.—OTHER CASES.

647. Dog bite—Dog chained to premises—Company liable—On proof of scienter.]—STYLES *v.* CARDIFF STEAM-BOAT CO. (1864), 4 New Rep. 483; 10 L. T. 844; 28 J. P. 646; *sub nom.* STILES *v.* CARDIFF STEAM NAVIGATION CO., 33 L. J. Q. B. 310; 10 Jur. N. S. 1199; 12 W. R. 1080.

Annotations:—**Refd.** Baldwin *v.* Casella (1872), L. R. 7 Exch. 325; Applebee *v.* Percy (1874), L. R. 9 C. P. 647.

648. —— Stray dog—Company not liable.]—SMITH *v.* GREAT EASTERN RY. CO. (1866), L. R. 2 C. P. 4; 36 L. J. C. P. 22; 15 L. T. 246; 15 W. R. 131.

See, further, ANIMALS, Vol. II., pp. 240, 245.

Duty as to platforms, generally.—*See* Sub-sect. 6, *ante.*

649. Defective fence—Train colliding with stray animal—Injury to passenger.]—BUXTON *v.* NORTH EASTERN RY. CO., No. 701, *post.*

—— Duty to maintain fences.]—*See* RAILWAYS & CANALS.

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644 i. —— *Person accompanying passenger.*]—A person, who had been permitted to go upon a railway platform to see friends off by a train, was injured through the fault of the station employees in starting a train without closing the doors:—*Held:* the ry. co. were liable.—TOUGH *v.* NORTH BRITISH RY. CO., [1914] S. C. 291.—SCOT.

646 i. *Licensee.*]—A boy selling newspapers, got on a street car at the rear end, & passed through the car to the front platform, where the driver was standing. He stepped to one side behind the driver, & fell off or disappeared from the car, there being no step on that side, & was killed by the car running over him. Newsboys were allowed to enter the cars to sell newspapers without being charged:—*Held:* he was lawfully on the car, was a mere licensee or volunteer, & the co. were under no duty to provide a step for him.—BLACKMORE *v.* TORONTO STREET RY. CO. (1876), 38 U. C. R. 172.—CAN.

u. *Trespasser.*]—Defts. agreed with a contractor for the construction of their railway to furnish a construction train to be used in carrying materials. Pltf., one of the contractor's workmen, with the permission of the conductor, but without the authority of defts., got on the train. Through the negligence of the person in charge of the train, an accident happened, & pltf. was injured:—*Held:* defts. were not liable, for their contract was to carry materials only, not passengers, & the conductor in permitting pltf. to get upon the train was not acting as defts.' agent.—GRAHAM *v.* TORONTO, GREY, & BRUCE RY. CO. (1874), 23 C. P. 541.—CAN.

v. *Passenger engaged in unlawful act.*]—A passenger was told by the guard of a train in which he was about to travel that he would find room in the front carriages, & on his failing so to do he returned towards the guard's van; seeing it already partly occupied by passengers he asked the guard's leave to go in. No reply was given, & on his immediately thereafter attempting to enter the guard thrust him back, whereupon he caught hold of the door handle, &, the train having then got into motion, fell between the van & the platform & thereby sustained injuries:—*Held:* pursuer at the time when the accident occurred having been engaged in an unlawful act, took the whole risk, & no fault was chargeable against defenders or their servants.—THOMPSON *v.* NORTH BRITISH RY. CO. (1882), 9 R. (Ct. of Sess.) 1101; 19 Sc. L. R. 817.—SCOT.

PART V. SECT. 2, SUB-SECT. 12.

649 i. *Defective fence—Train colliding with stray animal—Injury to passenger.*]—A passenger in a railway train suffered injury on the journey by reason of the derailment of the engine & carriages; the accident was caused by the engine colliding with a horse which had strayed on to the line:—*Held:* the railway co. was liable.—DALY *v.* RAILWAYS COMR. (1906), 8 W. A. L. R. 125.—AUS.

649 ii. —— ——.]—WALKER *v.* CANADIAN NORTHERN RY. CO. (1913), 26 W. L. R. 137.—CAN.

Duty to fence—As against passengers.]—*See* No. 561, *ante*.

650. Spark from engine—Injury to passenger.]—Pltf., a passenger, while leaving defts.' station by a path belonging to defts. which ran alongside the railway & was an authorised means of exit, was injured by a spark from an engine on the railway. There was evidence that the attention of defts. had been called to the danger of injury from sparks to passengers using the path, & they had declined to protect the path by a screen or cover on the ground of expense ; & that the path could have been protected at a reasonable cost & without interfering with the business of the railway. The engine was properly constructed to prevent the emission of sparks according to the latest & most improved methods, & there was no negligence in working the engine :—*Held :* there was evidence upon which the jury could properly find that defts. were negligent in not taking reasonable precautions to protect passengers using the path from injury by sparks.—ATHERTON *v.* LONDON & NORTH WESTERN RY. CO. (1905), 93 L. T. 464 ; 21 T. L. R. 671, C. A.

—— **Injury to other persons & crops.**]—*See* RAILWAYS & CANALS.

Liability to persons other than passengers.]—*See* NEGLIGENCE ; RAILWAYS & CANALS.

SECT. 3.—SPECIAL TERMS OF CONTRACT.

SUB-SECT. 1.—AS TO DESTINATION.

651. Agreement to carry to named destination—By advertised excursion train.]—GREAT NORTHERN RY. CO. *v.* HAWCROFT, No. 472, *ante*.

652. —— Measure of damages.]—Through the negligence of a railway co.'s servants, pltfs. & their two young children were taken to a wrong station, where they could not obtain either accommodation or a conveyance, & had to walk home several miles in the middle of a wet night. Female pltf. caught cold & was laid up for some time, & was unable to help her husband in his business, & he had to pay for medical attendance & other things, rendered necessary by the illness of his wife. Pltfs. having recovered damages, £10 for the personal inconvenience suffered by them, & £20 in respect of the wife's illness :—*Held :* pltfs. could recover damages for the inconvenience to which they had been exposed, but not for the illness of the wife or its consequences, the damages from these being too remote, & not flowing immediately from the cause of action.—HOBBS *v.* LONDON & SOUTH WESTERN RY. CO. (1875), L. R. 10 Q. B. 111 ; 44 L. J. Q. B. 49 ; 32 L. T. 252 ; 39 J. P. 693 ; 23 W. R. 520.

Annotations :—**Consd.** Lilley *v.* Doubleday (1881), 7 Q. B. D. 510. **Distd.** McMahon *v.* Field (1881), 7 Q. B. D. 591. **Refd.** Le Blanche *v.* L. & N. W. Ry. (1876), 1 C. P. D. 286 ; Coldman *v.* Hill (1918), 34 T. L. R. 486.

653. Travelling beyond named destination—Same fare to both stations—Liability to pay excess fare.]—A passenger with a return ticket between two stations on a line of railway cannot travel on, upon that ticket, to a station beyond the terminal station mentioned therein, & from & to which the ticket was taken, without paying the extra fare for the further distance so travelled, notwithstanding that the charge for a return ticket for the entire distance is the same as that paid by him for the ticket which he had taken.

Resp. took, at W. station of the applt. co., a return ticket from that station to D., for which he paid the authorised fare of 2*s.* 6*d.* On his return journey he travelled on in the same carriage from W. to P., & declined to pay the extra single fare of 3*d.* demanded of him for so doing, on the ground that, as the charge for a return ticket from P. to D. was only 2*s.* 6*d.*, the money which he had already paid for his ticket covered the whole distance, & entitled him to be carried on to P. without any extra payment :—*Held :* the contract between the passenger & the co., of which the ticket was conclusive evidence, was to carry him from W. to D.

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a. *Crossing gate left open—Train colliding with stray cattle—Injury to passenger.*]—Pltf., a passenger on defts.' railway, sustained injuries, by the collision of the train with cattle, which were trespassing from adjoining lands, & had come on the line at a private level crossing through a gate open at the time of the accident. The post to which the gate should have been locked was loose :—*Held :* mere looseness of the post to which the gate was usually bolted was insufficient to imply neglect in the co.—PATCHELL *v.* IRISH NORTH WESTERN RY. CO. (1871), I. R. 6 C. L. 117.—**IR.**

b. *Snow & ice at side of rails—Obligation to remove—Injury to person boarding car.*]—ELLIOTT *v.* WINNIPEG ELECTRIC RY. CO., [1918] 2 W. W. R. 820 ; 42 D. L. R. 106.—**CAN.**

c. *Train snowed up — Injury through exposure.*]—In an action of damages for personal injury against a ry. co., pursuer averred that when she was travelling in one of defenders' trains it became snowed up between two stations ; that the windows of the compartment in which she travelled were covered with snow so that she could not see out ; that she was unable to open the windows, & in consequence to reach the handle of the doors, owing to the windows being rendered immovable by the frost ; that defenders' officials left her unattended to during the stoppage, which lasted for more than an hour ; & that in consequence of the exposure to cold her health became seriously injured :—*Held :* pursuer's averments were irrelevant.—MATHIESON *v.* CALEDONIAN RY. CO. (1903), 5 F. (Ct. of Sess.) 511 ; 40 Sc. L. R. 392.—**SCOT.**

d. *Intoxicated person — Causing injury to passengers—Duty of conductor.*]—BLAIN *v.* CANADIAN PACIFIC RY. CO. (1903), 5 O. L. R. 334 ; 2 O. W. R. 76 ; 24 C. L. T. 49 ; 34 S. C. R. 75.—**CAN.**

e. —— *Injury to — Whether evidence of negligence.*]—GILES *v.* GREAT WESTERN RY. CO. (1875), 36 U. C. R. 360.—**CAN**

f. —— ——.]—A. was a passenger by defts.' railway. F., a drunken man, with a ticket, was admitted to the platform at O. station, passed the barrier where the ticket-checker was stationed, & attempted to enter a carriage, when the station-master ordered a porter to keep him back. Whilst the porter was leading F. along the platform, F. suddenly swung his arm & broke the window of the carriage in which A. was sitting, A. being severely injured by the broken glass. In an action for damages brought by A., & founded upon the alleged negligence & want of care on the part of defts., the case was left to the jury on the erroneous assumption that if the drunken man was "obviously drunk," either the neglect to notice that condition, or the admission of him in that condition as a passenger, rendered the co. absolutely responsible for all that he did :—*Held :* ground for a new trial.—ADDERLEY *v.* GREAT NORTHERN RY. CO., [1905] 2 I. R. 378, 401 ; 39 I. L. T. 74.—**IR.**

g. —— —— *Fall on to rails.*]—A ry. co. is not liable in damages for failing to see an intoxicated passenger safely off the platform at which he arrives.—M'CORMICK *v.* CALEDONIAN RY. CO. (1904), 6 F. (Ct. of Sess.) 362 ; 41 Sc. L. R. 282.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.

651 i. *Agreement to carry to named destination—By advertised steamers.*]—Applts. advertised that they ran a regular steamer to B. at definite dates & hours. No fare was mentioned ; but a uniform fare had always been charged. Resp. in reliance upon the advertisement went on board the steamer & started on the voyage, & was willing to pay the usual fare in the ordinary manner on the steamer : —*Held :* applts. committed a breach of contract in requiring from resp. on personal grounds four times the usual fare, & on his refusal putting the steamer back to port & compelling resp. to go ashore.—PITCAITHLY *v.* THACKER (1903), 23 N. Z. L. R. 783. —**N.Z.**

651 ii. —— *By train indicated—Delay —Damages.*]—A passenger by rail from E. to Q. was shown into a carriage as being a "through carriage." The carriage was, however, shunted off at an intermediate station, the passenger being in the carriage at the time & being subjected to a delay of some hours :—*Held :* the passenger was entitled to damages for breach of contract to carry her to her destination by the train indicated, but not for resulting inconvenience & discomfort. —PUBLIC WORKS COMR. *v.* DREYER (1910), E. D. L. 325.—**S. AF.**

h. —— *Continuous journey — Break in line—Failure to make connection.*]—Pltf. was a passenger by defts.'

Sect. 3.—Special terms of contract: Sub-sects. 1 & 2, A. & B.]

& back, & that, upon his arrival, on the return journey, at W., the co.'s contract with him was fulfilled & at an end; & if he chose to go on to P., he was bound & liable to pay the extra fare for being carried that further distance.—GREAT WESTERN RY. CO. *v.* POCOCK (1879), 41 L. T. 415; 44 J. P. 40; 28 W. R. 49.

Annotation:—Refd. Ashenden *v.* L. B. & S. C. Ry. (1880), 42 L. T. 586.

654. —— Ticket used for station further on—Amount of excess fare recoverable.]—A condition indorsed on an excursion ticket, that if the ticket is used for any other station than that named the ticket will be forfeited, not only precludes a passenger from leaving the train at an intermediate station, but also from continuing his journey in the same train beyond the station named without paying the full ordinary fare for the entire journey. Should such passenger attempt to avail himself of an excursion ticket from A. to B. as part of his journey in the same train from A. to C., a station beyond B., his ticket is, under the condition, forfeited. He cannot at C. tender the excursion ticket from A. to B. with the ordinary fare from B. to C., but must pay the full fare from A. to C.—GREAT NORTHERN RY. CO. *v.* PALMER, [1895] 1 Q. B. 862; 64 L. J. Q. B. 316; 72 L. T. 287; 59 J. P. 166; 43 W. R. 316; 11 T. L. R. 235; 39 Sol. Jo. 429; 15 R. 296, D. C.

655. —— —— ——.]—A passenger intending to travel by a through train from H. to M., for which the fare was 2*s.* 3*d.*, took an ordinary ticket from H. to an intermediate station, S., for which he paid 1*s.* 6*d.* At S. he gave up his ticket & told the ticket collector that he intended to travel on in the same train to M., & he tendered 7*d.*, the local fare from S. to M. This the collector refused & demanded 9*d.*, which was the difference between what he had paid for his ticket to S. & the whole fare from H. to M. The passenger refused to pay this, &, without getting a fresh ticket, travelled on in the same train to M. Conditions against using a ticket for any other station than that for which it was issued, & against rebooking at an intermediate station by the same train, were incorporated into the contract:—*Held:* the railway co. were entitled to charge the whole fare as for one through journey from H. to M., & the passenger was liable to pay the difference between what he would have paid if he had taken a through ticket for the whole distance & what he had actually paid.—LONDON & NORTH WESTERN RY. CO. *v.* HINCHCLIFFE, [1903] 2 K. B. 32; 72 L. J. K. B. 530; 88 L. T. 800; 67 J. P. 205; 51 W. R. 556; 19 T. L. R. 430; 47 Sol. Jo. 493, D. C.

656. Breaking journey—Condition for forfeiture & payment of full fare—If ticket used for any other than named station—Ticket used for intermediate station.]—Deft., a passenger on pltfs.' railway, took a tourist ticket to S., for which he paid 8*s.*; the ticket contained a condition that if used for any other station it would be forfeited & the full fare charged. He alighted at F., a station short of S., to which the fare was 9*s.*; he then took a ticket from F., to his destination on a branch line; he did not give up at F. the ticket he had originally taken. Pltfs. brought an action in the county ct., claiming to be entitled to recover 9*s.* the full fare to F., or 1*s.* if deft. was entitled to be credited with the 8*s.* paid by him for his original ticket; but they were nonsuited on the ground that they were suing for a penalty, which was only recoverable before justices:—*Held:* pltfs. were not suing to recover a penalty but to recover a fare under the terms of the contract entered into with deft.; the action was maintainable & the nonsuit was wrong.—GREAT NORTHERN RY. CO. *v.* WINDER, [1892] 2 Q. B. 595; 61 L. J. Q. B. 608; 67 L. T. 422; 56 J. P. 775; 8 T. L. R. 564; 36 Sol. Jo. 504, D. C.

See, also, No. 654, *ante.*

657. ——.]—A passenger who takes a railway ticket, either single or return, for a certain journey is not, unless there are special terms enabling him to do so, entitled to alight from the train at an intermediate station, break the journey & leave the station, & then on returning to that station claim to go on to his destination on the original ticket.—ASHTON *v.* LANCASHIRE & YORKSHIRE RY. CO., [1904] 2 K. B. 313; 73 L. J. K. B. 701; 91 L. T. 349; 52 W. R. 655; 20 T. L. R. 482; 48 Sol. Jo. 459, D. C.

658. ——.]—Resp., a passenger on a tramcar, paid for & obtained a ticket which entitled him to travel to a certain destination. He alighted at a stopping place short of that destination, &, having walked some distance, boarded another tramcar travelling to the same place to which he would have been entitled to go under the original ticket. The conductor demanded from him the legal fare for the journey, but resp. refused to pay it, contending that, having already paid for & obtained a ticket, he was entitled to complete the journey by another tramcar:—*Held:* resp. had, by alighting from the first tramcar & allowing it to proceed, determined the contract of carriage, & was not entitled to travel on the second tramcar without paying the legal fare.—BASTAPLE *v.* METCALFE, [1906] 2 K. B. 288; 75 L. J. K. B. 670; 70 J. P. 343; 4 L. G. R. 1073, D. C.

See, further, Part III., Sect. 2, *ante;* Part X., Sect. 2, sub-sect. 3, *post.*

railway under a contract by which defts. were to carry him by continuous journey from H. to S., *via* H. There was a break in the line of defts.' railway at G., & an omnibus was provided, as advertised by defts., but pltf. was asked to pay a fare of 10 cents for transfer in it, & refusing so to do, was not permitted to be transported free. He failed to make his connection, & brought action for damages:—*Held:* he was entitled to be conveyed from station to station free of expense; but it would have been reasonable for him to have paid the 10 cents & made his connection, & the damages should be restricted to that sum.—CLARRY *v.* GRAND TRUNK RY. CO. (1897), 29 O. R. 18.—CAN.

1. —— —— *Failure to carry—Cost of special conveyance.*]—Pltf. wished to proceed to a part of H. &, when a car came along labelled as going in the required direction, boarded a trailer attached to it which, however, was not so labelled. When the car containing pltf. had proceeded a certain distance it was stopped & the passengers informed that it would not go farther in that direction. Pltf. insisted on his right to be carried to his destination in that car, refused a transfer, & hired a cab. In an action for damages:—*Held:* there was no obligation on the co.'s part to carry pltf. to his destination on that particular car, & he could not recover.—O'CONNOR *v.* HALIFAX TRAMWAY CO., LTD. (1905), 37 S. C. R. 523.—CAN.

656 i. *Breaking journey—Contract for one continuous journey—Ticket used for intermediate station.*]—Pltf. purchased from defts. a ticket to D. & took defts.' accommodation train at S., which ran only as far as L., but he left it at C., an intermediate station, & defts. refused to let him go on thence by the night express:—*Held:* defts. contract bound them to convey pltf. in one continuous journey from S. to D., giving him the option of taking any passenger train from the point of commencement, & if that train did not go the whole distance, to be conveyed the residue in some other train, but it did not give a right to stop at an intermediate station.—CRAIG *v.* GREAT WESTERN RY. CO. (1865), 24 U. C. R. 504.—CAN.

656 ii. —— —— ——.]—BRIGGS *v.* GRAND TRUNK RY. CO. (1865), 24 U. C. R. 510.—CAN.

656 iii. —— —— ——.]—By the sale of a railway ticket the contract of the ry. co. is to convey the purchaser in one continuous journey to his destination; it gives him no right to stop at any intermediate station.—COOMBS *v.* R. (1896), 26 S. C. R. 13.—CAN.

SUB-SECT. 2.—AS TO TIME OF DEPARTURE AND ARRIVAL.

A. In General.

659. Whether railway company liable for train not starting punctually—Mere taking of ticket not contract by company to start train punctually.]—HURST *v.* GREAT WESTERN RY. Co., No. 669, *post.*

660. —— Passenger losing day's work.]—Pltf., a miner employed by the G. Co., held a ticket issued by defts. in the following terms: "G. Co. workmen's train. G. & back, Nov. 2 to Nov. 7. M. R. Not transferable." The train did not appear in the public time-tables, but the time of starting was notified to the G. Co. The train was run under an agreement between defts. & the G. Co. by which defts. lent the G. Co. engines, for continuing the trains from defts.' line to the colliery without charge, on condition that the G. Co. indemnified defts. from liability for injury to workmen being conveyed on the line & would treat the trains as private trains of the G. Co. Tickets for the train were issued by defts. to the G. Co. in bundles at 1*s.* a ticket & were distributed by the G. Co. to the colliers, who were charged 9*d.* a ticket. Defts.' train was timed to start at 5.18 a.m. Pltf. waited at the station until 7 a.m., when the train had not yet arrived, having been delayed by one of the carriages having got off the line. As it was then too late to be allowed to go down the pit to do that day's work he went home. He brought an action against defts. to recover the day's wages thus lost:—*Held:* (1) there was evidence of a contract between pltf. & defts.; (2) as there was unreasonable delay in starting the train, pltf. was entitled to recover.—COOKE *v.* MIDLAND RY. Co. (1892), 57 J. P. 388; 9 T. L. R. 147, C. A.

661. —— Train starting before time.]—*Held:* (1) deft. was not entitled to recover the cost of a special train when he was left behind at S., through the wilful misconduct of pltfs.' servant, in starting a train three minutes before time; (2) he was entitled to damages for the inconvenience & discomfort caused thereby.—GREAT WESTERN RY. Co. *v.* LOWENFELD (1892), 8 T. L. R. 230.

662. Condition limiting liability for delay—Construction—"Accident or other cause."]—BUCKMASTER *v.* GREAT EASTERN RY. Co., No. 675, *post.*

663. —— —— "Accident or otherwise."]—Pltf. took a season ticket on defts.' line, & signed a contract agreeing not to hold defts. responsible for any stoppage, delay, hindrance, or charge whatever arising from accident or otherwise which might impede the proper starting, running, or arrival of any of the trains:—*Held:* the clause protected defts. from liability for the unpunctuality of their trains.—SUTTON *v.* LONDON, CHATHAM & DOVER RY. Co. (1896), 12 T. L. R. 425, D. C.

664. Carriage by land & water.]—In contracts of carriage by land & water there is, in the absence of special contract, no contract to carry at any special time.—CRANE *v.* TYNE SHIPPING Co., LTD. (1897), 13 T. L. R. 172, D. C.

See, generally, Part III., Sect. 4, *ante.*

Lack of accommodation.]—*See* No. 472, *ante.*

B. In Time Tables.

665. Effect of publication—Promise that train will run as advertised.]—The G. N. Ry. Co., whose line communicated with the line of the N. E. Ry. Co. at M., had arrangements by which their trains starting from P. at 7 p.m. & going to M., there met a train of the N. E. Co. running from M. to H., by which passengers from P. to H. were forwarded. The G. N. Co. published monthly time tables in which they stated, in the usual way, that the 7 p.m. train from P. carried to H. At the end of a month, after the G. N. time tables for the ensuing month were prepared in this form & printed, but before they were published, the N. E. Co. discontinued the train from M. to H. The G. N. Co. made no alteration in their time tables already printed, but published & circulated them after they knew that there was no such train. Pltf., having seen one of the time tables, made his arrangements, on the faith of it, to go from P. to H. by the 7 p.m. train; he came to P. in time, went to the station, & then for the first time learned that he could go no further than M. by that train. He was delayed in his journey & sustained damage, for which he sued the G. N. Co.:—*Held:* (1) he was entitled to recover; the circulation of the time tables amounted to a representation on the part of defts. that there was a train, which was false to the knowledge of those making it, & calculated to induce pltf. to act as he did; (2) the time table amounted to a contract on behalf of the co. with those who should come to the station to forward them as stated in the table.—DENTON *v.* GREAT NORTHERN RY. Co. (1856), 5 E. & B. 860; Saund. & M. 128; 25 L. J. Q. B. 129; 26 L. T. O. S. 216; 20 J. P. 483; 2 Jur. N. S. 185; 4 W. R. 240; 119 E. R. 701.

Annotations:—As to (1) **Refd.** Hurst *v.* G. W. Ry. (1865), 19 C. B. N. S. 310; Lockyer *v.* International Sleeping Car & European Express Trains Co. (1892), 61 L. J. Q. B. 501; Fox *v.* Cambrian Rys. (1896), 60 J. P. Jo. 745. *As to* (2) **Refd.** Warlow *v.* Harrison (1859), 1 E. & E. 309; *Re* Agra & Masterman's Bank, *Ex p.* Asiatic Banking Corpn. (1867), 2 Ch. App. 391; Harris *v.* Nickerson (1873), 28 L. T. 410; Houldsworth *v.* City of Glasgow Bank (1880), 28 W. R. 677; Carlill *v.* Carbolic Smoke Ball Co., [1893] 1 Q. B. 256.

666. —— Whether absolute contract to reach destination same day.]—HAMLIN *v.* GREAT NORTHERN RY. Co., No. 714, *post.*

667. —— ——.]—Pltf. took a ticket of deft. co. from B. to L., by the train which was advertised in the time tables to leave B. at 4.55 p.m. & to arrive at L. at 10.10 p.m. Between B. & D. the train was delayed by the floods several times, & consequently failed to catch the corresponding train from D. to L. On arriving at D. pltf. was informed by the station-master that no other train would go to L. that night, but that the usual trains would run the following morning. Pltf. thereupon determined to pass the night at D. Next day pltf. was unable to reach L. at all owing to a portion of the line having during the night become impassable from the floods. Pltf. claimed damages for a breach of contract:—*Held:* (1) defts. had only contracted to use due diligence to reach D. in time to catch the corresponding train

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PART V. SECT. 3, SUB-SECT. 2.—A.

659 i. *Whether railway company liable for train not arriving punctually—Connection missed.]*—An intending passenger, who had not taken a ticket farther than a junction, missed a train owing to the train in which he was travelling arriving late there:—*Held:* the loss of time might be *primâ facie* evidence of negligence.—WATERFORD & LIMERICK RY. Co. *v.* DILLON (1867), 1 I. L. T. 35.—IR.

k. *Starting train from unusual platform.]*—It is the duty of a ry. co. which starts a train from an unusual platform to take steps to warn intending passengers of the place of departure of the train.—SIMMONTON *v.* BELFAST & COUNTY DOWN RY. (1911), 45 I. L. T. 251.—IR.

PART V. SECT. 3, SUB-SECT. 2.—B.

l. *Effect of publication — Whether incorporated in contract.]*—A published time table is not part of the contract to carry, but merely a representation that a train will leave a station at a named time & arrive at another station at another named time.—BRIGGS *v.* GRAND TRUNK RY. Co. (1865), 24 U. C. R. 510.—CAN.

m. —— *Liability for delay.]*—A ry. co. was held liable to pay damages because a train advertised in the time table as proceeding on a fair day to K. was delayed nearly three hours *en route*, & the passengers were late for the fair.—BURNS *v.* ULSTER RY. Co. (1867), 1 I. L. T. 534.—IR.

Sect. 3.—*Special terms of contract: Sub-sect.* 2, *B.*]

to L., & as they had failed to do so from unavoidable causes they were not bound to forward pltf. by a special train; (2) even had an absolute contract to carry from B. to L. on the day the ticket was taken existed, as pltf. alleged, the latter had by his conduct exonerated & discharged defts. from performance of it (BRAMWELL, B.).—FITZGERALD *v.* MIDLAND RY. CO. (1876), 34 L. T. 771, D. C.

668. —— **Whether warranty as to punctuality.**]—A statement in the official guide of a sleeping car co., which has sleeping cars in certain trains running between P. & the south of F., that such trains correspond with trains leaving L. at specified times, is not a warranty of punctuality, but a mere representation that the proper times of arrival of the trains from L. are those mentioned therein, & imposes no duty on the co. to see that such trains do so arrive.—LOCKYER *v.* INTERNATIONAL SLEEPING CAR & EUROPEAN EXPRESS TRAINS CO. (1892), 61 L. J. Q. B. 501; 8 T. L. R. 527; 36 Sol. Jo. 462, D. C.

See, also, Nos. 472, 660, *ante*, No. 713, *post.*

669. **Condition against liability for delay—Whether company liable.**]—Pltf. took a ticket from defts. from C. to N.; pltf., after waiting a long time, was told by a porter that the train was late in consequence of an accident, & the train eventually arrived an hour & a half late. The consequence was that pltf. was late for the train at G., which would have carried him on to N. The train bill was not put in, but only some correspondence in which defts. repudiated their liability on the ground that by the train bills they gave notice they would not be liable for the trains not keeping time:—*Held:* there was no evidence of a cause of action.—HURST *v.* GREAT WESTERN RY. CO. (1865), 19 C. B. N. S. 310; 6 New Rep. 297; 34 L. J. C. P. 264; 12 L. T. 634; 11 Jur. N. S. 730; 13 W. R. 950; 144 E. R. 807.

670. —— —— **Statement that punctuality not guaranteed.**]—The time table of a railway co. stated that a train would leave L. station at 2.37 p.m. & arrive at M. at 2.54. Pltf. entered L. station during the Whitsuntide holidays at 2.20 p.m. & procured a ticket for M. after being told by the ticket-porter & a guard that a train which was nearly due would stop there. The train in question did not arrive at L. till 3 p.m. Pltf. entered the carriage, &, after considerable delays in consequence of stoppages, arrived at S., a station beyond M., at 4.45 p.m. The train had not stopped at M. Pltf. who had an appointment for 3.30 at a place about ten minutes' walk from M. took a cab & arrived there at 5 p.m., but too late for his appointment. The time table of the co. contained the words following: "These tables show the time at which the trains may be expected to arrive & depart from the several stations; every exertion will be used to insure punctuality, but the departure or arrival of trains at the time stated will not be guaranteed, nor will the co. hold themselves responsible for delay, or any consequences, arising therefrom:—*Held:* no contract or duty had been proved by which the co. could be made liable.—PREVOST *v.* GREAT EASTERN RY. CO. (1865), 13 L. T. 20, N. P.

671. —— —— —— **Through ticket.**]—Pltf. took a ticket for S. at the defts.' station at L. The journey from L. to S. is *via* X. & Y. Defts.' train only goes to X.; & from X. to S. the journey is over the lines & by the trains of other cos. The ticket referred to the conditions in defts.' published time bills, of which the most material part was as follows: "The published train bills are only intended to fix the time at which passengers may be certain to obtain tickets for any journey from the various stations, it being understood that the trains shall not start before the appointed time. Every attention will be paid to insure punctuality, so far as it is practicable; but the directors give notice that the co. do not undertake that the trains shall start or arrive at the time specified in the bills, nor will they be accountable for any loss, inconvenience, or injury which may arise from delays or detention. . . . The granting of tickets to passengers to places off the co.'s line is an arrangement made for the convenience of the public; but the co. do not hold themselves responsible for any delay, detention, or other loss or injury whatsoever arising off their lines, or from the acts or defaults of other parties, nor for the correctness of the times over lines of other companies, nor for the arrival of this co.'s own trains in time for the nominally corresponding train of any other co. or party." The train by which pltf. travelled was too late at X. to catch the train by which pltf. should have proceeded to Y.; & when pltf. did arrive at Y., at about 7 p.m., he found that the train for S. which he should have caught had gone, & that the next train for S. did not start till 8 p.m., arriving at about 10 p.m. He thereupon took a special train from the N. E. Ry. Co., which arrived at S. between 8.30 & 9 p.m. Pltf. had no business or engagement in S. necessitating his being there at any particular time:—*Held:* (1) if one party does not perform his contract, the other may do so for him as reasonably near as may be, & charge him for the reasonable expense incurred in so doing; (2) a proper test of what is reasonable in such a case as pltf.'s is to consider whether, according to the ordinary habits of society, a person delayed on his journey, in circumstances for which the co. were not responsible, would have incurred the expenditure in question on his own account, & the taking of a special train was, in the circumstances, unreasonable; (3) the words "Every attention will be paid to insure punctuality as far as practicable" did import a contract to use due attention to keep the times specified in the time bills as far as practicable, having regard to the necessary exigencies of the traffic & circumstances over which the co. had no control.

(4) The contract in the conditions was such as to protect defts. from any further liability in a case where they issued a through ticket than they would have incurred if they had only issued a ticket to the farthest point of the journey on their own system (BAGGALLAY, J.A.).

(5) The true meaning of the contract was, that the persons in the management of the train would, with regard to the particular train on that particular journey, use due attention to insure punctuality, but that defts. were not to be held

670 i. *Condition against liability for delay—Whether company liable—Statement that punctuality not guaranteed.*]—Pltf. applying for a season ticket from C. to W., signed a condition that the co. did not hold themselves liable to subscribers for interruption or delay which might take place in the intercourse along the railway. The ticket was granted subject also to the published regulations & bye-laws of the co. The advertised time of arrival at W. was 8.30 p.m., & the train, owing to delay occasioned by races, did not arrive in W. until 9.12, owing to which pltf. lost the last train at 9 p.m. to T., where he lived, & was obliged to hire a car to take him home, the price of which he sought to recover from defts. The time tables provided that the co. did not guarantee punctual departure or arrival of the trains as advertised:—*Held:* pltf. could not recover.—KENNY *v.* WATERFORD & LIMERICK RY. CO., MURPHY *v.* WATERFORD & LIMERICK RY. CO. (1884), 18 I. L. T. 56.—IR.

responsible for delays arising from circumstances unconnected with the management of the particular train (JAMES, L.J.).—LE BLANCHE *v.* LONDON & NORTH WESTERN RY. CO. (1876), 1 C. P. D. 286; 45 L. J. Q. B. 521; 34 L. T. 667; 40 J. P. 580; 24 W. R. 808, C. A.

Annotations:—As to (1) **Refd.** Bright *v.* Peninsular & Oriental Steam Navigation Co. (1897), 2 Com. Cas. 106; Erie County Natural Gas & Fuel Co. *v.* Carroll, [1911] A. C. 105; *Re* Jewell's Settlement, Watts *v.* Public Trustee, [1919] 2 Ch. 161. *As to* (2) **Consd.** Millen *v.* Brash (1881), 8 Q. B. D. 35. **Apld.** G. W. Ry. *v.* Lowenfeld (1892), 8 T. L. R. 230. *As to* (3) **Apld.** Woodgate *v.* G. W. Ry. (1884), 51 L. T. 826. **Distd.** McCartan *v.* N. E. Ry. (1885), 54 L. J. Q. B. 441. **Consd.** Duckworth *v.* L. & Y. Ry. (1901), 84 L. T. 774. **Refd.** Roberts *v.* Mid. Ry. (1877), 25 W. R. 323; Fox *v.* Cambrian Rys. (1896), 60 J. P. Jo. 745.

672. —— —— —— ——.]—Pltf. took a ticket at defts.' station at D. by the 2.11 p.m. train for B. via L. (Midland) & B., which was printed on the tickets, & it was further stated that they were issued "subject to regulations in the time table." At the end of the time bills there were a number of pages entitled "Connection with other railways," & one of such pages was printed "Through communication between the N. E. Line & Ireland, B. via L. & Barrow," from which it appeared that the 2.11 p.m. train should arrive at L. at 4.45, & leave there at 5.10 by the M. Co.'s line. The M. Co.'s station at L. adjoins the N. E. station, but is a separate building. The train by which pltf. travelled did not reach L. till 5.22 or thirty-seven minutes late, & the M. Co.'s train having left at the proper time, pltf. was unable to proceed to B. that night, & was compelled to put up at a hotel at L. The conditions in defts.' time tables comprise the following: "The hours stated in these time tables are appointed as those at which it is intended, as far as circumstances will permit, the passenger trains should arrive at & depart from the several stations, but their departure or arrival at the times stated, or the arrival of any train passing over any portion of the co.'s lines in time for any nominally corresponding train on any other portion of their lines, is not guaranteed; nor will the co., in any circumstances, be held responsible for delay or detention, however occasioned, or any consequences arising therefrom. The issuing of tickets to passengers to places off this co.'s lines is an arrangement made for the greater convenience of the public; but the co. will not be held responsible for the non-arrival of this co.'s own trains in time for any nominally corresponding train on the lines of other cos., nor for any delay, detention, or other loss or injury whatsoever which may arise therefrom, or off their lines":—*Held:* the conditions formed part of the contract, & the true construction of such conditions was that defts. refused to guarantee the punctuality of their trains according to the times mentioned in the tables, from whatever cause the irregularity or want of punctuality might arise.—MCCARTAN *v.* NORTH EASTERN RY. CO. (1885), 54 L. J. Q. B. 441; 1 T. L. R. 490, D. C.

Annotation:—**Folld.** Duckworth *v.* L. & Y. Ry. (1901), 84 L. T. 774.

673. —— —— ——.]—(1) *Held:* a condition in defts.' time tables, that defts. would not undertake that the trains would arrive at the times stated in their time tables, nor would they be accountable for loss or inconvenience or injury arising from delays or detention, exonerated defts.

(2) *Qu.:* whether the condition would not cover negligence on the part of defts.—DRIVER *v.* LONDON & NORTH WESTERN RY. CO. (1900), 16 T. L. R. 293, C. A.

674. —— —— —— **Negligence of company.**]—A condition incorporated by a ticket issued by a railway co. to a passenger that the co. will not in any circumstances be held responsible for delay or detention, however occasioned, or any consequences arising therefrom, protects the co. from liability for delay or detention of the passenger, even when caused by the admitted negligence of the co.

A workman took a ticket issued subject to such a condition, & in consequence of the negligence of the company he was late in arriving at his destination, & so lost his day's work & his day's wages:—*Held:* he could not recover the amount of his loss from the co.—DUCKWORTH *v.* LANCASHIRE & YORKSHIRE RY. CO. (1901), 84 L. T. 774; 65 J. P. 517; 49 W. R. 541; 17 T. L. R. 454; 45 Sol. Jo. 467, D. C.

675. —— —— **For negligence or wilful misconduct.**]—In the common stipulation on railway tickets, that the co. shall not be liable for any delay in the starting or arrival of trains arising from "accident or other cause" the words "other cause" mean "other cause in the nature of accident," & not "any cause whatever." A railway co. cannot absolve themselves from the results of their negligence in not starting a train by stating on their time tables that they will not "hold themselves responsible for delay or any consequences arising therefrom."

Pltf. went to the terminus of a branch line of the G. E. Ry. intending to travel to L. by a certain train that he might attend a corn market. The train was at the station, but the engine which was to draw it had not sufficient steam up, in consequence of the fireman having neglected to light the fire in time, & the train could not go. Pltf. was compelled to take a special train. He was late at market, & suffered loss in his business thereby:—*Held:* the cause of the non-starting of the ordinary train was not accident, but an act of negligence on the part of a servant of the co., & pltf. was entitled to recover from the co. the sum he had paid for a special train, & likewise a reasonable sum for his loss of market.—BUCKMASTER *v.* GREAT EASTERN RY. CO. (1870), 23 L. T. 471, N. P.

676. —— —— —— **Fog & unusual traffic.**]—W. took a railway return ticket to B. by a train which was advertised to reach B. in six hours. The ticket had on its face the words "see back," & on the back the words "subject to conditions on time bills," which conditions stated the co. were not accountable for delays, except caused by wilful misconduct of the co.'s servants. Owing to fog & unusual traffic & a collision, W. was too late for the train at a junction, & at his request he was forwarded by another train, being at least four hours later in arrival than as advertised:—*Held:* W. was bound by the conditions on the time bills, & there being no evidence of wilful misconduct, W. could not recover damages for delay.—WOODGATE *v.* GREAT WESTERN RY. CO. (1884), 51 L. T. 826; 49 J. P. 196; 33 W. R. 428; 1 T. L. R. 133, D. C.

Annotations:—**Consd.** McCartan *v.* N. E. Ry. (1885), 54 L. J. Q. B. 441; Stevens *v.* G. W. Ry. (1885), 49 J. P. 310; G. W. Ry. *v.* Lowenfeld (1892), 8 T. L. R. 230.

677. —— —— —— **Steamer delayed.**]—A railway co. is not liable to the passengers for the unpunctuality of its trains, except such as is caused by the wilful misconduct of the company's servants, where notice to that effect is printed by the company upon their passenger tickets and time bills.

Defts.' steamer having been delayed by fog, the boat train run in connection with it missed the connecting train at S. Junction &, on account of there being only three passengers, was not sent on

Sect. 3.—*Special terms of contract: Sub-sect.* 2, *B.; sub-sects.* 3, 4 *&* 5.]

& the passengers including pltf. had to wait at S. for a later train. Defts., by their published conditions, had excluded liability for unpunctuality of their trains unless caused by wilful misconduct: —*Held:* pltf. could not recover damages for loss of a market.—COOPER *v.* GREAT WESTERN RY. CO. (1884), 1 T. L. R. 101.

See, also, No. 475, *ante.*

678. —— —— ——.]—DRIVER *v.* LONDON & NORTH WESTERN RY. CO., No. 673, *ante.*

679. —— —— **Ticket issued subject to time table.**]—Pltf. took a tourist ticket from defts. on the faith of defts.' programme of tourist ticket arrangements. On the back was printed "This ticket is subject to the regulations & conditions stated in the co.'s time tables & bills." Defts.' monthly time bill stated that the co. did not hold themselves responsible for any delay, detention, etc., arising off their lines, or from the acts or defaults of other parties, nor for the correctness of the times over other lines or cos." Pltf. was detained by the lateness of another co.'s train:—*Held:* pltf. was bound by the monthly time table & could not recover the expenses incurred through such detention.—THOMPSON *v.* MIDLAND RY. CO. (1875), 34 L. T. 34; 40 J. P. 612.

SUB-SECT. 3.—AS TO PASSENGER TRAVELLING AT OWN RISK.

680. Liability for negligence excluded.]—Declaration, that pltf. was received by defts., a railway co., as a passenger to be safely carried on their railway on a journey from P. to C., & that defts. so negligently managed the railway & the traffic upon it that a collision took place, by which pltf. was injured. Plea, that pltf. was received as a passenger under an agreement that he should travel at his own risk. Replication, that it was by reason of gross & wilful negligence & mismanagement of defts. that the collision took place:—*Held:* the replication was bad, for the agreement stated in the plea must be taken to include the negligence mentioned in the replication.—MCCAWLEY *v.* FURNESS RY. CO. (1872), L. R. 8 Q. B. 57; 42 L. J. Q. B. 4; 27 L. T. 485; 37 J. P. 358; 21 W. R. 140.

Annotations:—**Distd.** Mitchell *v.* L. & Y. Ry. (1875), L. R. 10 Q. B. 256. **Refd.** Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858.

—— **Where journey over several systems.**]—*See* Sect. 4, *post.*

681. Extent of risks included—Incidental risks —Access to & departure from train.]—Where a passenger travels on a railway at his own risk, the exemption from liability on the part of the railway co. extends, not only to the actual transit, but to risks incurred on the premises of the co. in coming to & going from the points to which the contract to carry applies.

A cattle drover so travelling had to alight at a siding, & in necessarily going to the station passed a dangerous place at which he met with an accident:—*Held:* he was not entitled to recover, although the jury found there had been negligence on defts.' part.—GALLIN *v.* LONDON & NORTH WESTERN RY. CO. (1875), L. R. 10 Q. B. 212; 44 L. J. Q. B. 89; 32 L. T. 550; 39 J. P. 518; 23 W. R. 308.

Annotations:—**Refd.** Mitchell *v.* L. & Y. Ry. (1875), L. R. 10 Q. B. 256; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858.

682. Validity against infant.]—An infant agreed in effect with a railway co., that the company should carry him at a reduced rate, that they should not be bound to take any care in so doing, & that they might be guilty of negligence towards him, &, however severely he might be injured in consequence, they should not be liable to make him any compensation:—*Held:* the agreement was to the detriment of the infant, & was not, therefore, binding on him.—FLOWER *v.* LONDON & NORTH WESTERN RY. CO., [1894] 2 Q. B. 65; 63 L. J. Q. B. 547; 70 L. T. 829; 58 J. P. 685; 42 W. R. 519; 10 T. L. R. 427; 9 R. 494, C. A.

Annotation:—**Refd.** Clements *v.* L. & N. W. Ry., [1894] 2 Q. B. 482.

Proof of assent to condition.]—*See* Sub-sect. 5, *post.*

SUB-SECT. 4.—OTHER TERMS.

683. Season ticket—Forfeiture of deposit—On failure to deliver up on expiry.]—Where, on the purchase of a season ticket on a line of railway, the purchaser, in addition to the sum paid by him for the ticket, deposits with the railway co. a sum of 10*s.*, & agrees to & signs conditions (*inter alia*) that the ticket is to be considered as the property of the co., to be delivered up on the day after expiry or on forfeiture, & that the ticket & all benefit & advantage thereof, including the deposit, shall be absolutely forfeited to the co. if it be lost, or in case of any breach of any of the conditions, the observance & fulfilment by the purchaser of each & every one of the conditions is a condition precedent to his right to a return of the deposit on the expiry of the ticket; if, therefore, he fails to return the ticket on the day after its expiry, the co. are entitled to retain the deposit as forfeited; & although he returns the ticket a few days afterwards, & no damage be shown to have accrued to the co. through the delay in returning it, he cannot maintain an action against

PART V. SECT. 3, SUB-SECT. 3.

680 i. *Liability for negligence excluded —Passenger carried free.*]—ROBINSON *v.* CANADIAN PACIFIC RY. CO. (1909), 14 O. W. R. 706.—CAN.

680 ii. —— ——.]—Pltf. travelled by defts.' railway as a drover in charge of cattle, under a contract which contained the words, "as a drover is allowed to attend the cattle during transit, the co. will allow such drover to travel free of charge upon condition that he so travel at his own risk." An accident occurred upon defts.' line, through which personal injuries were received by pltf.:—*Held:* (1) pltf.'s election to travel free under the contract was an election to travel at his own risk; (2) such contract was valid; (3) pltf. was without remedy against defts. for negligence during the journey.—DUFF *v.* GREAT NORTHERN RY. CO. (1879), 41 L. T. 197.—IR.

681 i. *Extent of risks included— Incidental risk—Access to & departure from train.*]—A condition of a free pass issued to pltf. relieved defts. from all liability in the event of disaster or injury to the holder, or damage to his property, however caused, while travelling on the railway by means of the pass. Pltf. was landed, at the end of the journey, on the arrival platform & was proceeding along it to go to another platform, when, owing to the negligence of one of the servants of defts., pltf. was injured:—*Held:* pltf. was a passenger on the free pass at the time & travelled at his own risk & could not recover damages for the injuries.—M'DONALD *v.* VICTORIAN RAILWAYS COMRS. (1887), 13 V. L. R. 399.—AUS.

n. —— *Accidents & damage.*]—Defts. gave a free ticket over their railway on the condition that the holder assumed the risk of accidents & damage:—*Held:* defts. were not liable for damage or injury arising to the person holding such ticket while travelling under it.—SUTHERLAND *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 409.—CAN.

PART V. SECT. 3, SUB-SECT. 4.

o. *Undertaking to wake passenger in time for post-cart.*]—Where the agent of a post-cart contractor undertakes to wake a passenger in time for him to catch the cart, & in consequence of his neglecting so to do, such passenger misses the cart, the post-cart contractor is liable for the reasonable expenses incurred by such passenger in completing his journey by other means.—HUNTER *v.* JELLIMAN (1905), 19 E. D. C. 5.—S. AF.

them for the recovery of the deposit which is to be treated as liquidated damages & not as a penalty.—COOPER *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1879), 4 Ex. D. 88 ; 48 L. J. Q. B. 434 ; 40 L. T. 324 ; 27 W. R. 474.

Annotation :—**Mentd.** Pye *v.* British Automobile Commercial Syndicate (1906), 22 T. L. R. 287.

684. Whether liability for negligence excluded—"Loss or damage arising from perils of sea."]—Defts., a steamship co., issued a passenger's ticket, which contained, amongst others, a condition that the co. would not be responsible for any loss, damage or detention of luggage in any circumstances . . . the co. would not be responsible for the maintenance of passengers, or for their loss of time or any consequence arising therefrom . . . nor for any delay arising out of accidents ; nor for any loss or damage arising from the perils of the sea, or from machinery, boilers or steam, or from any act, neglect or default whatsoever of the pilot, master or mariner :—*Held :* the words "loss or damage arising from the perils of the sea," contained in the condition, exempted defts. from liability for injury or loss of life to a passenger occasioned on the voyage by the negligence of defts.' servants.—HAIGH *v.* ROYAL MAIL STEAM PACKET CO., LTD. (1883), 52 L. J. Q. B. 641 ; 49 L. T. 802 ; 48 J. P. 230 ; 5 Asp. M. L. C. 189, C. A.

Annotations :—**Refd.** Woodgate *v* G. W. Ry. (1884), 51 L. T. 826 ; McCartan *v.* N. E. Ry. (1885), 54 L. J. Q. B. 441 ; Travers *v.* Cooper, [1915] 1 K. B. 73.

685. Limitation of amount recoverable—Tramway company—Validity.]—CLARKE *v.* WEST HAM CORPN., No. 14, *ante*.

686. Cheap return ticket available for certain days only—Used on other day—Passenger liable for full return fare.]—GREAT EASTERN RY. CO. *v.* KIRKLEY (1914), 58 Sol. Jo. 239.

SUB-SECT. 5.—ASSENT OF PASSENGER TO CONDITIONS.

687. Conditions incorporated in ticket—Passenger unaware of.]—HENDERSON *v.* STEVENSON, No. 855, *post*.

688. —— —— Whether sufficient notice given—Ticket consisting of book of coupons.]—Outside the cover of a paper book of coupons forming a railway ticket, issued to pltf. by defts., was printed the name of their railway, the words "Cheap return ticket, L. to P. & back, Second class," & a statement of the period & journey for which the ticket was available, but no reference to the inside of the cover. On the inside, & apparent on turning the leaf, was a condition limiting the responsibility of defts. to their own trains. Pltfs. having been injured while travelling by virtue of the ticket, in a French train, sued defts. They set up the condition. Pltf. had not read & did not know of it. The jury were directed that if it was brought to his notice it would afford a defence, &, on being asked whether what was done by the co. was reasonably sufficient to bring the condition to the notice of pltf., answered that it was not :—*Held :* the whole book was the contract accepted by pltf., & he could not reject the condition which was one of its terms, & judgment should be entered for defts.—BURKE *v.* SOUTH EASTERN RY. CO. (1879), 5 C. P. D. 1 ; 49 L. J. Q. B. 107 ; 41 L. T. 554 ; 44 J. P. 283 ; 28 W. R. 306.

Annotations :—**Consd.** Woodgate *v.* G. W. Ry. (1884), 49 J. P. 196. **Refd.** Watkins *v.* Rymill, (1883) 10 Q. B. D. 178.

689. —— —— ——.]—A. paid R. & Co. passage-money for a voyage on their steamer & received a folded ticket on which no writing was visible till it was opened. On the ticket was a condition that the co. would not be liable beyond $100 for injury to the passenger or his luggage. On an action by A. to recover damages exceeding $100 for personal injuries, the jury found that A. knew there was writing on the ticket, but did not know that it contained conditions as to the contract of carriage, & that the co. did not do what was reasonably sufficient to give A. notice of the conditions :—*Held :* there was evidence on which the jury could properly so find.—RICHARDSON, SPENCE & CO. & LORD GOUGH S.S. CO. *v.* ROWNTREE, [1894] A. C. 217 ; 63 L. J. Q. B. 283 ; 70 L. T. 817 ; 58 J. P. 493 ; 10 T. L. R. 335 ; 7 Asp. M. L. C. 482 ; 6 R. 95, H. L.

Annotations :—**Folld.** Stirling *v.* L. & S. W. Ry. (1895), 12 T. L. R. 69. **Consd.** Stephen *v.* International Sleeping Car Co. (1903), 19 T. L. R. 621 ; Marriott *v.* Yeoward, [1909] 2 K. B. 987. **Apld.** Cooke *v.* Wilson (1915), 85 L. J. K. B. 888. **Folld.** Hood *v.* Anchor Line, [1918] A. C. 837. **Refd.** G. N. Ry. *v.* Palmer (1895), 72 L. T. 287 ; Ryan *v.* Oceanic Steam Navigation Co., O'Connell *v.* Same, Scanlon *v.* Same, O'Brien *v.* Same, [1914] 3 K. B. 731 ; Liebig's Extract of Meat Co. *v.* Mersey Docks & Harbour Board, & Nelson, [1918] 2 K. B. 381 ; The Luna (1919), 124 L. T. 382 ; Armour *v.* Walford, [1921] 3 K. B. 473 ; Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76. **Mentd.** Lyons *v.* Houghton, [1915] 1 K. B. 489 ; Roe *v.* Naylor (1918), 87 L. J. K. B. 953 ; The Luna, [1920] P. 22.

690. —— —— ——.]—Pltf. having been injured by the negligence of defts. while travelling on their railway with a workman's ticket, defts. set up a condition on the back of the ticket that their liability should be limited to £100 in case of accident. The jury, in answer to the judge, found that pltf. knew that there was writing or printing on the back of the ticket ; that it contained conditions relating to the carrying contract ; & that defts. did what was reasonably sufficient to give purchasers of workmen's tickets notice of the conditions of the carrying contract ; & they assessed the damages at £100, the maximum allowed by the condition. Judgment accordingly.

PART V. SECT. 3, SUB-SECT. 5.

688 i. *Conditions incorporated in ticket—Passenger unaware of—Whether sufficient notice given.*]—The receipt by a passenger of a ticket on which conditions are printed does not, *per se*, furnish sufficient evidence that the passenger assents to the conditions thereon, & it is a question of fact for the jury to determine whether the delivery of a ticket to a passenger in such manner that he could see there was printing upon it was or was not reasonable notice that such printing contained conditions.—ROWE *v.* AUSTRALIAN UNITED STEAM NAVIGATION CO., LTD., [1909] St. R. Qd. 1.—**AUS.**

688 ii. —— —— ——.]—Issuing to the passenger a ticket with the conditions upon which it was issued plainly & distinctly printed upon the face of it, is in itself reasonably sufficient notice of such conditions ; & if, in the circumstances, he sees fit to put the ticket into his pocket without reading it, he has nothing to complain of except his own carelessness or indifference.—COOMBS *v.* R. (1896), 4 Exch. C. R. 321 ; 26 S. C. R. 13.—**CAN.**

688 iii. —— —— ——.]—A railway passenger took a ticket containing a printed condition which stated that, inasmuch as the holder was permitted to travel by a passenger carriage attached to a goods train, the ry. co. should be relieved from responsibility for any personal injury to him, consequent upon, or in any way arising from, such passenger carriage being attached to a goods train. In an action by the passenger for personal injuries, sustained by him while alighting from a carriage attached to a goods train :—*Held :* pltf. was bound by the condition, although in fact unaware of its terms.—JOHNSON *v.* GREAT SOUTHERN & WESTERN RY. CO. (1874), I. R. 9 C. L. 103.—**IR.**

688 iv. —— —— ——.]—A traveller took a "Saturday to Monday" ticket subject to the bye-laws, regulations, time tables, notices, etc., of the co. It was available by all afternoon trains on Monday except the limited mail. He never read the bye-laws, regulations, or notices, & was not aware of the exception. Returning by the limited mail excess fare was demanded, which he refused to pay :—*Held :* he took an extraordinary ticket, with ordinary conditions, which the co. had taken reasonable precaution to bring home to him.—CORK, BANDON & S. C. RY. CO. *v.* WOLFE (1897), 31 I. L. T. Jo. 418.—**IR.**

Sect. 3.—Special terms of contract: Sub-sect. 5. Sect. 4.]

—STIRLING *v.* LONDON & SOUTH WESTERN RY. CO. (1895), 12 T. L. R. 69.

691. —— —— —— Condition printed in a mass of advertisements.]—STEPHEN *v.* INTERNATIONAL SLEEPING CAR CO., LTD. (1903), 19 T. L. R. 621; 47 Sol. Jo. 692, D. C.

Annotations:—**Apprvd.** Cooke *v.* Wilson (1915), 85 L. J. K. B. 888. **Refd.** Roe *v.* Naylor (1918), 87 L. J. K. B. 958.

692. —— —— ——.]—Pltf. was a passenger on one of defts.' steamers for an evening cruise. The passengers took their tickets when on board, & on the face of the tickets were the words "at passengers own risk," & there were also conditions on the back. Pltf.'s hand was injured on board owing to the negligence of defts.' servants. The judge found that pltf. did not observe or read any notice upon the ticket, & that no reasonably sufficient notice was given to him that the ticket contained conditions:—*Held:* (1) the judge had put the proper questions to himself; (2) there was evidence to support his findings.—HOOPER *v.* FURNESS RY. CO. (1907), 23 T. L. R. 451; 51 Sol. Jo. 446, D. C.

693. —— —— ——.]—Pltf. booked by wire & paid for, a first class passage on one of defts.' steamships from H. to A., & on the day when the steamer was to sail she called at their office at H. for her ticket. One of defts.' clerks took a printed form of ticket, wrote in the necessary words, & handed her the completed ticket. The ticket which was headed "Passenger Contract," contained in print of ordinary size except as regards the written words, a statement that pltf. was entitled, "subject to the conditions hereof," to a berth in the steamship; while below on the face of the documents in small but clear print were the conditions which (*inter alia*) exempted defts. from responsibility to passengers for loss of luggage & for personal injuries or damage arising from neglect of their servants. During the voyage, owing to the captain's negligence, the steamer struck a mine which had been laid by the enemy & sank. In an action by pltf. against defts. for damages for not safely carrying pltf. & her luggage defts. relied upon the conditions on the ticket. Pltf. stated in evidence that she looked at the ticket, but only sufficiently to notice that it was partly in print & partly in writing, & that, as she alleged, it contained the name of a different steamer from that in which she was to sail; &, further, that she knew there were conditions on tickets, but not that there were in this case. The jury found, first, that pltf. was aware that there were generally conditions relating to contracts to travel, but that there was no evidence that she was aware that such conditions were on her ticket; secondly that defts. did not do what was reasonably sufficient to give pltf. notice of the conditions:—*Held:* assuming that the first of these findings was not against the weight of the evidence & might stand, the second finding was clearly against the weight of the evidence & could not stand, & judgment should be entered for defts.—COOKE *v.* WILSON (T.) SONS & CO., LTD. (1915), 85 L. J. K. B. 888; 114 L. T. 268; 32 T. L. R. 160; 60 Sol. Jo. 121, C. A.

694. —— —— —— Conditions signed in presence of passenger.]—Resp., by arrangement with the owner of a horse, travelled in charge of it upon applts.' railway. The owner's representative, in the presence of resp., signed a "livestock special contract," in a form authorised by the Board of Railway Comrs. for Canada. This contract provided for the carriage of the horse & contained, upon its face, a condition relieving applts. from liability for death or injuries, even where caused by negligence, to a person permitted to travel with the horse at less than full fare. The document was handed to resp. in order, as he knew, to show that he was travelling with the horse, but neither he nor the owner's representative read the conditions. A half fare was charged for the conveyance of resp., &, together with the freight for the horse, was payable by the owner upon delivery. Across the face of the contract was printed in large red type "Read this special contract," & at the side was written (but not as part of the authorised form) "Pass man in charge half fare." Resp., having been injured during the journey by the negligence of applts., sued to recover damages:—*Held:* the true inference was that resp. accepted the document knowing that it contained a contract made on his behalf for his conveyance, & that he was bound by the condition on its face exempting applts. from liability.—GRAND TRUNK RY. CO. OF CANADA *v.* ROBINSON, [1915] A. C. 740; 84 L. J. P. C. 194; 113 L. T. 350; 31 T. L. R. 395, P. C.

Annotations:—**Consd.** Hood *v.* Anchor Line, [1918] A. C. 837. **Refd.** Cooke *v.* Wilson (1915), 85 L. J. K. B. 888; Canadian Pacific Ry. *v.* Parent, [1917] A. C. 195.

695. —— —— ——.]—In answer to an action by a passenger against deft. co. for damages for personal injuries alleged to have been sustained through the negligence of the co.'s servants in the course of a voyage from N. to G. in a ship belonging to the co., defenders pleaded a condition in pursuer's ticket limiting their liability for injury to passengers to £10. The ticket was purchased at defender's N. office by one of pursuer's clerks, who, on payment of the passage money, received in exchange a ticket enclosed in an envelope, on the front of which was printed in capital letters a notice requesting the passenger to read the conditions of the enclosed contract. The ticket contained on its face a printed notice that it was issued subject to the conditions thereinafter set out (which included the condition in question) & at the foot a printed request to the passenger to read carefully the above contract. Neither the pursuer nor his clerk was aware of the conditions:—*Held:* defenders had taken all reasonable steps to bring to the knowledge of pursuer the existence of the conditions & he was bound by them.—HOOD *v.* ANCHOR LINE (HENDERSON BROTHERS), [1918]

p. —— —— —— *Condition printed in time table.*]—Where a passenger travelling on the ticket of a ry. co. does not know that the ticket has on its face the statement "this ticket is issued subject to the conditions in the co.'s time table," but knows in a vague & general way that the ticket is issued subject to some conditions, without knowing what these conditions specifically are, he is, nevertheless, bound by them.—TAGGART *v.* NORTHERN COUNTIES RY. CO. (1897), 31 I. L. T. Jo. 404.—**IR.**

q. —— —— —— *Burden of proof.*]—It is necessary for the carrier to show that, in the circumstances, he has adopted that course which was reasonably sufficient to give the passenger notice of the conditions at the time of the purchase of the ticket. —STRETTON *v.* UNION S.S. CO., LTD. (1881), 1 E. D. C. 315.—**S. AF.**

r. —— *Passenger aware of—Estoppel.*]—Where a passenger knows that a ticket is issued subject to restrictive conditions, he takes the ticket subject to the conditions.—CENTRAL SOUTH AFRICAN RYS. *v.* JAMES (1908), T. S. 221.—**S. AF.**

s. *Conditions incorporated in contract signed by passenger.*]—Pltf. was accompanying a horse to T., & was riding in the caboose when the engineer of the train clapped on the brakes suddenly & pltf. thrust his head through the window; the glass almost severed his nose & he sued for damages. He had, at request of defts.' agent, signed a contract containing a term relieving the co. from liability in respect to injury to him when riding on the train in which his horse was being carried. Pltf. said he did so without reading it or knowing its contents:—*Held:* pltf. was not an

A. C. 837; 87 L. J. P. C. 156; 119 L. T. 684; 34 T. L. R. 550; 62 Sol. Jo. 680, H. L.
Annotation :—**Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

696. —— Assent of passenger assumed.]—A man, while travelling on applts.' railway in charge of cattle, was killed by the negligence of applts.' servants. The cattle were consigned by the employers of deceased under applts.' form of live stock contract, which provided that if a man was allowed to travel in charge of the cattle at less than full fare applts. were to be under no liability for his death, injury, or damage, whether caused by negligence or otherwise. A pass at less than full fare was issued to deceased, who placed his signature below conditions printed thereon. One of the conditions was that applts. should be entirely free from liability for any damage, injury, or loss to deceased, whether caused by negligence or otherwise :—*Held :* upon the evidence, deceased must be taken to have assented to the condition in the pass.—CANADIAN PACIFIC RY. CO. *v.* PARENT, [1917] A. C. 195; 86 L. J. P. C. 123; 116 L. T. 165; 33 T. L. R. 180, P. C.

697. —— Whether passenger bound—Travelling by excursion train at reduced rate.]—ISLEY *v.* GREAT NORTHERN RY. CO. (1910), 45 L. Jo. 194.

See, further, Nos. 654, 655, & cases in Sub-sect. 2, B., *ante*, & Part IV., Sect. 1, sub-sects. 1, B., & 3, Sect. 2, sub-sects. 1, E., & 2, C., *ante*, Part VI., Sect. 8, sub-sect. 4, *post*.

SECT. 4.—JOURNEY OVER SEVERAL SYSTEMS.—THROUGH BOOKINGS AND RUNNING POWERS.

698. Liability of issuing company.]—B. took a ticket from W. to C. from the W. J. Ry. Co. In order to arrive at the platform at the station at M. the trains pass over the line of the M. & C. Ry. On that line was a self-acting switch used for shunting carriages into a siding. The switch & siding were the property of the M. & C. Ry. Co., but used exclusively by the W. J. Ry. Co. The switch was about four yards from a gate which was on the line of the W. J. Ry. Co., a servant of which co. was in the habit of occasionally looking over the gate to see that the switch was in proper order. It was proved that all switches are liable to get out of order. A train of the W. J. Ry. coming slowly up to the station, in consequence of the points being turned the wrong way, ran into the siding & came in collision with some coal trucks, whereby B. was killed :—*Held :* (1) the question whether there was negligence on the part of the W. J. Ry. Co. was properly left to the jury; (2) there was evidence of such negligence; (3) upon a finding by the jury of negligence on the part of the W. J. Ry. Co., the co. were liable, under Fatal Accidents Act, 1846 (c. 93), to an action by the personal representative of B.—BIRKETT *v.* WHITEHAVEN JUNCTION RY. CO. (1859), 4 H. & N. 730; 28 L. J. Ex. 348; 33 L. T. O. S. 226; 157 E. R. 1029.
Annotation :—**Refd.** Clarke *v.* West Ham Corpn. (1909), 73 J. P. 461.

699. —— Accident on non-issuing company's line—Negligence of non-issuing company.]—By arrangement between the G. W. Ry. Co. & the S. W. Ry. Co., whose lines of rails were in connection, each co. was to work both the lines, & the fares were to be divided between them. Pltf., wishing to go from L. to M. on the S. W. line, took a ticket at P. Station of the G. W. Ry. Co., paid his fare & became a passenger to be conveyed by that co. to M. After the train had passed from the G. W. Ry. on to the S. W. Ry. it came, without any negligence on the part of those who managed the train, into collision with a locomotive engine left on the line by the negligence of some servants of the S. W. Ry. Co., & pltf. was injured :—*Held :* (1) the G. W. Ry. Co. were liable to pltf. for the injury; a railway co. impliedly contracts with a passenger to use due & reasonable care in keeping its line in a proper state for traffic, & by the arrangement between the cos. the S. W. line became the line of the G. W. Ry. Co. in respect of their obligation to passengers.

(2) The same obligation would have arisen from the contract to carry the whole distance if no arrangement had existed between the cos. (BYLES, J.).—GREAT WESTERN RY. CO. *v.* BLAKE (1862), 7 H. & N. 987; 7 L. T. 94; 8 Jur. N. S. 1013; 10 W. R. 388; 158 E. R. 773; *sub nom.* BLAKE *v.* GREAT WESTERN RY. CO., 31 L. J. Ex. 346, Ex. Ch.
Annotations :—*As to* (1) **Folld.** Buxton *v.* N. E. Ry. (1868), L. R. 3 Q. B. 549. **Distd.** Zunz *v.* S. E. Ry. (1869), 10 B. & S. 594. **Apld.** John *v.* Bacon (1870), L. R. 5 C. P. 437. **Folld.** Thomas *v.* Rhymney Ry. (1871), L. R. 6 Q. B. 266. **Distd.** Wright *v.* Mid. Ry. (1873), L. R. 8 Exch. 137. **Refd.** Hall *v.* N. E. Ry. (1875), L. R. 10 Q. B. 437; Foulkes *v.* Met. Dist. Ry. (1880), 5 C. P. D. 157. *Generally* **Mentd.** Cox *v.* Coulson, [1916] 2 K. B. 177.

700. —— —— ——.]—Pltf. took a ticket of defts., a railway co., as a passenger from A. to C. At B., between A. & C., defts.' line joins the line of the T. Co., over which defts. have running powers from B. to C., on payment of certain tolls, the traffic arrangements being left in the control of the T. Co., & the station at B. belonging to & being in the exclusive control of the T. Co. After leaving B., it being after dark, the train of defts. in which pltf. rode ran into a train of the T. Co., & pltf. was injured by the collision. Defts.' servants were guilty of no negligence; & the collision was owing to the negligence of the servants of the T. Co. in sending on their own train without the proper tail light, & allowing defts.' train to proceed on the same line of rails too soon after the other train without giving any warning to the driver of defts.' train :—*Held :* defts. were liable for the negligence of the T. Co.: the contract into which a railway co. enters with a passenger on giving him a ticket between two places is the same, whether the journey be entirely over their own line or partly over the line of another co., & whether the passage over the other line be under an agreement to share profits, or simply under running powers: that is, that due care shall be used in carrying the passengers from one end of the journey to the other, so far as is within the compass of

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inexperienced shipper, & his signature was not obtained by fraud, & it was immaterial that he might not have read the contract or even might not have known its contents.—HELLER *v.* GRAND TRUNK RY. CO. (1911), 21 O. W. R. 219; 3 O. W. N. 642; 25 O. L. R. 488; 2 D. L. R. 114.—CAN.

t. ——.]—A passenger signed a contract which provided that it was made subject to conditions mentioned upon the back of the invoice handed to him. He swore that he had not read the condition. In an action for personal injuries caused to him by an accident on defts.' railway :—*Held :* the condition in the invoice must be read as if it were stated in the document signed by him.—DUFF *v.* GREAT NORTHERN RY. CO. (1878), 13 I. L. T. 100; 4 L. R. Ir. 178.—IR.

PART V. SECT. 4.

699 i. *Liability of issuing company—Accident on non-issuing company's line—Negligence of non-issuing company.*]—A passenger purchased from a Scottish ry. co. a through ticket from a station in Scotland to London. The journey had to be performed by travelling over the line of the Scottish co. & the lines of two English cos. The passenger was killed owing to an accident on the line of one of the English cos. In an action against the Scottish co. the judge directed the jury that the fault of the English co., on whose line the accident happened, was the fault of defenders :—*Held :* the direction was right.—HORN *v.* NORTH BRITISH RY. CO. (1878), 5 R. (Ct. of Sess.) 1055; 15 Sc. L. R. 707.—SCOT.

Sect. 4.—Journey over several systems.—Through bookings and running powers. Sect. 5.]

railway management.—THOMAS *v.* RHYMNEY RY. Co. (1871), L. R. 6 Q. B. 266; 40 L. J. Q. B. 89; 19 W. R. 477; *sub nom.* RHYMNEY RY. Co. *v.* THOMAS, 24 L. T. 145, Ex. Ch.

Annotations :—**Distd.** Wright *v.* Mid. Ry. (1873), L. R. 8 Exch. 137. **Refd.** Foulkes *v.* Met. Dist. Ry. (1880), 5 C. P. D. 157.

701. —— —— Failure to repair fence.]—Pltf. was a passenger by defts.' railway to be carried from Y. to T. It was necessary to travel over a line belonging to another co.; while passing over the latter line, the train in which pltf. was came into collision with a bullock which had strayed on to the line from an adjoining field, by breaking through the fence. The fence was, in fact, defective but had been lately repaired & was apparently in good condition. Pltf., being injured by the collision, sought to recover damages from defts. :—*Held :* (1) the contract having been made with defts., they were the proper parties to be sued; (2) Railways Clauses Act, 1845 (c. 20), s. 68, imposes no duty on a railway co. towards their passengers to keep up the fences; (3) a railway co. are not bound at common law to maintain fences sufficient to keep cattle off the line in all circumstances, but are bound to use every reasonable care to prevent them straying on to the line.—BUXTON *v.* NORTH EASTERN RY. Co. (1868), L. R. 3 Q. B. 549; 9 B. & S. 824; 37 L. J. Q. B. 258; 18 L. T. 795; 32 J. P. 661; 16 W. R. 1124.

Annotations :—*As to* (1) **Apld.** John *v.* Bacon (1870), L. R. 5 C. P. 437. **Consd.** Thomas *v.* Rhymney Ry. (1871), L. R. 6 Q. B. 266.

702. —— Accident on issuing company's line—Negligence of company with running powers.]—The N. Co. had statutory authority to run over a portion of the defts.' line, paying a certain toll to the defts. The signals at the point of junction between the two lines were under the control of the defts. Owing to the servants of the N. Co. negligently disobeying these signals, a train of the N. Co. ran into a train of the defts. in which pltf. was, causing him damage. There was no negligence on the part of any of defts.' servants. In an action for injuries sustained, brought by pltf. against defts. :—*Held :* he was not entitled to recover.—WRIGHT *v.* MIDLAND RY. Co. (1873), L. R. 8 Exch. 137; 42 L. J. Ex. 89; 29 L. T. 436; 21 W. R. 460.

Annotation :—**Refd.** Armstrong *v.* L. & Y. Ry. (1875), 44 L. J. Ex. 89.

See, also, No. 489, *ante.*

703. Liability of non-issuing company—Negligence of non-issuing company.] — A passenger took a ticket of A. Co. for a journey over the lines of A., B., & C. Cos.; a collision occurred on B. railway by reason of the train in which pltf. was running into trucks negligently left on the line :—*Held :* B. Co. were liable to pltf. in an action of negligence.—REYNOLDS *v.* NORTH EASTERN RY. Co. (1868), cited in 5 C. P. D. at p. 169.

Annotation :—**Consd.** Foulkes *v.* Met. Dist. Ry. (1880), 5 C. P. D. 157.

704. —— Accident on joint line — Return ticket—Return journey in non-issuing company's train.]—Defts., a railway co., had running powers between H., a station on their own line, & R., a station of the S. Co., over the line of that co. Defts. & the S. Co. divided the profits of the traffic between H. & R. Pltf. took a return ticket from R. to H., which was issued to him by a clerk of the S. Co. Upon the return journey from H. to R. he travelled in a train belonging to defts. & driven by their servants. Owing to the carriage being unsuited to the platform at R. which belonged to the S. Co. pltf. sustained bodily injury :—*Held :* an action lay against defts., for they, having permitted pltf. to travel by their train, were bound to make provision for his safety.—FOULKES *v.* METROPOLITAN DISTRICT RY. Co. (1880), 5 C. P. D. 157; 49 L. J. Q. B. 361; 42 L. T. 345; 44 J. P. 568; 28 W. R. 526, C. A.

Annotations :—**Apld.** Hooper *v.* L. & N. W. Ry. (1880), 50 L. J. Q. B. 103. **Refd.** Elliott *v.* Hall (1885), 15 Q. B. D. 315; Kelly *v.* Met. Ry. (1895), 43 W. R. 497; Meux *v.* G. E. Ry., [1895] 2 Q. B. 387; Taylor *v.* M. S. & L. Ry., [1895] 1 Q. B. 134; Harris *v.* Perry, [1903] 2 K. B. 219; The Termagant (1914), 30 T. L. R. 377. **Mentd.** Clarke *v.* Army & Navy Co-op. Soc. (1902), 72 L. J. K. B. 153.

705. —— —— Negligence of non-issuing company's porter—In station of that company.]—S. took a ticket from D. Co., & travelled in a D. carriage over the B. line, the B. Co. allowing running powers over their line & giving use of their servants & staff at stations & charging a percentage on the D. traffic. At a station kept for the D. traffic, a porter negligently caused injury to S. :—*Held :* B. Co. were liable, as the porter was a servant of the B. Co., & acting as such at the time.—SELF *v.* LONDON, BRIGHTON & SOUTH COAST RY. Co. (1880), 42 L. T. 173; 44 J. P. 344, C. A.

706. Condition restricting liability — Whether non-issuing company protected—Passenger at "own risk."]—A cattle drover booked stock at a station on the N. B. line to a station on the N. E. line, taking from the N. B. Co. a free pass to travel by the same train with the stock at his own risk, & exonerating the co. from all responsibility for injury or loss to himself, however occasioned, on the journey for which it was issued or used. By the negligence of the N. E. Co. a train of that co. ran into the train in which pltf. was on the N. E. line, & injured him :—*Held :* the N. E. Co. were free from liability to pltf. by reason of the contract, & pltf. could not recover against them.—HALL *v.* NORTH EASTERN RY. Co. (1875), L. R. 10 Q. B. 437; 44 L. J. Q. B. 164; 33 L. T. 306; 39 J. P. 724; 23 W. R. 860.

Annotations :—**Refd.** Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858; Grand Trunk Ry. of Canada *v.* Robinson, [1915] A. C. 740.

See, further, Sect. 3, sub-sect. 3, *ante.*

707. —— Whether issuing company protected—Accident on non-issuing company's line—Conditions sufficiently brought to passenger's notice.]—BURKE *v.* SOUTH EASTERN RY. Co., No. 688, *ante.*

Through ticket—Punctuality of trains.]—*See* Sect. 3, sub-sect. 2, *ante.*

—— Connecting train ceasing to run—Still advertised by issuing company.]—*See* No. 665, *ante.*

See, further, Part III., Sect. 5, *ante,* Part VI., Sect. 5, *post.*

SECT. 5.—MEASURE OF DAMAGES.

See, further, Part IX., *post, &, generally,* DAMAGES.

708. Failure to carry or delay—Cost of special conveyance — Recoverable.] — GREAT NORTHERN RY. Co. *v.* HAWCROFT, No. 472, *ante.*

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706 i. *Condition restricting liability—Whether non-issuing company protected—Passenger at own risk.*]—A contract was made by a ry. co. for carriage of cattle to a point on the line of a connecting ry. co. at a fixed rate for the whole journey. The contract provided that the shipper, or his drover, should accompany the cattle; & that the person in charge should be entitled to a "free pass," but only "on the express condition that the ry. co. were not responsible for negligence, default, or misconduct of any kind on the part of the co. or their servants" :—*Held :* the condition could be taken advantage of by the connecting ry. co., who were not liable to the shipper for injuries suffered by him in a collision caused by their servants' negligence.—BICKNELL *v.* GRAND TRUNK RY. Co. (1899), 26 A. R. 431.—CAN.

709. ——— ——— ———.]—BUCKMASTER *v.* GREAT EASTERN RY. CO., No. 675, *ante*.

See, also, No. 475, *ante*, No. 714, *post*.

710. ——— **Not recoverable.**]—LE BLANCHE *v.* LONDON & NORTH WESTERN RY. CO., No. 671, *ante*.

711. ——— ——— ———.]—GREAT WESTERN RY. CO. *v.* LOWENFELD, No. 661, *ante*.

712. ——— ——— **When recoverable.**]—Where a passenger, having missed a train, hires a special train & seeks to recover the loss of such train from the co. which has contracted to carry him, he must show that the expenditure was one which he would have incurred if he had missed the train through his own fault & not through fault of the co.—BRIGHT *v.* PENINSULAR & ORIENTAL STEAM NAVIGATION CO. (1897), 2 Com. Cas. 106, N. P.

713. ——— **Out-of-pocket expenses—& deposit already paid.**]—Pltf., who resided in Ireland, having applied to defts., emigration agents in L., respecting a passage for himself & family on board their ships to A., received in answer a letter in which they agreed to convey him & his family for £65. This letter was written on the fly-sheet of a printed circular, headed "Emigration to A.," & which (*inter alia*) stated that ships would be despatched on the appointed days, wind & weather permitting, for which written guarantees would be given. Then followed a list of ships, amongst which the X. was named as to sail from L. on Aug. 15, & from P. on the 25th. In another part of the circular it was stated that passengers from Ireland could readily join at P., a deposit of one-half the passage-money to be paid at the time the berths were engaged, the balance to be paid prior to granting the embarkation order. Pltf. engaged a berth on board X. & paid defts. £32 10*s.* as a deposit, but no written guarantee was given. The X. did not arrive at P. until Sept. 3, although not prevented by wind or weather. Pltf.'s berth was kept vacant from L. to P.:—*Held:* the statement in the circular was not a mere representation, but a warranty that the X. would sail on the days appointed, &, as she did not, pltf. was justified in taking a passage on board another vessel, & was entitled to recover from defts. the amount of the deposit, & the expenses he had been put to by the delay at P.—CRANSTON *v.* MARSHALL (1850), 5 Exch. 395; 19 L. J. Ex. 340; 15 L. T. O. S. 208; 155 E. R. 172.

Annotations:—**Mentd.** Kingston-upon-Hull Grdns. *v.* Petch (1854), 10 Exch. 610; Crookewit *v.* Fletcher (1857), 26 L. J. Ex. 153.

714. ——— ——— **Not loss of business appointments.**]—A tradesman took a ticket to go by railway from L. to H. On arriving at G. he found no train ready to take him to H. the same night, as it should have been according to the published time bill. He slept at G., & in the morning paid 1*s.* 4*d.* fare to H. In consequence of the delay, he failed to keep appointments with his customers, & was detained for many days:—*Held:* though he would have been entitled to have performed the contract at the expense of the railway co., yet, not having done so, he was not entitled to recover anything more than nominal damages in addition to the 1*s.* 4*d.*, & perhaps the cost of his bed, &c., at G.—HAMLIN *v.* GREAT NORTHERN RY. CO. (1856), 1 H. & N. 408; 26 L. J. Ex. 20; 28 L. T. O. S. 104; 5 W. R. 76; 156 E. R. 1261; *sub nom.* HAMBLIN *v.* GREAT NORTHERN RY. CO., 2 Jur. N. S. 1122.

Annotations:—**Distd.** Randall *v.* Roper (1858), 27 L. J. Q. B. 266. **Consd.** Hobbs *v.* L. & S. W. Ry. (1875), L. R. 10 Q. B. 111. **Distd.** Le Blanche *v.* L. & N. W. Ry. (1876), 1 C. P. D. 286. **Reid.** Bright *v.* Peninsular & Oriental Steam Navigation Co. (1897), 2 Com. Cas. 106; Erie County Natural Gas & Fuel Co. *v.* Carroll, [1911] A. C. 105. **Mentd.** Lockyer *v.* International Sleeping Car & European Express Trains Co. (1892), 61 L. J. Q. B. 501; *Re* Jewell's Settlement, Watts *v.* Public Trustee, [1919] 2 Ch. 161.

715. ——— **Loss of market.**]—BUCKMASTER *v.* GREAT EASTERN RY. CO., No. 675, *ante*.

716. ——— ———.]—COOPER *v.* GREAT WESTERN RY. CO., No. 677, *ante*.

717. ——— **Personal inconvenience—Not consequences of wife's illness.**]—HOBBS *v.* LONDON & SOUTH WESTERN RY. CO., No. 652, *ante*.

718. ——— ——— **& for discomfort.**]—GREAT WESTERN RY. CO. *v.* LOWENFELD, No. 661, *ante*.

719. ——— **Day's wages lost recoverable.**]—COOKE *v.* MIDLAND RY. CO., No. 660, *ante*.

720. Personal injuries—Loss of profits from business or profession—Passenger resuming business too soon.]—It is not sufficient ground for disturbing a verdict for heavy damages given by a jury for injury sustained in a collision upon a railway, that pltf., who had been advised by medical men to abstain entirely from business for a considerable time, did not act upon such advice (though, if he had, the evidence was that he would permanently recover), but resumed his business shortly after the accident, even though the effect might be to render permanent an ailment which otherwise would have been only temporary. The question of damages is entirely within the province of the jury, and the ct. will not in such a case interfere with their finding upon it.—SAUNDERS *v.* LONDON & NORTH WESTERN RY. CO. (1860), 2 L. T. 153.

721. ——— ———.]—The declaration in an action for negligence, after alleging that pltf. was hurt while being carried as a passenger by defts., concluded by stating as damage that she was greatly hurt, maimed, wounded, & permanently injured. Pltf. was accustomed to the management of a restaurant, & the judge directed the jury in assessing the damages to ask themselves, "what salary would a lady of experience in the trade be able to command for managing a public house in London, at a fair salary?":—*Held:* the question was justified by the form of the count, although no special damage was laid.—POTTER *v.* METROPOLITAN RY. CO. (1873), 28 L. T. 735; 37 J. P. 696.

722. ——— ———.]—C., a passenger upon defts.' railway, met with an accident through their default, which occasioned him bodily harm; he was in consequence unable to attend to his business of a bootmaker, which became less profitable to him, & he incurred medical expenses in endeavouring to cure his bodily injuries. C. died of a disease unconnected with the accident. Pltf., as his extrix., sued to recover compensation for the sums expended in medical attendance, & for the loss of profit arising from C.'s inability to attend to his business. The declaration was framed upon a contract between C. & defts., & alleged that by breach of it his personal estate was lessened in value. At the trial the jury found a verdict for pltf. for £200, of which £160 was given for the loss sustained in C.'s business, & £40 for

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v. General rule.] — In actions against carriers of passengers for injuries, there seem to be no well-defined rules for estimating damages; it is a matter to be submitted to the sound discretion & judgment of the jury; the actual loss to pltf., present & prospective, being the lowest amount which they are justified in giving; & the ct. will not set aside an assessment of damages by a jury where there is no evidence to show misconduct of the jury, or that they acted upon a wrong principle, or from a corrupt motive.—BLANCHARD *v.* WINDSOR & ANNAPOLIS RY. CO. (1875), 1 R. & C. 8.—**CAN.**

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the medical expenses :—*Held :* (1) the action was maintainable ; the right to sue in respect of the breach of contract survived to the extrix., the maxim, "*Actio personalis moritur cum persond*," did not apply, and none of the provisions in Fatal Accidents Act, 1846 (c. 93), took away the cause of action ; (2) the damages given in respect of the loss of profit in C.'s business were not too remote.—BRADSHAW *v.* LANCASHIRE & YORKSHIRE RY. CO. (1875), L. R. 10 C. P. 189 ; 44 L. J. C. P. 148 ; 31 L. T. 847 ; 23 W. R. 310.

Annotations :—As to (1) **Folld.** Leggott *v.* G. N. Ry. (1876), 1 Q. B. D. 599. **Consd.** Pulling *v.* G. E. Ry. (1882), 9 Q. B. D. 110 ; Griffiths *v.* Dudley (1882), 47 L. T. 10 ; The Greta Holme (1897), 66 L. J. P. 166. **Dbtd.** Quirk *v.* Thomas, [1915] 1 K. B. 798. **Refd.** Jackson *v.* Watson, [1909] 2 K. B. 193 ; Quirk *v.* Thomas, [1916] 1 K. B. 516.

Fatal Accidents Act, 1846 (c. 93), generally, *see* NEGLIGENCE.

723. —— —— **Physician in big practice.**]—In an action against a railway co. for personal injury to a passenger, a physician, making £5000 a year, & with an increasing practice, the jury in assessing the damages may take into their consideration, besides the pain & suffering of pltf., & the expense incurred by him for medical & other necessary attendance, the loss he has sustained through his inability to continue a lucrative professional practice.—PHILLIPS *v.* LONDON & SOUTH WESTERN RY. CO. (1879), 5 C. P. D. 280 ; 49 L. J. Q. B. 233 ; 42 L. T. 6 ; 44 J. P. 217, C. A.

724. —— ——.]—(1) The rule laid down in *Praed* v. *Graham* ((1889), 24 Q. B. D. 53), that a new trial will not be granted on the ground of excessive damages unless, having regard to all the circumstances of the case, the ct. is of opinion that the amount is so large that no twelve men could reasonably have given it, must be construed in the light of other decisions of the Ct. of Appeal, *e.g.*, *Phillips* v. *London & South Western Ry. Co.* (No. 723, *ante*), the effect of which is that a verdict may be set aside & a new trial granted if the ct., without imputing perversity to the jury, comes to the conclusion, from the amount of the damages & the other circumstances, that the jury must have taken into consideration matters which they ought not to have considered, or applied a wrong measure of damages.

(2) In awarding damages for a prospective loss of income from professional or other earnings, the jury ought not to give pltf. such a sum as, if invested, would produce the full amount of income which he would probably have earned, but ought in estimating the damages to take into account the accidents of life & other matters, & to give pltf. what they consider in all the circumstances a fair compensation for his loss.—JOHNSTON *v.* GREAT WESTERN RY. CO., [1904] 2 K. B. 250 ; 73 L. J. K. B. 568 ; 91 L. T. 157 ; 52 W. R. 612 ; 20 T. L. R. 455 ; 48 Sol. Jo. 435, C. A.

Annotations :—As to (1) **Consd.** Price *v.* Glynea & Castle Coal & Brick Co. (1915), 85 L. J. K. B. 1278. **Refd.** Barber *v.* Deutsche Bank (Berlin) London Agency, [1919] A. C. 304.

725. —— **Passenger insured.**]—In an action for injuries caused by defts.' negligence a sum received by pltf. on an accident insurance policy cannot be taken into account in reduction of damages.—BRADBURN *v.* GREAT WESTERN RY. CO. (1874), L. R. 10 Exch. 1 ; 44 L. J. Ex. 9 ; 31 L. T. 464 ; 23 W. R. 48.

Annotations :— **Consd.** Jebson *v.* East & West India Dock Co. (1875), L. R. 10 C. P. 300. **Distd.** British Westinghouse Electric & Manufacturing Co. *v.* Underground Electric Rys. of London, [1912] A. C. 673. **Consd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38. **Refd.** The Marpessa, [1891] P. 403 ; The Mediana (1899), 68 L. J. P. 26 ; Jamal *v.* Moolla Dawood Sons, [1916] 1 A. C. 175 ; Hill *v.* Showell (1918), 87 L. J. K. B. 1106 ; Baker *v.* Dalgleish S. S. Co., [1921] 3 K. B. 481.

—— **From overcrowding.**]—*See* Sect. 2, sub-sect. 3, *ante*.

—— **In alighting from train.**]—*See* No. 557, *ante*.

726. **Wrongful removal—From ship—Passenger put ashore at intermediate port.**]—A declaration in *assumpsit* on an agreement to carry pltf. in a ship to a particular place, alleged as a breach, that defts., by their agent, caused him to be disembarked at an intermediate point, &, by their agent, caused the disembarkation to be conducted in a scandalous, disgraceful, & improper manner, whereby, & also by contemptuous usage & insulting language addressed to pltf. by the agent in effecting the disembarkation, pltf. sustained damage :—*Held :* (1) the declaration was good on motion in arrest of judgment ; (2) the judge had rightly received evidence of the language of the captain of defts.' ship in putting pltf. on shore, in which he described pltf. as being a pick-pocket, & belonging to the "swell mob" ; (3) the judge had rightly directed the jury that defts. were responsible for any injury naturally resulting from the acts of the captain, when acting as their servant, & that pltf. was entitled to fair compensation for the injury done to him in being put on shore at the intermediate place, so far as the injury arose from the act of the captain in putting him on shore.

(4) *Semble :* supposing pltf. had been a pick-pocket, or belonged to the "swell mob," it would be no excuse for turning him out of a ship in which he had paid his passage, so long as he was not guilty of any impropriety on board.—COPPIN *v.* BRAITHWAITE (1844), 8 Jur. 875.

727. —— **Train—Loss of race-glasses.**]—Pltf. was travelling with other passengers in a carriage of a railway co., & on the tickets being collected there was found to be a ticket short. Pltf. was charged by the collector with being the defaulter, & on his refusing to pay the fare or leave the carriage he was removed from the carriage by the officers of the co. without any unnecessary violence. It turned out that pltf. had a ticket. He brought an action for the assault against the co. laying as special damage the loss of a pair of race-glasses which he had left behind in the carriage when he was removed. There was also a count in trover ; but there was no evidence that the glasses had come to the possession of any of the co.'s servants :—*Held :* pltf. could not recover for the loss of the glasses.—GLOVER *v.* LONDON & SOUTH WESTERN RY. CO. (1867), L. R. 3 Q. B. 25 ; 37 L. J. Q. B. 57 ; 32 J. P. 39.

See, generally, Sect. 7, *post*.

SECT. 6.—OFFENCES BY PASSENGERS.

SUB-SECT. 1.—UNDER STATUTES.

728. **Failure to produce ticket—Or pay fare—Power to force passenger to proceed to principal station—& pay fare of forced journey.**]—(1) *Qu. :* whether, after the refusal of a passenger to produce his ticket or pay his fare, on alighting from a railway carriage, he can be compelled to proceed by

v. *Failure to produce ticket—Whether refusal to pay fare—General Railway Act*, 1888, *s.* 248.]—GRAND TRUNK RY. CO. *v.* BEAVER (1893), 22 S. C. R. 498.—CAN.

w. *Failure to produce "hat-check"—Whether refusal to pay fare—Railway Act*, 1903, *s.* 217.]—HAINES *v.* GRAND TRUNK RY. CO. (1913), 5 O. W. N. 298 ; 29 O. L. R. 553.—CAN.

train to the principal station on the line, to be there dealt with by the authorities of the co. ?

(2) Whether such a power exists or not, it is clear that the fare for such subsequent involuntary journey cannot be legally demanded.—*R. v.* MANN (1854), 23 L. T. O. S. 12 ; 6 Cox, C. C. 461.

729. —— —— Power to detain pending inquiries—Reasonable belief that information false.]—*Held :* in an action against a railway co. for false imprisonment, deft. co. were not justified under Regulation of Railways Act, 1889 (c. 57), s. 5 (2), in detaining a passenger pending an inquiry whether the name & address given were correct, although his conduct is such as to give reasonable & probable cause for the belief that such information is false, when the name & address turned out on inquiry to have been in fact correctly given.—KNIGHTS *v.* LONDON, CHATHAM & DOVER RY. CO. (1893), 62 L. J. Q. B. 378 ; 5 R. 399.

730. —— Whether offence committed—Question for jury.]—BROTHERTON *v.* METROPOLITAN & DISTRICT JOINT COMMITTEE (1893), 9 T. L. R. 645, C. A. ; *subsequent proceedings*, [1894] 1 Q. B. 666, C. A.

See, also, cases in Sub-sect. 2, A., *post*.

731. Intent to avoid payment of fare—Evidence.]—H. was convicted of unlawfully travelling in a railway carriage without having paid his fare. The evidence was that H. had a ticket of another railway co. which used the same station, there being some confusion caused by the separate railways :—*Held :* there being some evidence of travelling unlawfully to avoid payment, the conviction could not be disturbed.—HAMMOND *v.* KEPT (1865), 29 J. P. 438.

732. —— What amounts to—Purchase of non-transferable ticket.]—Resp. travelled with half of a tourist return ticket over the latter part of the route covered by that half. The ticket had been taken by another person who had used it over the first portion of the route, & had then sold it to resp. for a trifling sum. Upon the ticket were printed the words "not transferable" :—*Held :* resp. was liable to be convicted under Railways Clauses Consolidation Act, 1845 (c. 20), s. 103, of travelling without having previously paid his fare, & with intent to avoid payment thereof.—LANGDON *v.* HOWELLS (1879), 4 Q. B. D. 337 ; 48 L. J. M. C. 133 ; 40 L. T. 880 ; 43 J. P. 717 ; 27 W. R. 657, D. C.

733. —— —— ——.]—By Regulation of Railways Act, 1889 (c. 57), s. 5 (3), "If any person travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof . . . he shall be liable on summary conviction to a fine" :—*Held :* the payment of fare referred to in Regulation of Railways Act, 1889, s. 5 (3), means a payment to the railway co., & a person who travels on a non-transferable ticket which he has purchased from another person may be convicted under the sub-sect.—REYNOLDS *v.* BEASLEY, [1919] 1 K. B. 215 ; 88 L. J. K. B. 466 ; 120 L. T. 271 ; 83 J. P. 35 ; 35 T. L. R. 115 ; 17 L. G. R. 29, D. C.

734. —— —— Travelling in superior class.]—Deft., having paid third-class fare, travelled in a second-class carriage with intent to defraud :—*Held :* he should be convicted for travelling "without having previously paid his fare" under Railways Clauses Consolidation Act, 1845, s. 103. "His fare" in the sect. means the fare by the train & for the class of carriage in which the passenger travels.—GILLINGHAM *v.* WALKER (1881), 44 L. T. 715 ; 45 J. P. 470 ; 29 W. R. 896, D. C.

735. —— —— —— Demand of excess fare.]—Resps. were summoned before a metropolitan police magistrate, under Regulation of Railways Act, 1889, s. 5 (3) (*a*), for travelling without having previously paid their fare, & with intent to avoid payment thereof. They had travelled in a first-class carriage with second-class tickets. Evidence having been given that the excess fare had been demanded, the magistrate at once dismissed the summons, on the ground that resps., having been asked to pay the excess fare, could not be proceeded against criminally :—*Held* : the ground on which the magistrate had dismissed the summons was wrong in point of law, & the case must be remitted to him for further consideration.—NOBLE *v.* KILLICK (1891), 60 L. J. M. C. 61, D. C.

736. —— Power of arrest.]—The power given to railway cos. by Railways Clauses Consolidation Act, 1845, ss. 103, 104, to arrest passengers for travelling without having paid the proper fare with intent to avoid payment thereof was determined by Regulation of Railways Act, 1889, the code contained in ss. 103, 104 of the former Act with regard to that offence being replaced by the code contained in the latter Act, s. 5, under which there is only a power of arrest if a passenger refuses to give his name & address after having failed to produce a ticket & to pay his fare.

Pltf. was the holder of a first-class season ticket between certain stations upon defts.' railway. Upon pltf.'s arrival at a station at which the ticket was available, after he had passed the ticket barrier & had shown his ticket to a ticket collector but before he had reached the exit from the station, a porter in the employment of defts. took him by the arm & in the presence of other persons charged him with having travelled first class with a third-class ticket :—*Held :* as defts. had no power to arrest pltf. for the offence with which the porter charged him, they could not be taken to have impliedly authorised the porter to arrest him.—ORMISTON *v.* GREAT WESTERN RY. CO., [1917] 1 K. B. 598 ; 86 L. J. K. B. 759 ; 116 L. T. 479 ; 33 T. L. R. 171.

See, further, Sect. 8, *post*.

737. —— Nature of statutory penalty.]—The penalty imposed by Railways Clauses Consolidation Act, 1845, s. 103, for travelling in a railway carriage without having paid the fare, & with intent to avoid the payment of it, is not "a sum of money claimed to be due & recoverable on complaint to a ct. of summary jurisdiction" within Summary Jurisdiction Act, 1879 (c. 49), s. 6, & is not subject to the procedure for the recovery of civil debts in a ct. of summary jurisdiction prescribed by s. 35 of the latter Act.—R. *v.* PAGET (1881), 8 Q. B. D. 151 ; 51 L. J. M. C. 9 ; 45 L. T. 794 ; 46 J. P. 151 ; 30 W. R. 336, D. C.

Annotations :—**Consd.** Kennard *v.* Simmons (1881), 48 J. P. 551. **Distd.** R. *v.* Lewis & Moss (1896), 74 L. T. 551. **Expld.** R. *v.* Burrows, *Ex. p.* Wilson (1897), 77 L. T. 338. **Refd.** R. *v.* Daly, *Ex. p.* Newson (1911), 104 L. T. 892.

See, further, MAGISTRATES.

738. Obtaining ticket by false pretences—"Chattel"—Larceny Acts.]—A railway ticket

732 i. *Intent to avoid payment of fare—What amounts to—Workman's ticket.*]—A workman, who had travelled by a workmen's train, attempted to leave the station where he alighted without giving up a ticket, his intention being to defraud the ry. co., but was prevented from so doing, & thereupon he produced from his pocket & tendered a workman's ticket valid & available for the journey. Workmen's tickets were not dated & could be used at any time :—*Held :* the workman had not been guilty of travelling "without having previously paid his fare & with intent to avoid payment thereof" within Railways Clauses Consolidation (Scotland) Act, 1845, s. 96.—CALEDONIAN RY. CO. *v.* ROPER, [1908] S. C. (J.) 69.—**SCOT.**

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entitling a passenger to travel upon a railway to a certain place, without any further charge, is a chattel of value, within Larceny Act, 1827 (c. 29), s. 53, and a person obtaining such a ticket by false pretences from a servant of the railway co. is guilty of a misdemeanour.—R. *v.* BOULTON (1849), 2 Car. & Kir. 917; 1 Den. 508; T. & M. 201; 3 New Sess. Cas. 705; 19 L. J. M. C. 67; 14 L. T. O. S. 296; 13 Jur. 1034; 13 J. P. 747; 3 Cox, C. C. 576, C. C. R.

Annotations:—**Expld.** R. *v.* Danger (1857), 3 Jur. N. S. 1011. **Folld.** R. *v.* Morrison (1859), Bell, C. C. 158. **Distd.** R. *v.* Kilham (1870), L. R. 1 C. C. R. 261. **Folld.** R. *v.* Chapman (1910), 4 Cr. App. Rep. 276.

739. —— —— ——.]—*Semble:* a railway ticket is a chattel which a passenger may obtain within Larceny Act, 1861 (c. 96), s. 88.—R. *v.* CHAPMAN (1910), 74 J. P. 360; 4 Cr. App. Rep. 276, C. C. A.

740. Arrest of passenger—Travelling in superior class.]—ORMISTON *v.* GREAT WESTERN RY. CO., No. 736, *ante*.

—— **By company's servants—Whether within scope of authority.**]—*See* Sect. 8, *post, &, generally,* MALICIOUS PROSECUTION & PROCEDURE; MASTER & SERVANT; TRESPASS.

SUB-SECT. 2.—UNDER BYE-LAWS.

A. Of Railway Companies.

741. Entering carriage without previously paying fare—Alighting at intermediate station.]—A railway co. was authorised by statute to impose fares within certain amounts for conveyance on their line, & to make bye-laws. By a bye-law it was declared that any passenger who should enter a carriage without having paid his fare was subjected to a penalty. The co. imposed a fare of 5*s.* for conveyance from C. to N., & of 7*s.* for conveyance from C. to D. D. was a place between C. & N. Both fares were within the limits prescribed by the Act. A person took, at C., a ticket from C. to N., intending to stop at D., paid for it 5*s.*, got into a carriage at C., & quitted it at D. He refused, when called upon at D. to do so, to pay the difference of 2*s.* He was convicted of having entered the carriage without having previously paid his fare, contrary to the bye-law:—*Held:* a bad conviction, inasmuch as applt. had paid the fare within the language of the bye-law.—R. *v.* FRERE (1855), 4 E. & B. 598; 24 L. J. M. C. 68; 24 L. T. O. S. 233; 19 J. P. 261; 1 Jur. N. S. 700; 3 W. R. 210; 3 C. L. R. 455; 119 E. R. 219.

Annotation:—**Reld.** McCarthy *v.* Dublin, Wicklow & Wexford Ry. (1869), 17 W. R. 1101.

742. Entering carriage with animal.]—LAWTON *v.* GREAT WESTERN RY. CO., No. 473, *ante*.

743. Failure to produce ticket—Power to detain—For purpose of demanding fare.]—By a bye-law of a railway co. any passenger not producing or delivering up his ticket would be required to pay the fare from the most distant place, &c., & was to forfeit & pay a sum of 40*s.*:—*Held:* the co. were not justified in detaining a passenger for the purpose of making the demand.—TALMAGE *v.* LONDON & SOUTH WESTERN RY. CO. (1856), 4 W. R. 234; *sub nom.* TOLLEMACHE *v.* LONDON & SOUTH WESTERN RY. CO., 26 L. T. O. S. 222.

744. —— **By season ticket holder.**]—A bye-law of a railway co. provided that each passenger booking his place would be furnished with a ticket, which he was to show & deliver up when required to the guard, &c.; each passenger not producing or delivering up his ticket when required was subjected to a penalty not exceeding 40*s.*:—*Held:* under the bye-law holders of annual tickets for travelling on the line were bound to produce their tickets to the railway officers as much as ordinary passengers.—WOODARD *v.* EASTERN COUNTIES RY. CO. (1861), 30 L. J. M. C. 196; 4 L. T. 336; 25 J. P. 310; 7 Jur. N. S. 971; *sub nom.* EASTERN COUNTIES RY. CO. *v.* WOODARD, 9 W. R. 660.

745. —— **By servant—Bought & kept by master—Assent of company.**]—A master took tickets for himself & three servants, keeping the tickets in his own care, but telling the guard that he had the servants' tickets, & the servants were allowed to enter the train without each having or showing his own ticket:—*Held:* by so doing the co. were estopped from pleading, as a defence to an action by the master against the co. for afterwards expelling the servants from the train & refusing to carry them, a bye-law that no passenger would be allowed to enter any carriage or travel therein without having paid his fare & obtained a ticket . . . which ticket such passenger was to show when required by the guard, & to deliver up before leaving the co.'s premises.—JENNINGS *v.* GREAT NORTHERN RY. CO. (1865), L. R. 1 Q. B. 7; 35 L. J. Q. B. 15; 13 L. T. 254; 30 J. P. 7; 14 W. R. 28.

746. —— **Liability to pay whole fare on default—Demand of fare necessary—Before bye-law enforceable.**]—One of the bye-laws of a railway co. provided that any passenger travelling without a ticket, or failing or refusing to show or deliver up his ticket, would be liable to pay the fare from the station whence the train originally started:—*Held:* (1) before the bye-law could be enforced by the co., a demand must have been made for the amount of the fare at the time the offence was committed.

(2) *Semble:* such a bye-law is not void for uncertainty.

(3) *Semble:* the fare to be so paid is in the nature of a penalty or forfeiture.—BROWN *v.* GREAT EASTERN RY. CO. (1877), 2 Q. B. D. 406; 46 L. J. M. C. 231; 36 L. T. 767; 41 J. P. 567; 25 W. R. 792, D. C.

Annotations:—*As to* (1) **Consd.** Saunders *v.* S. E. Ry. (1880), 5 Q. B. D. 456. **Reld.** Bolton Corpn. *v.* Scott (1913), 108 L. T. 406. *As to* (3) **Reld.** L. & B. Ry. *v.* Watson (1878), 3 C. P. D. 429.

See, also, cases in Sub-sect. 1, *ante*.

747. Publication—What is sufficient.]—A bye-law imposed a penalty not exceeding 40*s.* upon a passenger getting into or out of a carriage whilst in motion. Upon a summons before justices for a breach of this bye-law:—*Held:* to prove publication of the bye-law, under Railways Clauses Consolidation Act, 1845 (c. 20), ss. 110, 111, it was sufficient to show that the bye-laws were affixed at the stations at which the party entered & quitted the train, without showing publication at every station on the line.—MOTTERAM *v.* EASTERN COUNTIES RY. CO. (1859), 7 C. B. N. S. 58; 29

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x. *Failure to produce ticket—Liability to pay whole fare on default—Bye-law not unreasonable.*]—A bye-law of a ry. co. provided that a passenger must show his ticket when required, & deliver it up before leaving the co.'s premises, upon demand, to a servant of the co., duly authorised to collect tickets & that a passenger not producing or delivering up his ticket would be required to pay his fare from the place from which the train originally started, or, in default thereof, should forfeit or pay a sum not exceeding 40*s.*:—*Held:* the bye-law was not unreasonable.—BARRY *v.* MIDLAND RY. CO. (1867), I. R. 1 C. L. 130.—IR.

L. J. M. C. 57; 1 L. T. 101; 24 J. P. 40; 6 Jur. N. S. 583; 8 W. R. 77; 141 E. R. 735.

Annotations :—**Refd.** Robinson *v.* Gregory (1905), 92 L. T. 171. **Mentd.** Cox *v.* Hakes (1890), 15 App. Cas. 506.

748. Validity—Bye-law making offence punishable without fraud—Travelling without ticket—Fare from furthest station.]—By a bye-law of a railway co. no passenger was to be allowed to enter or travel in a carriage without having paid his fare & obtained a ticket, which the passenger was to show whenever required, & give up on demand before leaving the co.'s premises. Any passenger not so producing or delivering up his ticket was to be required to pay the fare from the place whence the train originally started, or forfeit a sum not exceeding 40*s.* :—*Held :* this bye-law only applied to the case of a person having & wilfully refusing to produce or give up his ticket, & not to the case of a person travelling without having paid for & obtained a ticket, with no intention to defraud the co.; if the bye-law extended to the latter case, it would have been illegal & void under Railways Clauses Consolidation Act, 1845, s. 109, as repugnant to s. 103, which makes a fraudulent intention the gist of the offence of travelling without having paid the fare.—DEARDEN *v.* TOWNSEND (1865), L. R. 1 Q. B. 10; 6 B. & S. 861; 35 L. J. M. C. 50; 13 L. T. 323; 29 J. P. 821; 12 Jur. N. S. 120; 14 W. R. 53; 122 E. R. 1411.

Annotations :—**Consd.** Barry *v.* Mid. G. W. Ry. (1867), 15 W. R. 384. **Apld.** L. & B. Ry. *v.* Watson (1878), 3 C. P. D. 429. **Consd.** Saunders *v.* S. E. Ry. (1880), 5 Q. B. D. 456. **Apld.** Dyson *v.* L. & N. W. Ry. (1881), 7 Q. B. D. 32.

749. —— —— —— ——.]—Pltfs., a railway co., made, under Railways Clauses Consolidation Act, 1845, ss. 108, 109, a bye-law that any passenger travelling without a ticket would be required to pay the fare from the station whence the train originally started to the end of his journey. Deft., without any intent to defraud, travelled on pltfs.' railway from N. to L. without a ticket, & in a train which had originally started from C. On his arrival deft. tendered the fare for the distance he had actually travelled, but this was refused by pltfs.' servants, who demanded the whole fare from C. Deft. having subsequently paid pltfs. the fare from N. to L., they sued him to recover the difference between the sum so paid, & the amount of the whole fare from C. to L. :—*Held :* (1) pltfs. were not entitled to maintain their action, because the excess fare was claimed, not as a penalty which would be recoverable only before two justices under Railways Clauses Consolidation Act, 1845, ss. 145, 150, but as a debt, & the Act gave pltfs. no power to create such a debt.

(2) The bye-law was repugnant to the provisions of the Act, because the Act only authorised the exacting of an additional sum from a passenger whose conduct had been fraudulent (BRETT, L. J.). —LONDON & BRIGHTON RY. CO. *v.* WATSON (1879), 4 C. P. D. 118; 27 W. R. 614; *sub nom.* LONDON, BRIGHTON & SOUTH COAST RY. CO. *v.* WATSON, 48 L. J. Q. B. 316; 40 L. T. 183; 43 J. P. 301, C. A.

Annotations :—*As to* (1) **Refd.** Saunders *v.* S. E. Ry. (1880), 5 Q. B. D. 456. *Generally* **Mentd.** Goodes *v.* Cluff (1884), 13 Q. B. D. 694.

750. —— —— **Travelling in superior class—Fare from furthest station.**]—A bye-law of a railway company provided that a person travelling in a carriage of a superior class to that for which his ticket was issued should be subject to a penalty not exceeding 40*s.*, & should, in addition, be liable to pay his fare according to the class of carriage in which he was travelling from the station whence the train originally started, unless he showed that he had no intention to defraud. Applt. was convicted of this offence, & fined 10*s.* & costs, although he showed to the satisfaction of the justices that he had no intention to defraud :—*Held :* unless the proviso at the end applied to the whole, the bye-law was inconsistent with Railways Clauses Consolidation Act, 1845, s. 103, & bad; & the conviction could not be sustained.—BENTHAM *v.* HOYLE (1878), 3 Q. B. D. 289; 47 L. J. M. C. 51; 37 L. T. 753; 42 J. P. 437; 26 W. R. 314, D. C.

Annotations :—**Apld.** Dyson *v.* L. & N. W. Ry. (1881), 7 Q. B. D. 32. **Refd.** L. & B. Ry. *v.* Watson (1878), 3 C. P. D. 429; Lowe *v.* Volp (1896), 65 L. J. M. C. 43; White *v.* Morley, [1899] 2 Q. B. 34.

751. —— —— —— **Unreasonableness.**]—By a bye-law under Railways Clauses Consolidation Act, 1845, any person travelling, without the special permission of some duly authorised servant of the co., in a carriage or by a train of a superior class, to that for which his ticket was issued, was subjected to a penalty not exceeding 40*s.*, & was, in addition, liable to pay his fare, according to the class of carriage in which he was travelling, from the station where the train originally started, unless he showed that he had no intention to defraud. Applt. was convicted in a penalty of 10*s.* under this bye-law for travelling in a first-class carriage with a second-class ticket, & it was found as a fact that he did so with the intention of defrauding the co. :—*Held :* (1) the bye-law taken as a whole was void, on the ground that the penalty imposed by the latter part was unreasonable; (2) the bye-law was divisible, but the conviction could not be upheld, for the first part of the bye-law which alone was applicable to the case, omitted the intention to defraud required by s. 103 of the Act, to constitute the offence, & was repugnant to the Act & invalid.—DYSON *v.* LONDON & NORTH WESTERN RY. CO. (1881), 7 Q. B. D. 32; 50 L. J. M. C. 78; 44 L. T. 609; 45 J. P. 650; 29 W. R. 565, D. C.

Annotations :—*As to* (1) **Refd.** Huffam *v.* North Staffordshire Ry., [1894] 2 Q. B. 821. *As to* (2) **Refd.** Lowe *v.* Volp (1896), 65 L. J. M. C. 43.

752. —— —— **Failure to produce ticket—Unreasonableness.**]—A bye-law of resp. co. provided that a passenger should show & deliver up his ticket to any duly authorised servant of the co. whenever required to do so for any purpose, & that any person travelling without a ticket, or failing or refusing so to show or deliver up his ticket should be required to pay the fare from the station whence the train originally started to the end of his journey. Applt. had a ticket entitling him to travel on the lines of resps. and the L. Co. from X. or C. to W. & back. Having come to J. station on resps.' line, where he had to change trains, he had for this purpose to go from resps.' station to that of the L. Co. On passing out of resps.' station he was asked to show his ticket but refused to do so. There was no intention to defraud on applt.'s part. Resps. summoned him under the above bye-law, & he was convicted in the amount of the fare from the station whence resps.' train by which he travelled had started :—*Held :* the conviction must be quashed.

(1) Assuming that the power given by Railways Clauses Consolidation Act, s. 108, to make bye-laws for regulating the travelling upon or using & working the railway, applied to persons travelling in the co.'s carriages, which he was inclined to think it did not, it was not competent to the co. by their bye-law to make the refusal to show the ticket an offence in the absence of a fraudulent intention; (2) the bye-law was void for

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unreasonableness, because the penalties thereunder for offences of equal criminality would vary with the distances from which the train might originally have started; (3) the bye-law was inapplicable to the case, as the power to make bye-laws was confined to the case of persons travelling on the railway, which applt. was not doing when required to show his ticket (COCKBURN, C.J.).

The bye-law was void for unreasonableness, because (4) the penalty for not showing the ticket varied according to the distance the train had travelled, & also because (5) the passenger was required not only to show but to deliver up his ticket whenever required for any purpose (LUSH, J.).—SAUNDERS *v.* SOUTH EASTERN RY. CO. (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761; 43 L. T. 281; 44 J. P. 781; 29 W. R. 56, D. C.

Annotations:—As to (2) **Refd.** Butler *v.* M. S. & L. Ry. (1888), 21 Q. B. D. 207. *As to* (4) **Refd.** Lowe *v.* Volp, [1896] 1 Q. B. 256.

See, also, No. 773, *post.*

753. —— —— Using ticket on day when not available—Unreasonableness.]—The bye-law of a railway co. provided that, any passenger using, or attempting to use, a ticket on any day for which such ticket was not available, or using a ticket which had been already used on a previous journey, was thereby subjected to a penalty not exceeding 40*s.* No fraud, or attempt to commit fraud, was alleged or suggested against applt. The justices convicted applt. under the bye-law:—*Held:* the bye-law, being repugnant to Regulation of Railways Act, 1889 (c. 57), s. 5, was invalid, & the conviction must be quashed.—HUFFAM *v.* NORTH STAFFORDSHIRE RY. CO., [1894] 2 Q. B. 821; 63 L. J. M. C. 225; 71 L. T. 517; 59 J. P. 23; 43 W. R. 28; 10 T. L. R. 653; 38 Sol. Jo. 682; 18 Cox, C. C. 41; 10 R. 507, D. C.

Annotation:—**Refd.** Lowe *v.* Volp (1896), 60 J. P. 232.

Arrest of passenger—For breach of bye-laws.]—*See* Sect. 8, *post, &, generally,* MALICIOUS PROSECUTION & PROCEDURE; MASTER & SERVANT; TRESPASS.

B. Of Other Carriers.

754. Validity—Tramway—Delivery up of ticket on demand or payment of fare—Journey not completed.]—A tramway bye-law imposed a penalty on passengers who refused to deliver up the ticket or pay the fare. H., a passenger, paid the fare & showed the ticket on demand, but refused to deliver it up, because he had gone only a part of the whole distance:—*Held:* H. was rightly convicted, as the bye-law was valid, & constituted a reasonable check on the tramway servants.—HEAP *v.* DAY (1886), 51 J. P. 213; 34 W. R. 627; 2 T. L. R. 687, D. C.

Annotations:—**Apld.** Hanks *v.* Bridgman, [1896] 1 Q. B. 253. **Consd.** Lowe *v.* Volp, [1896] 1 Q. B. 256. **Folld.** Tuffley *v.* Tate (1906), 96 L. T. 24. **Refd.** Hunt *v.* Green (1906), 23 T. L. R. 19.

755. —— —— —— Ticket lost.]—By a bye-law made by a tramway co. & enforceable by a penalty, each passenger was to . . . when required so to do either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger.

A passenger having paid the fare & received a ticket inadvertently lost it, & was thus unable to deliver it up when required. He declined to pay the fare over again & was summoned by the co. for a breach of the bye-law:—*Held:* the bye-law was not unreasonable & the passenger ought to have been convicted.—HANKS *v.* BRIDGMAN, [1896] 1 Q. B. 253; 65 L. J. M. C. 41; 74 L. T. 26; 60 J. P. 312; 44 W. R. 285; 12 T. L. R. 193; 40 Sol. Jo. 277; 18 Cox, C. C. 224, D. C.

Annotations:—**Folld.** Tuffley *v.* Tate (1906), 96 L. T. 24. **Refd.** Lowe *v.* Volp, [1896] 1 Q. B. 256; Hunt *v.* Green (1906), 96 L. T. 23.

756. —— —— Production of ticket on demand.]—By a bye-law made by a tramway co., & enforceable by a penalty, each passenger was to show his ticket, if any, when required so to do by the conductor or any duly authorised servant of the co. A passenger, having paid the fare & received a ticket, refused to show it to an inspector of the co. & was summoned for breach of the bye-law:—*Held:* the bye-law was not unreasonable, & the passenger ought to have been convicted.—LOWE *v.* VOLP, [1896] 1 Q. B. 256; 74 L. T. 143; 60 J. P. 232; 44 W. R. 442; 12 T. L. R. 206; 18 Cox, C. C. 253, D. C.

Annotation:—**Refd.** Hunt *v.* Green (1906), 96 L. T. 23.

757. —— —— ——.]—A bye-law of a tramway co. provided that each passenger should show his ticket if & when required to do so to the conductor or any duly authorised servant of the company & should also when required to do so either deliver up his ticket or pay the fare legally demandable for the distance travelled by such passenger. Resp., on entering the car, paid his fare & received a ticket. In the course of the journey he lost it. On being asked to produce his ticket by the inspector he was unable to do so, though the conductor admitted he had paid for & received one. Resp. was then asked to produce his ticket, or pay the fare or leave the car, but failed to comply with any of these requests. He was summoned for a breach of the bye-law:—*Held:* the bye-law was reasonable, & resp. had infringed it.—HUNT *v.* GREEN (1906), 96 L. T. 23; 71 J. P. 18; 23 T. L. R. 19; 21 Cox, C. C. 333; 5 L. G. R. 67, D. C.

758. —— —— Payment of fare legally demandable—Refusal to pay fare as protest.]—Applt. was summoned for unlawfully refusing to pay the fare legally demandable for his journey on the W. Light R. Applt., accompanied by his nephew, took two tickets to N., the fare being 5*d.*, & requested the conductor to set him down at Q. Hotel, which is a place where cars stop on request. The conductor forgot to stop & applt. was carried 200 or 250 yards past his destination. Applt. did not leave the car, & on being spoken to said he was going to remain on the car as a protest, & afterwards that he was going to the office of the co. to lodge a complaint. He refused to pay the extra fare after passing N. or to give his name & address, which he said he would only give to the manager. An inspector accompanied applt. to the office, where he gave his name & address and lodged his complaint. He was summoned for refusing to pay the excess fare under a bye-law which provided that each passenger should upon demand pay to the conductor or other duly authorised officer of the co., the fare legally demandable for the journey: *Held:* the bye-law was good, & applt. could be convicted, though there was no intention to defraud.—TUFFLEY *v.* TATE (1906), 96 L. T. 24; 71 J. P. 21; 21 Cox, C. C. 337; 5 L. G. R. 148, D. C.

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n. Failure to remove animal—Tramway.]—A tramway co.'s bye-law made it an offence for a person to take a dog or other animal into any carriage after having been requested not so to do by the conductor:—*Held:* a pigeon was an animal within the meaning of the bye-law, & that a refusal to remove it after request by the conductor constituted an offence.—VAN WERKMESERKEN *v.* JOHANNESBURG MUNICIPALITY, [1913] T. P. D. 540.—S. AF.

759. —— —— Prohibition of obscene language —Form.]—Tramways Act, 1870 (c. 78), s. 46, enables the promoters of any tramway to make bye-laws for the prevention of nuisances in any carriage belonging to them. The promoters of a tramway made a bye-law providing: "No person shall swear or use offensive or obscene language whilst in or upon any carriage":—*Held:* the bye-law was valid although it did not contain any such additional words as "so as to be a nuisance or annoyance to others."—GENTEL *v.* RAPPS, [1902] 1 K. B. 160; 71 L. J. K. B. 105; 85 L. T. 683; 18 T. L. R. 72; 50 W. R. 216; 46 Sol. Jo. 69; 20 Cox, C. C. 104, D. C.

Annotations:—**Folld.** Brabham *v.* Wookey (1901), 18 T. L. R. 99. **Refd.** Moorman *v.* Tordoff (1908), 98 L. T. 416.

760. Failure to produce ticket—Passenger paying fare but refusing to accept ticket—Refusal to pick up ticket.]—Applt., a passenger on one of the trams owned by the Corpn. of S., paid his fare, but refused to accept the ticket on account of a condition printed on the back of it, limiting the liability of the corpn. in case of an accident to the passenger. The conductor appeared to have thought that applt. took the ticket, but between them it fell to the floor. Later on an inspector asked applt. for his ticket, who pointed it out to him lying on the floor, but refused to take it up or deliver it up to the inspector. Applt. was summoned for contravention of a bye-law, which provided that each passenger when tickets were issued should as and when requested to do so show his ticket to the conductor or other servant of the corpn. acting in the performance of his duty deliver up his ticket or, in case of failure to produce such ticket, pay the fare legally demandable for the distance travelled over by such passenger:—*Held:* applt. had not been guilty of any offence under the bye-law.—WILSON *v.* FEARNLEY (1905), 92 L. T. 647; 69 J. P. 165; 3 L. G. R. 470, D. C.

761. —— Bonâ fide.]—HUNT *v.* GREEN, No. 757, *ante*.

762. Refusal to pay fare—Passenger going beyond destination as protest—For failure of conductor to stop.]—TUFFLEY *v.* TATE, No. 758, *ante*.

763. Obstruction of carriers' servants—Riding outside omnibus—Contrary to regulation.]—The E. Corpn., who had statutory authority to run motor omnibuses, made a regulation prohibiting on one section of a particular route passengers riding on the top of the omnibuses. The regulation was made for the safety of the passengers in view of the camber of the road, & notice thereof was exhibited on top of the omnibuses, but attention was not drawn thereto on passengers' tickets. Applt., who had previous knowledge of the regulation, was an outside passenger on the particular route & had paid the fare entitling him to travel over the section to which the regulation applied. When the omnibus reached the beginning of that section he refused to come down from the top although his attention was again called to the notice by the conductor & an inspector, applt. stating that he had got his ticket & intended riding on the top to the terminus. The inspector declined to allow the omnibus to proceed while applt. remained on the top, & it was thereby delayed 20 minutes. Applt. having been convicted of the breach of the corpn.'s bye-law which provided that no passenger or other person should wilfully obstruct or impede any officer or servant of the council in the execution of his duty upon or in connection with any motor omnibus:—*Held:* (1) applt. was not entitled to be carried on the top of the omnibus on the part of the route to which the regulation applied inasmuch as the corpn. had not, in respect of that part of the route, held themselves out as common carriers of passengers on the top of their omnibuses, or contracted to carry applt. on the top of the omnibus; (2) applt.'s conduct amounted to wilful obstruction of the conductor & inspector within the bye-law, & the conviction was right.—BAKER *v.* ELLISON, [1914] 2 K. B. 762; 83 L. J. K. B. 1335; 111 L. T. 66; 78 J. P. 244; 30 T. L. R. 426; 24 Cox, C. C. 208; 12 L. G. R. 992, D. C.

Arrest of passenger—For breach of bye-laws.]—*See* Sect. 8, *post, &, generally*, MALICIOUS PROSECUTION & PROCEDURE; MASTER & SERVANT; TRESPASS.

SECT. 7.—REMOVAL OF PASSENGERS.

764. Removal—For misconduct—Unnecessary violence used.]—The conductor of deft.'s omnibus had, as part of his general employment, authority from deft. to remove from it passengers who misconducted themselves. Pltf., who had been drinking, having got into the omnibus, the conductor deeming him an improper person to remain in it, carelessly & with unnecessary violence dragged pltf. out & threw him on the ground, & thereby inflicted on pltf. a serious injury:—*Held:* deft. was responsible for the act of his servant, the conductor.—SEYMOUR *v.* GREENWOOD (1861), 7 H. & N. 355; 158 E. R. 511; *sub nom.* GREENWOOD *v.* SEYMOUR, 30 L. J. Ex. 327; 4 L. T. 835; 25 J. P. 693; 8 Jur. N. S. 214; 9 W. R. 785, Ex. Ch.

Annotations:—**Distd.** Poulton *v.* L. & S. W. Ry. (1867), L. R. 2 Q. B. 534; Lucas *v.* Mason (1875), L. R. 10 Exch. 251. **Apld.** Dyer *v.* Munday, [1895] 1 Q. B. 742. **Refd.** Splents *v.* Lefevre (1864), 11 L. T. 114; Walker *v.* S. E. Ry., Smith *v.* S. E. Ry. (1870), L. R. 5 C. P. 640; Bayley *v.* M. S. & L. Ry. (1873), L. R. 8 C. P. 148.

See, also, No. 768, *post*.

765. —— From wrong train—Porter acting in mistake.]—Pltf., a passenger on defts.' line of railway, sustained injuries in consequence of being violently pulled out of a railway carriage, just after the train had started, by one of defts.' porters, who acted under an erroneous impression that pltf. was not in the right train for the place to which he had booked. Defts.' rules, a copy of which was given to each porter in their employ, assigned various specific duties to the porters, among others, that of not suffering passengers to get in or out of trains in motion, & concluded with a general direction that they were to do all in their power to promote the comfort of the passengers & the interests of the co. It was proved to be the duty of the porters to prevent passengers going by wrong trains, as far as they could do so, but it was not their duty to remove passengers from the wrong train or carriage:—*Held:* there was evidence on which the jury might find that the act of the porter in pulling pltf. out of the carriage was an act done within the course of his employment as defts.' servant, & one for which they were therefore responsible.—BAYLEY *v.* MANCHESTER, SHEFFIELD, & LINCOLNSHIRE RY.

Sect. 7.—Removal of passengers. Sect. 8.]

Co. (1873), L. R. 8 C. P. 148; 42 L. J. C. P. 78; 28 L. T. 366, Ex. Ch.

Annotations:—**Distd.** Richards *v.* West Middlesex Waterworks Co. (1885), 15 Q. B. D. 660. **Apld.** Dyer *v.* Munday, [1895] 1 Q. B. 742. **Refd.** Bolingbroke *v.* Swindon L. B. (1874), L. R. 9 C. P. 575; Jefferies & Atkey *v.* Derbyshire Farmers (1920), 36 T. L. R. 825.

766. —— For refusing to pay fare—On failure to produce ticket — Ticket lost.] — Pltf. was a passenger by defts.' railway. The ticket issued to him incorporated by reference certain conditions published in defts.' time-tables, one of which was that every passenger should show & deliver up his ticket to any duly authorised servant of the co., when required to do so for any purpose, & any passenger travelling without a ticket, or failing, or refusing so to show or deliver up such ticket, should be required to pay the fare from the station whence the train originally started. Pltf. having lost the ticket was unable to produce it when required to do so during the journey by one of defts.' servants. Pltf. was thereupon required to pay the fare from the station whence the train started, &, on his declining to do so, was forcibly removed by defts.' servants from the carriage in which he was travelling, no more force, however, being used than was necessary for his removal. He thereupon sued defts. for assault:—*Held:* the contract between pltf. & defts. did not by implication authorise defts. to remove pltf. from the carriage on his failing to produce a ticket & refusing to pay the fare as provided by the condition; defts. were not justified in so removing him; & the action was maintainable.—BUTLER *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. Co. (1888), 21 Q. B. D. 207; 57 L. J. Q. B. 564; 60 L. T. 89; 52 J. P. 612; 36 W. R. 726; 4 T. L. R. 607, C. A.

Annotations:—**Consd.** Kerrison *v.* Smith, [1897] 2 Q. B. 445. **Mentd.** Hurst *v.* Picture Theatres, [1915] 1 K. B. 1.

767. —— —— Improper conduct of carriers' servant—Carriers liable.]—The car of deft. tramway co. was crowded, & pltf., a passenger, was obliged to stand. The conductor had, by the bye-laws of the co., power to collect the fares, which were payable on demand, & to prevent people travelling without paying them. The conductor asked pltf. for his fare, but, as pltf. was unable to get to his pocket, as he subsequently alleged, owing to the crowd, he asked the conductor to wait a little. The conductor thereupon said:—"None of your nonsense," & took him by the collar & pushed him off the car. Pltf. fell & sustained injuries:—*Held:* an action lay against the co. in respect of the assault & injuries.—SMITH *v.* NORTH METROPOLITAN TRAMWAYS CO. (1891), 55 J. P. 630; 7 T. L. R. 459, C. A.

768. —— For travelling without paying proper fare — Porter acting in mistake.] — There is an implied authority by a railway co. to its servants to remove passengers from carriages in which they are misconducting themselves, or travelling without having paid the proper fare. A railway co., however, is liable for the acts of its servants, if in pursuance of such authority, but under a misapprehension, they eject a passenger who has neither misconducted himself nor travelled improperly.—LOWE *v.* GREAT NORTHERN RY. Co. (1893), 62 L. J. Q. B. 524; 9 T. L. R. 516; 5 R. 535, D. C.

769. —— Whether in performance of powers—Or actuated by malice—Question for jury.]—Whether the conductor of a tramcar, who removed a passenger from the car, was acting in the supposed exercise of his powers under bye-laws, or was actuated by personal malice in consequence of something which had passed between him & the passenger, is a question which should be left to the jury, & the judge at the trial is not justified in withdrawing the case from them on the ground that there was no evidence which could make the conductor's principals liable in an action for damages for assault brought against them by the passenger.—HUTCHINS *v.* LONDON COUNTY COUNCIL (1915), 85 L. J. K. B. 1177; 114 L. T. 377; 80 J. P. 193; 32 T. L. R. 179; 60 Sol. Jo. 156; 14 L. G. R. 313, H. L.

Annotation:—**Refd.** Whittaker *v.* L. C. C., [1915] 2 K. B. 676.

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766 i. —— *For refusing to pay fare—On failure to produce ticket—Ticket lost.*]—Pltf. lost his ticket before an intermediate station between the stations of departure & destination & when the conductor demanded the fare informed him of these facts, of which he had no other knowledge. He insisted nevertheless upon payment to him, & on refusal obliged pltf. to leave the cars at the intermediate station. In so doing he was obeying the regulations of the co., which were authorised by their charter:—*Held:* he was justified, & the co. not liable.—DUKE *v.* GREAT WESTERN RY. Co. (1857), 14 U. C. R. 369, 377.—**CAN.**

766 ii. —— —— —— *Subsequent tender of fare.*]—Pltf. got upon the train without a ticket, & when asked for his fare declined paying then, as he said he had not made up his mind how far he should go. The conductor said he must decide, & afterwards, on his declining again on the same ground, stopped the train & put him out. Pltf. at last tendered his fare:—*Held:* the pltf. had refused to pay his fare & the conductor was justified in what he did.—FULTON *v.* GRAND TRUNK RY. Co. (1859), 17 U. C. R. 428.—**CAN.**

766 iii. —— —— —— —— ——]—THOMAS *v.* GELDART (1880), 20 N. B. R. 95.—**CAN.**

c. —— —— *Wrongfully demanded—Removal illegal.*]—It is not the law that a passenger rightfully travelling upon his ticket is bound to pay fare wrongfully demanded, or to leave the train on the conductor's order, at the peril of not being able to recover damages for an assault committed in expelling him by force.—DANCEY *v.* GRAND TRUNK RY. Co. (1892), 19 A. R. 664.—**CAN.**

d. —— —— *Passenger asserting previous payment.*]—HUNTSMAN *v.* GREAT WESTERN RY. Co. (1860), 20 U. C. R. 24.—**CAN.**

e. —— —— —— *Carrier liable.*]—Pltf. sued to recover damages for having been wrongfully put off a street car in T. Defts.' line has connecting branches, & pltf.'s fare entitled him to travel over the entire route. At the intersection of a branch line, he changed cars & the conductor on the second car disputing his statement that he had been duly transferred demanded his fare—ultimately he was required to leave the second car:—*Held:* the tramway co. was liable.—TORONTO RY. Co. *v.* GRINSTED (1895), 24 S. C. R. 570.—**CAN.**

f. —— —— *Non-compliance with condition.*]—Pltf. purchased an excursion ticket from I. to T. & return, one of the conditions being that he should identify himself to an agent in T. before he set out on his return journey & obtain the agent's signature. On production of his ticket at T., he was admitted to the train, & started on his return journey, but neglected to identify himself, & was put off the train by the conductor after he had refused to pay his fare, although he offered to identify himself to the conductor. In an action for damages:—*Held:* he could not recover.—TAYLOR *v.* GRAND TRUNK RY. Co. (1902), 22 O. L. T. 361; 4 O. L. R. 357; 2 O. W. R. 447.—**CAN.**

g. —— —— *Passenger having handed in other passengers' tickets—Defective ticket.*]—A passenger in a railway train handed to the ticket collector, along with his own ticket, the tickets of the other passengers who were travelling in the same compartment as himself. The collector having discovered one of these tickets to be defective, demanded from the passenger who had handed him the tickets payment of the difference between it & a good ticket. On the passenger refusing to pay he was removed from the carriage. His own ticket had been good for the journey. In an action by him against the ry. co.:—*Held:* he was entitled to damages, & his claim was not barred by his having handed to the collector the tickets of the other passengers along with his own.—HARRIS *v.* NORTH BRITISH RY. Co. (1891), 18 R. (Ct. of Sess.) 1009; 28 Sc. L. R. 751.—**SCOT.**

h. —— *For failure to produce ticket.*]—The contract between a person buying a railway ticket & the co. on whose line it is intended to be used implies that such ticket shall be produced & delivered up to the conductor of the train on which such person travels, & if he is put off a train for

770. —— Or detention—Under Tramways Act, 1870 (c. 78), s. 52.]—In the case of a person who enters a tramcar & refuses to pay the proper fare for the distance travelled, the remedy of the tramway authority is not limited to that given by the above sect., namely, the right to seize & detain him, if his name & address are unknown, until he can conveniently be taken before a justice or until he be otherwise discharged by due course of law; in such a case the tramway authority may treat the person offending as a trespasser & eject him from the tramcar provided no more force than is necessary is used.

Pltf., who had duly paid his fare, was ejected from one of defts.' tramcars by the conductor, who was under the mistaken belief that pltf. was travelling beyond the point to which his ticket allowed him to travel. Pltf. claimed damages from defts. in respect of the injuries he sustained through being ejected:—*Held:* defts. were liable for the wrongful act of their servant.—WHITTAKER *v.* LONDON COUNTY COUNCIL, [1915] 2 K. B. 676; 84 L. J. K. B. 1446; 113 L. T. 544; 79 J. P. 437; 31 T. L. R. 412; 13 L. G. R. 950, D. C.

Arrest & detention of passengers.]—*See* cases in Sect. 6, *ante*; Sect. 8, *post*, &, *generally*, MALICIOUS PROSECUTION & PROCEDURE; MASTER & SERVANT; TRESPASS.

Measure of damages.]—*See* Sect. 5, *ante*.

SECT. 8.—ARREST AND DETENTION OF PASSENGERS.

771. Non-production of ticket—Journey over several systems—Which carrier liable.]—Pltf. had taken his place at E., which is a station on defts.' railway, to come to L., & had paid one shilling for his fare; upon arriving at the terminus at S., upon his not producing his ticket, he was detained by a servant of the E. Ry. Co.:—*Held:* (1) the man who committed the trespass was himself liable in the first instance; (2) as it did not appear he was the servant of defts., but of the E. Ry. Co., defts. could not be liable for his wrongful act.—WHELDALE *v.* NORTHERN & EASTERN RY. CO. (1844), 3 L. T. O. S. 59.

772. —— & refusal to give name & address—Railway company officials justified in arresting passenger.]—YOUNG *v.* GREAT EASTERN RY. CO. (1888), 5 T. L. R. 112.

773. —— Non-payment of fare from starting-point—Arrest illegal.]—5 Will. 4, c. x., incorporated deft. co., & (s. 106) empowered the co. to make bye-laws for (*inter alia*) the management of the undertaking, & of the officers & servants of the co. in all respects whatever, & to impose & inflict reasonable fines & forfeitures upon persons offending against the bye-laws, to be levied & recovered as any penalty might by the Act be levied & recovered; such bye-laws to be binding upon & be observed by all parties; provided that they were not repugnant to the laws of England, or the directions of that Act. S. 148 enacted that it should be lawful for the co. to make orders & regulations for regulating the travelling upon & use of the railway, & for or relating to travellers upon the line; such orders & regulations to be binding upon travellers & passengers passing upon the railway. By s. 163, penalties & forfeitures imposed by the Act (of which there were several) or by any bye-law might be recovered summarily. S. 165 enacted that it should be lawful for any officer or agent of the co. to seize & detain any person whose name & residence should be unknown to such officer or agent, who should commit any offence against the Act, & to convey him, etc., before a justice without any warrant or other authority than that Act.

The co. made a bye-law, whereby a passenger not producing or delivering up his ticket was to be required to pay the fare from the place where the train originally started:—*Held:* (1) this was not a bye-law imposing a penalty or forfeiture; (2) the arrest of a passenger not producing his ticket, & refusing to pay the fare from the place where the train originally started, was illegal.

(3) *Qu.:* whether s. 165 gave power to apprehend a person, except for an offence against the Act itself.

(4) *Qu.:* whether the bye-law was a reasonable

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refusing or being unable so to produce & deliver it up, the co. is not liable to an action for such ejectment.—GRAND TRUNK RY. CO. *v.* BEAVER (1893), 22 S. C. R. 498.—**CAN.**

i. —— ——.]—PRATAB DAJI *v.* BOMBAY BARVDU & CENTRAL INDIA RY. CO. (1875), I. L. R. 1 Bom. 25.—**IND.**

k. —— ——.]—Where, in violation of an unquestioned bye-law, a party took his seat in a railway carriage without having first paid his fare & obtained a proper ticket, & refused to leave when required so to do by the ry. co.'s servants:—*Held:* the ry. co. were justified in removing him from the carriage.—M'CARTHY *v.* DUBLIN, WICKLOW, & WEXFORD RY. CO. (1870), I. R. 5 C. L. 244.—**IR.**

l. —— —— *Subsequent tender of fare—Ticket lost.*]—Pltf. mislaid, & being called upon to produce could not find, his ticket. The conductor after waiting some time stopped the train & turned him off, he offering to pay, but the conductor refusing to take his fare:—*Held:* defts. were responsible for this act of the officer.—CURTIS *v.* GRAND TRUNK RY. CO. (1862), 12 C. P. 89.—**CAN.**

m. —— —— ——.]—A ry. co. is not bound to permit a person to proceed without a ticket in a train which he has entered while it was standing at a station, although he should tender the amount of his fare to the station-master.—SCOTTISH NORTH EASTERN RY. CO. *v.* MATTHEWS (1866), 5 Irv. 237.—**SCOT.**

n. —— *For travelling with wrong ticket—Whether fraud intended.*]—DAVIS *v.* GREAT WESTERN RY. (1860), 20 U. C. R. 27.—**CAN.**

o. —— ——.]—A passenger purchased a return ticket at the co.'s station of H. between A. & P. by the last train of Friday, for which he paid one ordinary fare & one third. The ticket bore on its face, besides the names of the stations, etc., the words "Saturday fare." On the following Sunday, the passenger, having only the return half of this ticket, took his seat at P. in the only train on that day which stopped at B., the junction for A., intending to post from there to A.:—*Held:* on his refusal to comply with the co.'s regulations, or to leave the carriage, the co. were entitled to use necessary force to remove him.—HIGHLAND RY. CO. *v.* MENZIES (1878), 5 R. (Ct. of Sess.) 887.—**SCOT.**

p. —— —— *Pleading.*]—FAREWELL *v.* GRAND TRUNK RY. CO. (1865), 15 C. P. 427.—**CAN.**

q. —— *Of passenger who has paid fare—Injuries while alighting.*]—Where the conductor forcibly removes from a train a passenger who has paid his fare, the co. are liable for the assault. But where, in the course of such removal, & while leaving the car, pltf. slipped & was injured:—*Held:* defts. were not liable for the injuries sustained, as his removal was not the proximate but remote cause of the accident.—WILLIAMSON *v.* GRAND TRUNK RY. CO. (1867), 17 C. P. 615.—**CAN.**

r. —— *Jurisdiction—Where cause of action arises.*]—RALPH *v.* GREAT WESTERN RY. CO. (1878), 14 C. L. J. N. S. 172.—**CAN.**

PART V. SECT. 8.

772 i. *Non-production of ticket—Refusal of name & address—Duty of official—Obstruction.*]—A passenger on a tram was asked to produce his check & failed so to do, either before or after alighting. Immediately after he had alighted an official demanded his name & address, & on his refusing to give them, he was forcibly detained. He sued for wrongful arrest:—*Held:* (1) the duty of the official on the refusal to produce a check was to demand another fare; (2) the demand of the name & address must be made before the passenger actually got out of the tram; (3) the question of obstruction was one of fact & not of law, & the question whether the passenger refused to give his name & address "upon quitting the tram" was one for the jury.—SCOTT *v.* MUNICIPAL TRAMWAYS TRUST, [1919] S. A. L. R. 228.—**AUS.**

s. —— *Non-payment of fare from starting point of train—Name & address of passenger unknown.*]—BARRY

Sect. 8.—Arrest and detention of passengers.

& valid bye-law.—CHILTON *v.* LONDON & CROYDON RY. CO. (1847), 16 M. & W. 212; 5 Ry. & Can. Cas. 4; 16 L. J. Ex. 89; 8 L. T. O. S. 366; 11 J. P. Jo. 87; 11 Jur. 149; 153 E. R. 1164; *subsequent proceedings* (1848), 11 L. T. O. S. 108.

Annotations :—As to (1) **Consd.** Brown *v.* G. E. Ry. (1877), 2 Q. B. D. 406; L. & B. Ry. *v.* Watson (1878), 3 C. P. D. 429. *As to* (3) **Refd.** Stevens *v.* Midland Counties Ry. (1854). 18 Jur. 932; Eggington *v.* Lichfield Corpn. (1855), 19 J. P. 819; Whitfield *v.* S. E. Ry. (1858), 27 L. J. Q. B. 229; Green *v.* London General Omnibus Co. (1859), 7 C. B. N. S. 290. *As to* (4) **Consd.** Barry *v.* Mid. G. W. Ry. (1867), 15 W. R. 384. **Refd.** L. & B. Ry. *v.* Watson (1878), 3 C. P. D. 429.

See, also, Nos. 728, 730, 743, *ante.*

774. Scope of servant's authority—Non-payment of fare—Ratification.]—Pltf. having seen an advertisement of an excursion train from M. to B. & back, inquired of the clerk at M. station, which belonged to defts., as to the return of the train, & was informed that he could return that day by the 7.30 p.m. train. Pltf. then took a ticket, proceeded to B., & returning thence by train at the time appointed arrived at C., where the train stopped. C. station was used by defts. & by other railway cos. A railway servant, who had charge of the train, took pltf.'s ticket, & informing him that he ought not to have gone by that train, demanded 2*s.* 6*d.* more. Payment being refused, the railway servant & the superintendent took pltf. into custody. Pltf.'s attorney having written to the secretary of deft. co., asking for compensation, received an answer from the secretary, requesting that he might be furnished with the date of the transaction & promising to make inquiries. The secretary also stated verbally that it was an awkward business, that the blame would fall upon the station clerk at M. station, who gave pltf. the false information, & he also offered to return the 2*s.* 6*d.* :—*Held :* (1) there being no proof of defts. having the power of arresting pltf. there was no evidence of their having expressly or impliedly authorised or ratified the arrest made by the railway servant, & therefore they were not liable for his tortious act.

(2) *Qu. :* whether there was evidence for the jury of the railway servant, who made the arrest, being a servant of defts.—ROE *v.* BIRKENHEAD, LANCASHIRE & CHESHIRE JUNCTION RY. CO. (1851), 7 Exch. 36; 6 Ry. & Can. Cas. 795; 21 L. J. Ex. 9; 155 E. R. 845.

Annotations :—As to (1) **Consd.** Goff *v.* G. N. Ry. (1861), 3 E. & E. 672; Seymour *v.* Greenwood (1861), 6 H. & N. 359; Allen *v.* L. & S. W. Ry. (1870), 19 W. R. 127; Moore *v.* Met. Ry. (1872), 42 L. J. Q. B. 23; Bank of New South Wales *v.* Owston (1879), 4 App. Cas. 270. *As to* (2) **Refd.** Goff *v.* G. N. Ry. (1861), 3 E. & E. 672.

775. —— ——.]—Action against a railway co. for giving the plaintiff into custody, & causing him to be taken before a magistrate, on a charge of travelling in a carriage of the co. without having paid his fare, & with intent to avoid payment thereof. Plea, not guilty.

Pltf., being in L. took a return ticket by defts.' railway to W. & back to L., available from Saturday to Monday; on arriving at home at W. he placed the half ticket on the chimney piece. On the preceding Thursday his wife's sister had come with a return ticket available that day, & had placed the half of her ticket on the same chimney piece; having stayed over the night she went away leaving it there. On the Monday pltf. took by mistake his sister-in-law's half ticket. On his arrival at the station at L. he gave up this ticket; & being told by the collector of tickets that he had got a wrong ticket, he mentioned at what hour he got it on Saturday. He went with the collector to the ticket office, & hearing that the ticket which he had given up had been issued on Thursday, he explained the mistake, & gave his address. He then went with the collector to the inspector of police in the station, & they went to the superintendent of the line. Pltf. asked them to send to the station master at W., who knew him. The superintendent of the line said, "I think you had better take him, but first you had better obtain the concurrence of the secretary." Pltf., being asked whether he would pay the fare, said he had not enough, but offered to leave a few tools which he had. The police inspector then went away, & on returning said to a police constable, "Take this man to P. S. station, & charge him with having travelled in a second-class carriage without having paid his fare." Pltf. was accordingly taken to the station, & before a magistrate; the charge was made, & defts.' servants gave evidence. In the result he was discharged. When pltf.'s attorney applied to the co. for compensation, a letter was written in answer by the secretary, in which he did not state that the persons apprehending pltf. acted on their own responsibility. The police constable & the police inspector were employed & paid by defts. :—*Held :* there was evidence on which the jury might properly find that the imprisonment was the act of some person acting within the scope of an authority conferred on him by defts., inasmuch as it was a reasonable inference that for the conduct of their business the co. had on the spot officers with authority to determine, without the delay attending on convening the directors, whether the servants of the co. should or should not on its behalf apprehend a person accused of this offence, & there was evidence to go to the jury that the superintendent of the line was an officer having such authority from the co.—GOFF *v.* GREAT NORTHERN RY. CO. (1861), 3 E. & E. 672; 30 L. J. Q. B. 148; 3 L. T. 850; 25 J. P. 326; 7 Jur. N. S. 286; 121 E. R. 594.

*Annotations :—***Expld. & Distd.** Poulton *v.* L. & S. W. Ry. (1867), L. R. 2 Q. B. 534. **Apprvd. & Apld.** Moore *v.* Met. Ry. (1872), L. R. 8 Q. B. 36. **Distd.** Walker *v.* Nottingham Board of Grdns. (1873), 28 L. T. 308. **Consd.** Kirkstall Brewery Co. *v.* Furness Ry. (1874), L. R. 9 Q. B. 468; Bank of New South Wales *v.* Owston (1879), 4 App. Cas. 270; Edwards *v.* Mid. Ry. (1880), 50 L. J. Q. B. 281. **Distd.** Knight *v.* North Metropolitan Tram. Co. (1898), 78 L. T. 227. **Consd.** Lambert *v.* G. E. Ry., [1909] 2 K. B. 776. **Refd.** Allen *v.* L. & S. W. Ry. (1870), 19 W. R. 127. **Mentd.** Seymour *v.* Greenwood (1861), 7 H. & N. 355.

776. —— ——.]—Pltf. took a ticket for himself as a passenger by defts.' railway, & by the same train a horse of pltf.'s was conveyed, in respect of which, by an arrangement of defts., nothing was payable. On reaching his destination pltf. gave up his ticket & was leaving the station with his horse, when he was taken into custody by the direction of the station-master for non-payment of the fare alleged to be due for the horse :—*Held :* the arrest was not within the powers conferred on railway cos. by 1845 Act, ss. 103, 104, & defts. were not liable for the act of the station-master.

v. MIDLAND RY. CO. (1867), L. R. 1 C. L. 130.—IR.

t. —— *Railway Regulation Act,* 1840, *s.* 16.]—Mere refusal to produce a railway ticket, even although persistent, does not justify an arrest under the above sect., but where the circumstances are such as would support a finding by the jury that there has been wilful obstruction or impeding of the servants of the ry. co., justification under that would be a good defence.—M'CLEAN *v.* GREAT SOUTHERN & WESTERN RY. CO. (1908), 42 I. L. T. 239.—IR.

u. Alleged theft of ticket.]—Pltf. came to a station of defts.' railway when a passenger train was shortly about to start; &, having entered the compartment of the ticket-office where the clerk was then issuing tickets, he approached the ticket-press & asked for a ticket, but did not get or pay for

POULTON *v.* LONDON & SOUTH WESTERN RY. Co. (1867), L. R. 2 Q. B. 534; 8 B. & S. 616; 36 L. J. Q. B. 294; 17 L. T. 11; 31 J. P. 677; 16 W. R. 309.

Annotations :—**Consd.** Allen *v.* L. & S. W. Ry. (1870), L. R. 6 Q. B. 65; Edwards *v.* L. & N. W. Ry. (1870), L. R. 5 C. P. 445. **Distd.** Moore *v.* Met. Ry. (1872), L. R. 8 Q. B. 36. **Consd.** Bolingbroke *v.* Swindon L. B. (1874), L. R. 9 C. P. 575. **Distd.** Mill *v.* Hawker (1874), L. R. 9 Exch. 309. **Consd.** Bank of New South Wales *v.* Owston (1879), 4 App. Cas. 270. **Folld.** Charleston *v.* London Tram. Co. (1888), 4 T. L. R. 629. **Distd.** Smith *v.* North Metropolitan Tram. Co. (1891), 55 J. P. 630; Giblan *v.* National Amalgamated Labourers' Union of Great Britain & Ireland, [1903] 2 K. B. 600. **Consd.** Campbell *v.* Paddington Corpn., [1911] 1 K. B. 869. **Folld.** Ormiston *v.* G. W. Ry., [1917] 1 K. B. 598. **Refd.** Mulkern *v.* Met. Ry. (1892), 8 T. L. R. 232; Radley *v.* L. C. C. (1913), 109 L. T. 162; Whittaker *v.* L. C. C., [1915] 2 K. B. 676. **Mentd.** Abrahams *v.* Deakin, [1891] 1 Q. B. 516; Smithies *v.* National Assocn. of Operative Plasterers (1908), 78 L. J. K. B. 259.

777. —— —— **.]**—Pltf. had taken a third-class return ticket from N. to M., & he was told by the station-master that, by the rules of the co., he might, if he liked, return from G. instead of from M. He availed himself of this privilege as far as E., three stations short of that from which his return ticket was taken. Here upon giving up the second half of his ticket, the collector demanded 2*d.* extra payment. Pltf. offered to pay under protest the sum demanded, if a receipt were given him. This was refused, & the ticket collector, acting under the advice of the station inspector, a railway official, caused pltf. to be taken to a police-station. Upon the facts the magistrate dismissed the charge, & in an action for false imprisonment pltf. was non-suited on the ground that no evidence of express authority from defts. to the inspector having been given, defts. were not responsible for his mistake of law in taking pltf. into custody :—*Held :* upon a rule for a new trial, there was evidence for a jury that the inspector was authorised by the co. to exercise a discretion, which, by mistake, might include such an act as this, & the co. might be liable for such a mistake.—MOORE *v.* METROPOLITAN RY. Co. (1872), L. R. 8 Q. B. 36; 42 L. J. Q. B. 23; 27 L. T. 579; 37 J. P. 438; 21 W. R. 145.

Annotations :—**Refd.** Kirkstall Brewery Co. *v.* Furness Ry. (1874), 43 L. J. Q. B. 142; Bank of New South Wales *v.* Owston (1879), 4 App. Cas. 270.

778. —— **Refusal of name & address.]**—MULKERN *v.* METROPOLITAN RY. Co. (1892), 8 T. L. R. 232.

Scope of servant's authority generally, *see* MALICIOUS PROSECUTION & PROCEDURE; MASTER & SERVANT.

See, also, Nos. 781, 783, *post.*

779. —— **Tender of suspected counterfeit coin—In payment of fare.]**—A passenger on a tramway tendered a half-sovereign to the conductor of the car in payment of the fare. The conductor, supposing the coin to be counterfeit, gave the passenger in charge to the police :—*Held :* the tramway co. were liable in an action against them by the passenger for false imprisonment.—FURLONG *v.* SOUTH LONDON TRAMWAYS Co. (1884), 48 J. P. 329; 1 Cab. & El. 316.

780. —— —— —— **Servant disobeying instructions.]**—(1) The power of detention given by Tramways Act, 1870 (c. 78), s. 52, must be construed as limited to any officer or servant appointed for that purpose.

(2) A tramway co. gave to their conductors printed instructions, that, except in cases of assault, conductors were not to give passengers into custody without the authority of an inspector or timekeeper. The conductor of a car in which pltf. was a passenger detained pltf. & gave her into custody on a charge of passing bad money :—*Held :* in an action for false imprisonment against the co., defts. were not liable.—CHARLESTON *v.* LONDON TRAMWAYS Co. (1888), 4 T. L. R. 629; 32 Sol. Jo. 557, C. A.

Annotation :—*As to* (2) **Folld.** Knight *v.* North Metropolitan Tram. Co. (1898), 78 L. T. 227.

781. —— —— —— **Whether ratified.]**—Pltf. was travelling in one of deft. co.'s trams, & tendered sixpence in payment of the fare, & received fourpence change. Shortly after, the conductor alleged it was counterfeit, &, on pltf. refusing to give another, gave him in charge. An inspector of the co., who happened to be passing, sent the conductor down to charge pltf., & went on with the tram. The next morning the magistrate dismissed the charge, the sixpence turning out to be a good one. Another inspector of the co. was present in ct. during the proceedings. In an action against the tramway co. for malicious prosecution & false imprisonment :—*Held :* there was no evidence to show that the conductor acted within the scope of his authority express or implied, or that deft. co. ratified his proceedings.—KNIGHT *v.* NORTH METROPOLITAN TRAMWAYS Co. (1898), 78 L. T. 227; 14 T. L. R. 286; 42 Sol. Jo. 345.

782. —— **Travelling in wrong class.]**—ORMISTON *v.* GREAT WESTERN RY. Co., No. 736, *ante.*

783. For breach of bye-law—Ratification of servant's act by carrier—What amounts to.]—The servant of a railway co. took pltf., a passenger upon the co.'s line, into custody, for an alleged breach of one of the co.'s bye-laws, & carried him before a magistrate. The attorney of the co. attended before the magistrate to conduct the charge :—*Held :* this was no evidence that the co. ratified the act of their servant.—EASTERN COUNTIES RY. Co. *v.* BROOM (1851), 6 Exch. 314; 6 Ry. & Can. Cas. 743; 20 L. J. Ex. 196; 16 L. T. O. S. 465; 15 Jur. 297; 155 E. R. 562, Ex. Ch.

Annotations :—**Consd.** Goff *v.* G. N. Ry. (1861), 3 E. & E. 672; Bank of New South Wales *v.* Owston (1879), 4 App. Cas. 270. **Refd.** Whitfield *v.* S. E. Ry. (1858), E. B. & E. 115; Woollen *v.* Wright (1862), 1 H. & C. 554; Williams *v.* Smith (1863), 14 C. B. N. S. 596; Walker *v.* S. E. Ry., Smith *v.* S. E. Ry. (1870), L. R. 5 C. P. 640.

See, also, Nos. 774, 781, *ante.*

Authority of railway police to arrest for felony generally.]—*See* POLICE; RAILWAYS & CANALS.

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one. A person outside the office called pltf. out as the train was about to leave the platform; &, as pltf. was leaving the ticket-office the ticket-clerk, erroneously believing that he had seen a ticket in pltf.'s hand, detained him, asked him for the ticket, & searched him, & subsequently charged pltf., in the presence of the station-master, with having stolen a ticket, whereupon pltf. was also searched by the station-master. In an action brought by pltf. against the ry. co. for false imprisonment :—*Held :* there was evidence of defts.' liability for the acts of the ticket-clerk & station-master, & the Judge was right in refusing to direct a verdict for defts. on the ground that there was no evidence that they committed or authorised the trespass proved.—VAN DEN EYNDE *v.* ULSTER RY. Co. (1871), I. R. 5 C. L. 328.—**IR.**

Part VI.—Carriage of Passengers' Luggage.

SECT. 1.—DUTY TO RECEIVE AND CARRY.

784. Extent of duty—Amount allowed—Husband & wife travelling together.]—(1) A carrier of passengers for hire is, at common law, only bound to carry their personal luggage; if a passenger has merchandise among his personal luggage, or so packed that the carrier has no notice that it is merchandise, he is not responsible for its loss. If the merchandise is carried openly, or so packed that its nature is obvious, & the carrier does not object to it, he will be liable.

(2) Under Railway Regulation Act, 1844 (c. 85), s. 6, a husband & wife travelling together are entitled to carry 1 cwt. of luggage.

(3) The luggage of a passenger by railway, though never delivered to any servant of the co., but kept by the passenger during the journey, is, nevertheless, in point of law, in the custody of the co., so as to render them responsible for its loss.—GREAT NORTHERN RY. CO. *v.* SHEPHERD (1852), 8 Exch. 30; 7 Ry. & Can. Cas. 310; 21 L. J. Ex. 286; 155 E. R. 1246; *sub nom.* SHEPHERD *v.* GREAT NORTHERN RY. CO., 19 L. T. O. S. 324.

Annotations:—As to (1) **Consd.** Cahill *v.* L. & N. W. Ry. (1863), 13 C. B. N. S. 818. **Refd.** Macrow *v.* G. W. Ry. (1871), L. R. 6 Q. B. 612; Gilbey *v.* G. N. Ry. (1920), 36 T. L. R. 562. *As to* (3) **Refd.** Dansey *v.* Richardson (1854), 3 E. & B. 144.

785. —— Refusal to label loose articles.]—A railway Act enacted, that, without extra charge, it should be lawful for every passenger travelling upon or along the railway to take with him his articles of clothing, not exceeding 40 lbs. in weight & four cubic feet in dimensions; & that the co. should in no case be in any way liable or responsible for the safe carriage or custody of, or for any loss of or injury to any articles, matters, or things whatsoever carried upon or along the railway with or accompanying the person of or belonging to any passenger, or delivered for the purpose of being carried, other than & except such passenger's articles of clothing not exceeding the weight & dimensions aforesaid. Pursuant to the powers conferred upon them by the Act, the co. made certain rules & regulations as to passengers' luggage; amongst others, one requiring it to be labelled, & declaring that they would not be responsible for the loss or detention of articles not labelled & properly addressed, & another declaring that all unclaimed property found on their premises or in their carriages should be deposited in a place called the lost property office, & restored to the owner on payment of a fee of 6*d.* for each article. In addition to these regulations, the co. gave private instructions to their servants, to the effect that no small articles, such as rugs, coats, umbrellas, sticks, caps, or small paper parcels, nor bundles of rugs, coats, & wrappers strapped together, are to be labelled or placed in the luggage-van: the passengers must take charge of such articles themselves, or send them as booked parcels. Pltf., a passenger upon the railway, required one of the co.'s porters to label & place in the luggage-van a package (within the stipulated weight and dimensions) consisting of articles of wearing apparel, & wrapped in a shawl fastened with a strap, & properly addressed. The porter refused to label the package, & insisted upon placing it in the carriage with pltf. Pltf. declined to allow this, unless it was to be at the co.'s risk. The package was left behind, & was afterwards taken to the lost property office, where it was detained, & 6*d.* demanded for its restoration:—*Held:* the co. were not justified in refusing to carry the package at their own risk, & were responsible for its detention.

Semble: if the co. had been justified in refusing to carry the parcel, they might have been justified in taking it to the lost property office.—MUNSTER *v.* SOUTH EASTERN RY. CO. (1858), 4 C. B. N. S. 676; 27 L. J. C. P. 308; 31 L. T. O. S. 200; 4 Jur. N. S. 738; 140 E. R. 1257.

Annotations:—**Refd.** Peek *v.* North Staffordshire Ry. (1858), E. B. & E. 958; Talley *v.* G. W. Ry. (1870), L. R. 6 C. P. 44; Sutcliffe *v.* G. W. Ry., [1910] 1 K. B. 478.

See, further, Part III., Sect. 1, *ante*.

Modification of common law contract.]—*See* Sect. 8, *post*.

SECT. 2.—WHAT IS "ORDINARY" OR "PERSONAL LUGGAGE."

See, now, Railways Act, 1921 (c. 55), s. 28 (1) (h).

786. General rule.]—(1) Those articles only which travellers usually carry with them as part of their luggage, come within the definition of ordinary or personal luggage, which a railway co. is bound to carry with a passenger free of charge.

(2) *Held:* a "spring horse" for a child to ride on, weighing 78 lbs. & measuring 44 inches in length, was not ordinary or personal luggage.—HUDSTON *v.* MIDLAND RY. CO. (1869), L. R. 4 Q. B. 366; 10 B. & S. 504; 38 L. J. Q. B. 213; 20 L. T. 526; 33 J. P. 453; 17 W. R. 705.

Annotations:—As to (1) **Consd.** Macrow *v.* G. W. Ry. (1871), L. R. 6 Q. B. 612. **Refd.** Jenkyns *v.* Southampton, etc., Steam Packet Co., [1949] 2 K. B. 135. *As to* (2) **Consd.** Macrow *v.* G. W. Ry. (1871), L. R. 6 Q. B. 612. **Refd.** Casswell *v.* Cheshire Lines Committee, [1907] 2 K. B. 499.

787. ——.]—(1) Whatever the passenger takes with him for his personal use or convenience, according to the habits & wants of the particular class to which he belongs, either with reference to the immediate necessities or the ultimate purpose of the journey, is to be considered as personal luggage.

(2) *Held:* a history of Ireland, & articles of household linen or furniture not ordinarily required on a journey, were not personal luggage, but a plum cake, a family Bible, & a Union Jack were articles of personal luggage.

(3) An objection that luggage lost was in excess of the weight allowed to be carried without extra charge, was too late if made after the loss of the

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PART VI. SECT. 1.

a. *Extent of duty — Luggage mixed with other goods.*]—Where ordinary luggage is mixed with other luggage, a ry. co. is justified in refusing to carry it, unless paid for, & it is not their duty to separate the one class of luggage from the other.—CAMPSIE *v.* GREAT SOUTHERN & WESTERN RY. CO. (1892), 26 I. L. T. Jo. 334.—IR.

b. —— *Duty to label luggage.*]—Pltf. handed her luggage to a porter in the deft. co.'s service, telling him her proposed destination, & he put it into the van without labelling it:—*Held:* it was the porter's duty to label the luggage before putting it into the van.—WALLIS *v.* GREAT NORTHERN RY. CO. (1898), 32 I. L. T. 116.—IR.

PART VI. SECT. 2.

786 i. *General rule.*]—Whatever a passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or the ultimate purpose of the journey, must be considered as personal luggage. But what is carried for the purposes of business, such as merchandise or the like, or for larger or ulterior purposes, such as articles of furniture, or household goods, would not come within the ordinary description of luggage, unless accepted as such by the carrier.—STRETTON *v.* UNION S.S. CO., LTD. (1881), 1 E. D. C. 315.—S. AF.

luggage.—MACROW *v.* GREAT WESTERN RY. Co. (1871), L. R. 6 Q. B. 612; 40 L. J. Q. B. 300; 24 L. T. 618; 35 J. P. 678; 19 W. R. 873.

Annotations :—As to (1) **Consd.** Jenkyns *v.* Southampton, etc., Steam Packet Co., [1919] 2 K. B. 135. **Refd.** G. W. Ry. *v.* Evans (1921), 38 T. L. R. 166. *As to* (2) **Foll.** Britten *v.* G. N. Ry., [1899] 1 Q. B. 243. *Generally*, **Refd.** Cohen *v.* G. E. Ry. (1876), 45 L. J. Q. B. 298; Dyke *v.* S. E. & C. Ry. (1901), 17 T. L. R. 651; Casswell *v.* Cheshire Lines Committee, [1907] 2 K. B. 499.

788. Not merchandise—Carrier not liable—Unless with notice.]—GREAT NORTHERN RY. Co. *v.* SHEPHERD, No. 784, *ante*.

789. —— —— —— Box marked "Glass" not sufficient notice.]—CAHILL *v.* LONDON & NORTH WESTERN RY. Co., No. 848, *post*.

790. —— —— —— Pleading.]—K., a passenger by railway, as to which notice had been given that no merchandise would be carried as luggage, but must be paid for at certain rates, took a box of merchandise with him as luggage. During the journey a guard demanded & took it to carry separately, but no extra rate was demanded or paid. It was stolen afterwards by some of the co.'s servants. K. sued the co., & setting forth these circumstances, alleged that the co. undertook to carry safely, & by reason of gross neglect it was lost. Plea, that the case contained merchandise, & the pltf. had not paid for it as such, though he knew the rule. Replication, that the box manifestly contained merchandise, & yet was received as luggage :—*Held :* (1) assuming the declaration showed a good cause of action in tort, the plea answered it; (2) the replication was bad for not averring that defts. had notice that the box contained merchandise.—BELFAST & BALLYMENA RY. Co. *v.* KEYS (1861), 9 H. L. Cas. 556; 4 L. T. 841; 8 Jur. N. S. 367; 9 W. R. 793; 11 E. R. 846, H. L.

Annotations :—As to (1) **Refd.** Phelps *v.* L. & N. W. Ry. (1865), 19 C. B. N. S. 321; Austin *v.* G. W. Ry. (1867), L. R. 2 Q. B. 442; Macrow *v.* G. W. Ry. (1871), L. R. 6 Q. B. 612; Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515. *Generally* **Mentd.** Rumsey *v.* N. E. Ry. (1863), 14 C. B. N. S. 641; Gabell *v.* S. E. Ry., Parker *v.* S. E. Ry. (1877), 36 L. T. 540.

791. Not artists' sketches.]—MYTTON *v.* MIDLAND RY. Co., No. 816, *post*.

792. Not title deeds—Nor bank notes—Carried by solicitor—For purposes of action.]—PHELPS *v.* LONDON & NORTH WESTERN RY. Co. (1865), 19 C. B. N. S. 321; 6 New Rep. 206; 34 L. J. C. P. 259; 12 L. T. 496; 11 Jur. N. S. 652; 13 W. R. 782; 144 E. R. 811.

Annotation :—**Consd.** Macrow *v.* G. W. Ry. (1871), L. R. 6 Q. B. 612.

793. Not child's spring horse.]—HUDSTON *v.* MIDLAND RY. Co., No. 786, *ante*.

794. Not articles for use in passenger's household—Nor history of Ireland—Includes plum cake, family Bible & Union Jack.]—MACROW *v.* GREAT WESTERN RY. Co., No. 787, *ante*.

795. Not invalid chair.]—*Held :* (1) an invalid chair is not personal luggage; (2) a condition exempting from liability for loss or damage was reasonable, there being an alternative rate at carriers' risk.—CUSACK *v.* LONDON & NORTH WESTERN RY. Co. (1891), 7 T. L. R. 452, D. C.

796. Not bicycle.]—BRITTEN *v.* GREAT NORTHERN RY. Co., [1899] 1 Q. B. 243; 68 L. J. Q. B. 75; 79 L. T. 640; 15 T. L. R. 71.

797. Not typewriter—Carried for business purposes.]—*Semble :* a typewriter carried for business purposes is not personal luggage.—HASTIE *v.* GREAT EASTERN RY. Co. (1911), 46 L. J. 507.

798. Includes officer's revolver, ear defenders, flash lamp & binoculars.]—JENKYNS *v.* SOUTHAMPTON, ETC., STEAM PACKET Co., No. 829, *post*.

799. Not theatrical clothing & properties.]—Pltf., a comedian, was a passenger by defts.' railway, one of the conditions on his ticket being that he was allowed 100 lbs. of luggage, which must not be merchandise or luggage carried for profit. Among his luggage, for which he was not charged, was a hamper containing theatrical clothing & properties. The co. had no notice as to the contents of the hamper, & it was lost on the journey. In an action against the co. for negligence :—*Held :* the theatrical clothing & properties were not personal luggage & pltf. took them with him as personal luggage at his own risk, & therefore the action failed.—GILBEY *v.* GREAT NORTHERN RY. Co. (1920), 36 T. L. R. 562.

800. Not violoncello—Carried for professional use.]—A violoncello carried by a violoncello player by train, for his professional & not personal use, does not come within the words "personal or ordinary luggage."—GREAT WESTERN RY. Co. *v.* EVANS (1921), 38 T. L. R. 166, D. C.

801. Commercial travellers' luggage—What included in.]—A commercial traveller in bicycles who travels with the component parts & with incomplete machines is entitled to the special terms given by railway cos. in respect of commercial travellers' luggage, & should not be charged the higher rates for bicycles.—GORMULLY & JEFFERY MANUFACTURING Co. *v.* MIDLAND RY. Co. (1897), 14 T. L. R. 84.

SECT. 3.—LIABILITY FOR LOSS OR DAMAGE.

SUB-SECT. 1.—IN GENERAL.

Commencement of liability.]—*See* Sect. 6, *post*.

Duration & termination of liability.]—*See* Sect. 7, *post*.

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788 i. *Not merchandise—No extra charge paid—Carrier not liable.]*—A railway co. is not liable for merchandise carried by a passenger as baggage, for which no extra charge is paid.—SHAW *v.* GRAND TRUNK RY. Co. (1858), 7 C. P. 493.—**CAN.**

794 i. *Not articles for use in passenger's household.]*—MCCAFFREY *v.* CANADIAN PACIFIC RY. Co. (1884), 1 Man. L. R. 350.—**CAN.**

794 ii. —— *Unless accepted by carrier.]*—CHAN DY CHEA *v.* ALBERTA RY. & IRRIGATION Co. (1905), 6 Terr. L. R. 175; 1 W. L. R. 371.—**CAN.**

c. —— *Not husband's & daughter's clothing—Carried by wife.]*—In the case of a married woman travelling with infant children to join her husband, the husband's clothing, household effects & the clothing of grown up daughters cannot be classed as personal baggage.—CALLAN *v.* CANADIAN NORTHERN RY. Co. (1909), 19 Man. L. R. 141; 11 W. L. R. 341.—**CAN.**

d. *Not canoes, skiffs nor rowboats.]*—Canoes, skiffs & rowboats are not such articles of necessity or personal convenience as are usually carried by passengers for their personal use so as to be baggage.—*Re* BAGGAGE CAR TRAFFIC RULES (1915), 33 W. L. R. 54.—**CAN.**

e. *Not sewing machine.]*—BRUTY *v.* GRAND TRUNK RY. Co. (1871), 32 U. C. R. 66.—**CAN.**

f. —— *Unless carried for business purposes.]*—A sewing machine carried on a railway by a lady who is not a professional seamstress is personal luggage.—SHANNON *v.* MIDLAND GREAT WESTERN RY. Co. (1898), 33 I. L. T. 32.—**IR.**

g. *Not workman's materials.]*—BRUTY *v.* GRAND TRUNK RY. Co. (1871), 32 U. C. R. 66.—**CAN.**

h. ——.]—CAMPSIE *v.* GREAT SOUTHERN & WESTERN RY. Co. (1892), 26 I. L. T. Jo. 334.—**IR.**

i. *Includes rifle, revolver, articles of personal adornment, & pencil case.]*—Pltf. had with him, as a passenger by defts.' railway, a box containing a rifle, revolver, articles of personal adornment, & a silver pencil case :—*Held :* the articles were ordinary personal luggage.—BRUTY *v.* GRAND TRUNK RY. Co. (1871), 32 U. C. R. 66.—**CAN.**

k. *Milliner's luggage—What included in.]*—Clothing to the value of £100, including a velvet robe costing £30, & jewellery to the value of £60, taken for the *bonâ fide* use of an assistant in a millinery business, travelling as a first-class passenger from England to the Cape, considered to be personal luggage, valuable documents cannot, however, be so considered.—STRETTON *v.* UNION S.S. Co., LTD. (1881), 1 E. D. C. 315.—**S. AF.**

PART VI. SECT. 3, SUB-SECT. 1.

1. *Duty of baggage transfer agent.]*—MURPHY *v.* DUNLOP (1910), 17 O. W. R. 244; 2 O. W. N. 178.—**CAN.**

Sect. 3.—Liability for loss or damage: Sub-sects. 1, 2 & 3. Sects. 4 & 5.]

802. Duty of cab proprietor — Negligence of driver.]—In *assumpsit* against a cab proprietor the declaration stated, that pltf. hired the vehicle, & that, in consideration of the premises, & that pltf., with his luggage, would become a passenger, & of certain reward, deft. promised pltf. to carry & convey him & his luggage safely & securely from, etc., to, etc., & alleged a loss of part of the luggage by the negligence of deft.'s servant:—*Held:* the declaration was sufficient to charge deft. for a breach of his implied duty to use an ordinary degree of care, the words "safely & securely" not necessarily importing a more extended liability.—ROSS *v.* HILL (1846), 2 C. B. 877; 3 Dow. & L. 788; 15 L. J. C. P. 182; 7 L. T. O. S. 112; 10 Jur. 435; 135 E. R. 1190.

Annotations:—**Distd.** Abrahams *v.* Bullock (1901), 85 L. T. 237. **Refd.** Talley *v.* G. W. Ry. (1870), L. R. 6 C. P. 44.

803. —— ——.]—The owner of a cab is under an implied contract to carry safely the luggage of a person who hires the cab, & is responsible if that luggage is lost by the negligence of the driver.—BROADHURST *v.* CUMMINGS (1850), 15 L. T. O. S. 349, N. P.

—— —— Whether driver agent of proprietor.]—*See* AGENCY, Vol. I., p. 288; MASTER & SERVANT.

804. —— —— Presumption.]—BARDSLEY *v.* MANCHESTER CARRIAGE CO., LTD. (1910), 45 L. Jo. 238, D. C.; *revsd.*, [1911] W. N. 18, C. A.

——.]—*See, generally,* STREET & AERIAL TRAFFIC. *See, generally,* Part III., Sect. 3, *ante.*

SUB-SECT. 2.—LUGGAGE KEPT IN PASSENGER'S CONTROL.

805. Luggage never delivered to servant of company—Company liable.]—GREAT NORTHERN RY. CO. *v.* SHEPHERD, No. 784, *ante.*

806. Luggage placed in compartment with passenger—Whether company liable.]—LE CONTEUR *v.* LONDON & SOUTH WESTERN RY. CO., No. 300, *ante.*

807. —— —— Negligence of passenger.] — When a passenger's luggage is at his request placed by a railway co.'s servants in the carriage in which he is travelling, the co.'s contract to carry it safely is subject to an implied condition that the passenger takes ordinary care of it, & if his negligence causes its loss the co. are not responsible.

A passenger whose portmanteau had been placed at his request in the carriage with him, got out at an intermediate station on his journey, & having negligently failed to find the same carriage again, finished his journey in a different one; the portmanteau having been robbed during the latter part of the journey by persons in the carriage without any negligence of the railway co.:—*Held:* the railway co. were not responsible for the loss.—TALLEY *v.* GREAT WESTERN RY. CO. (1870), L. R. 6 C. P. 44; *sub nom.* GREAT WESTERN RY. CO. *v.* TALLEY, 40 L. J. C. P. 9; 23 L. T. 413; 19 W. R. 154.

Annotations:—**Folld.** Richardson *v.* N. E. Ry. (1872), L. R. 7 C. P. 75; Bergheim *v.* G. E. Ry. (1878), 3 C. P. D. 221. **Cousd.** G. W. Ry. *v.* Bunch (1888), 13 App. Cas. 31. **Refd.** Macrow *v.* G. W. Ry. (1871), L. R. 6 Q. B. 612; Cohen *v.* S. E. Ry. (1876), 1 Ex. D. 217; L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

808. —— —— Company not insurers.] — A railway co. are not insurers in respect of luggage placed at a passenger's request in the same compartment in which he intends to travel; & they will not be liable to compensate him if luggage so placed is lost or stolen without any negligence on their part.—BERGHEIM *v.* GREAT EASTERN RY. CO. (1878), 3 C. P. D. 221; 47 L. J. Q. B. 318; 38 L. T. 160; 42 J. P. 324; 26 W. R. 301, C. A.

Annotation:—**Consd.** G. W. Ry. *v.* Bunch (1888), 13 App. Cas. 31.

809. —— —— Train starting before passenger able to enter.]—A passenger put his luggage into a carriage, but the train moved on before he was able to get into the carriage himself, & the luggage was lost:—*Held:* in the absence of evidence that the train started too quickly, or of any negligence on the part of the co. conducing to the loss, the passenger could not recover the value of the lost luggage.—HAYWOOD *v.* METROPOLITAN RY. CO. (1885), 1 T. L. R. 578, D. C.

See, also, No. 823, *post.*

810. Personal articles in exclusive control of passenger.]—Pltf. was a passenger on defts.' steamship upon the terms of a ticket which provided that defts. would not be responsible for loss or injury of or to the person or property, goods, or articles belonging to or carried by a passenger, whether occasioned by thefts or robberies by persons in defts.' employment or others, or any other acts, defaults, or negligence of defts.' agents or servants of any kind whatsoever. Pltf. at night placed his gold watch & chain & some money in the watch pocket over his berth in his cabin. The watch pocket was close to a fanlight opening on to a ventilating shaft through which a person on deck could reach the watch pocket. The watch pocket was placed there under the directions of defts.' marine superintendent when the vessel was being built. The watch, chain, & money were stolen one night by a person on deck reaching through the ventilating shaft. In an action to recover their value upon the grounds (1) of negligence on the part of defts. in placing the watch pocket where it was, & (2) of breach of

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m. *Liability of cab proprietor — Whether driver his agent.]*—A. engaged a cab to take him to a railway station: the cab-driver subsequently agreed with B. to take a portmanteau for him at the same time. On the way to the station, the portmanteau was lost:—*Held:* the cab-owner was not responsible for the loss of the portmanteau, in respect that the cabman, after his cab had been hired by A., had no power to bind his master in a second contract of hiring with the owner of the portmanteau. ORD *v.* GEMMELL & SON (1898), 1 F. (Ct. of Sess.) 17; 36 Sc. L. R. 17.—**SCOT.**

n. *Loss of luggage — Amount recoverable—Value of goods—Reasonable expenses.]*—Pltf., a passenger on defts.' railway, gave his baggage in charge of their servants. The baggage was lost, & pltf. sued for the value of the articles, & damage sustained in consequence of such loss, both in expense incurred thereby & loss of time:—*Held:* the damage must be confined to reasonable expenses of searching for the baggage, such as telegraphing & cab hire in going to defts.' office.—MORRISON *v.* EUROPEAN & NORTH AMERICAN RY. CO. (1874), 2 Pug. 295.—**CAN.**

o. —— *Luggage sent by different steamer from that named in ticket—Steamer not calling at port to which luggage checked—Luggage lost in transshipment—Steamship company's liability limited to amount under contract.]*—LUMSDEN *v.* PACIFIC S. S. CO. (1920), 3 W. W. R. 464; 54 D. L. R. 226.—**CAN.**

p. *Misdelivery.]* — MACINTOSH *v.* CAPE BRETON RY. CO. (1908), 7 E. L. R. 142.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

805 i. *Luggage never delivered to servant of company—Company liable.]*—Pltf. took a travelling bag with him into a first-class car, not having offered it to be checked, nor having been asked so to do or to give it in charge to any of defts.' servants. At a station, where the train stopped for refreshments, he left the bag on his seat in the car to retain the place, & on his return from the refreshment room it was gone:—*Held:* defts. were liable for the loss.—GAMBLE *v.* GREAT WESTERN RY. CO. (1865), 24 U. C. R. 407.—**CAN.**

805 ii. —— ——.]—GREAT NORTHERN RY. CO. *v.* FAINER (1903), 5 E. L. R. 310.—**CAN.**

805 iii. —— —— *In absence of contract relieving carrier from liability.]*—GAMBLE *v.* GREAT WESTERN RY. CO. (1865), 3 E. & A. 163.—**CAN.**

810 i. *Personal articles in exclusive control of passenger.]*—Pltf. occupied a sleeping berth on one of defts.' cars.

warranty in not providing a safe cabin for the carriage of pltf.'s property :—*Held :* (1) if defts. were negligent, they were protected by the terms of the ticket ; (2) with regard to the warranty as to articles which remained in the personal control of the passenger such as his watch, chain, & money, the liability of a carrier was the same as in the case of a passenger, namely, an obligation to exercise reasonable care ; (3) this obligation did not become more extensive at night by reason of the passenger placing the articles in the receptacle intended for them ; (4) if the obligation did become more extensive, Merchant Shipping Act, 1894 (c. 60), s. 502 (ii.), protected defts., the value of the articles not having been declared & the loss not having occurred through the personal fault of defts.—SMITTON *v.* ORIENT STEAM NAVIGATION CO., LTD. (1907), 96 L. T. 848 ; 23 T. L. R. 359 ; 51 Sol. Jo. 343 ; 10 Asp. M. L. C. 459 ; 12 Com. Cas. 270.

Annotation :—As to (4) **Refd.** Asiatic Petroleum Co. *v.* Lennard's Carrying Co., [1914] 1 K. B. 419.

See, further, Part III., Sect. 3, sub-sect. 1, B., sub-sect. 2, G., *ante*.

Commencement of carrier's liability.]—*See* Sect. 6, *post*.

SUB-SECT. 3.—LUGGAGE SENT WITH PASSENGER'S SERVANT.

811. Liability to servant—Ticket taken by master.]—(1) A servant travelling with his master on a railway, may have an action in his own name against the railway co. for the loss of his luggage, although the master took & paid for his ticket. The liability of the railway co. in such a case is independent of the contract.

(2) A declaration stated that deft. received pltf. & his luggage to be carried " for reward to defts. in that behalf," & it was proved that pltf.'s master paid his fare & took the ticket :—*Held :* it was immaterial by whom the reward was to be paid, & the allegation in the declaration was proved.

Semble : if the allegation as to reward meant that it was to be paid by pltf., & if that allegation had been material, the payment for & on behalf of pltf. by his master would have been a payment by him.—MARSHALL *v.* YORK, NEWCASTLE & BERWICK RY. CO. (1851), 11 C. B. 655 ; 21 L. J. C. P. 34 ; 18 L. T. O. S. 94 ; 16 Jur. 124 ; 138 E. R. 632.

Annotations :—As to (1) **Apprvd.** Austin *v.* G. W. Ry. (1867), L. R. 2 Q. B. 442. **Consd.** Shrimpton *v.* Hertfordshire County Council (1910), 74 J. P. 305. **Refd.** R. *v.* Robson (1861), 9 Cox, C. C. 29 ; Hayn, Roman *v.* Culliford & Clark (1879), 49 L. T. 536 ; Foulkes *v.* Met. Dist. Ry. (1880), 5 C. P. D. 157 ; Taylor *v.* M., S. & L. Ry., [1895] 1 Q. B. 134 ; Meux *v.* G. E. Ry., [1895] 2 Q. B. 387 ; East Indian Ry. *v.* Kalidas Mukerjee (1901), 84 L. T. 210 ; Harris *v.* Perry, [1903] 2 K. B. 219 ; Lyles *v.* Southend-on-Sea Corpn., [1905] 2 K. B. 1. *As to* (2) **Consd.** Tattan *v.* G. W. Ry. (1860), 2 E. & E. 844 ; Foulkes *v.* Met. Dist. Ry. (1879), 4 C. P. D. 267. **Refd.** Dalyell *v.* Tyrer (1858), E. B. & E. 899.

812. Liability to master—Ticket taken by servant—Master travelling later.]—Pltf. gave his portmanteau to his servant to take with him by defts.' railway from N. to L., he intending himself to travel by a later train. The servant took, & paid defts. for, a ticket from N. to L., & delivered to defts. pltf.'s portmanteau & his own luggage as his, the servant's, ordinary luggage, each passenger being entitled to take with him his ordinary luggage, not exceeding a certain weight, free of charge, & defts. received the portmanteau as such ordinary luggage. Pltf. travelled as a passenger from N. to L. by a later train on defts.' line without any luggage. The portmanteau having been lost during the journey by defts.' default :—*Held :* pltf. could not maintain an action against defts. for the loss.—BECHER *v.* GREAT EASTERN RY. CO. (1870), L. R. 5 Q. B. 241 ; 39 L. J. Q. B. 122 ; 22 L. T. 299 ; 34 J. P. 693 ; *sub nom.* BEEHER *v.* GREAT EASTERN RY. CO., 18 W. R. 627.

813. —— Ticket taken by servant—Misfeasance.]—A servant of pltf. took a ticket for a journey on defts.' railway, & a portmanteau of his was accepted by defts. as his personal luggage. The portmanteau contained his livery, which was the property of pltf. Through an act of misfeasance of a porter in the employment of defts. the livery was destroyed. In an action to recover the value of the goods destroyed :—*Held :* defts. were liable to pltf. for the tortious act of their servant in injuring pltf.'s property.—MEUX *v.* GREAT EASTERN RY. CO., [1895] 2 Q. B. 387 ; 64 L. J. Q. B. 657 ; 73 L. T. 247 ; 59 J. P. 662 ; 43 W. R. 680 ; 11 T. L. R. 517 ; 39 Sol. Jo. 654 ; 14 R. 620, C. A.

*Annotations :—***Consd.** Wilson Sons *v.* Barry Ry. (1916), 116 L. T. 71. **Refd.** White *v.* Steadman, [1913] 3 K. B. 340. **Mentd.** The Winkfield, [1902] P. 42 ; Harris *v.* Perry (1903), 72 L. J. K. B. 725.

See, further, Part III., Sect. 3, sub-sect. 2, G., *ante*.

SECT. 4.—LIABILITY FOR DELAY.

In delivering up luggage at cloak room.]—*See* cases in Sect. 9, *post*, *&, generally*, Part III., Sect. 4, *ante*.

SECT. 5.—CARRIAGE OVER SEVERAL SYSTEMS.

814. Liability of issuing company—No proof as to time & place of loss.]—MIDLAND RY. CO. *v.* BROMLEY, No. 835, *post*.

815. —— ——.]—FLOWERS *v.* SOUTH EASTERN RY. CO., No. 327, *ante*.

816. ——.]—(1) Where, by a traffic arrangement between two railway cos., passengers are booked through, the contract is one entire contract between the passenger & the co. issuing the ticket.

A traffic arrangement for booking passengers through, existed between the S. Ry. Co. & the M. Co. The S. Co. issued a through ticket to pltf. from N. to B., the words " *via* M. Co. from G." being printed on the ticket. Under the S. Co.'s Act, a passenger's ordinary luggage is conveyed at his own risk. The fares paid are divided between the cos. according to the mileage :—*Held :* pltf. had no cause of action against the M. Co., the contract entered into by him being with the S. Co. for the whole distance.

Before going to sleep he undressed himself & put his pocket-book, containing his money, in his trousers pocket, rolling up his trousers & putting his braces around them, & then placed them under his pillow next the wall. When he was called before arriving at his place of destination, he discovered that his pocket-book & money were gone. No negligence in defts. was shown :—*Held :* no liability attached to defts.—STEARN *v.* PULLMAN CAR CO. (1885), 8 O. R. 171.—**CAN.**

PART VI. SECT. 5.

816 i. *Liability of issuing company.*] —Pltf. purchased a ticket from defts. at D. for passage from D. to W., paying the fare for the whole distance. The ticket had coupons attached, perforated so that they could be detached & given up, each one being for the distance to be traversed over a different railway or omnibus route on the way. Pltf.'s trunk was checked to B., &, when near the place, a person took his check for it, with the coupon for the omnibus route to the station of E. Ry., by which the pltf. was to proceed, & gave him an omnibus check across the city of B. in return. The conductor of defts.' train, being asked by pltf., told him it was right to give his check to this person. The trunk having been lost owing to the neglect of the omnibus agent :—*Held :* defts. were liable, for the contract was with them, to carry pltf. & his luggage the entire distance.—SMITH *v.* GRAND TRUNK RY. CO. (1874), 36 U. C. R. 547.—**CAN.**

Sect. 5.—Carriage over several systems. Sect. 6.]

(2) Pencil sketches of an artist, placed in his portmanteau, do not form part of his ordinary luggage, so as to entitle them to be conveyed free of charge.—MYTTON *v.* MIDLAND RY. CO. (1859), 4 H. & N. 615; 28 L. J. Ex. 385; 33 L. T. O. S. 287; 24 J. P. 42; 7 W. R. 737; 157 E. R. 982.

Annotations:—As to (1) **Consd.** Coxon *v.* G. W. Ry. (1860), 5 H. & N. 274. **Dbtd.** Hooper *v.* L. & N. W. Ry. (1880), 50 L. J. Q. B. 103.

817. —— Application of Railway & Canal Traffic Act, 1854 (c. 31), s. 7.]—ZUNZ *v.* SOUTH EASTERN RY. CO., No. 367. *ante.*

818. —— Special condition—Loss "arising off their lines"—No proof of delivery to second company.]—Pltf. took a ticket of the M. Ry. Co. from A. to C. On the ticket was stated that it was issued subject to the conditions in the co.'s time-tables, one being that the co. did not hold themselves responsible for any delay, detention, or other loss or injury arising off their lines. The journey from A. to C. is on the M. line to B., & thence by the L. line. At B. the station belongs to the L. Co. & all the clerks & porters are hired & paid by that co.; but by agreement, sanctioned by Act of Parliament, the M. Co. have the use of the station & the services of the clerks & porters on payment of an annual sum. Pltf. delivered his luggage to the M. Co. at A., & when the train by which he travelled arrived at B. a porter took pltf.'s luggage from the train & put it on a truck, &, after about twenty minutes wheeled the truck across to the platform from which the L. train was about to start for C. Pltf. saw the luggage on the platform, & this was the last that was seen of it. On the above facts, the ct. having power to draw inferences of fact:—*Held:* that, assuming the pltf. to be bound by the condition, the meaning of "off the co.'s lines," when applied to luggage, must be taken to be, not off the lines of railway merely, but out of the custody of the co. Pltf.'s luggage was shown to have been delivered to defts., & it lay on them to show that they had delivered it to the L. Co. which they had not shown; pltf. was therefore entitled to recover against defts. for the loss.—KENT *v.* MIDLAND RY. CO. (1874), L. R. 10 Q. B. 1; 44 L. J. Q. B. 18; 31 L. T. 430; 38 J. P. 823; 23 W. R. 25.

819. Liability of non-issuing company—Proof of delivery to such company.]—A passenger took a ticket at a G. W. Ry. station for a journey over the lines of that & deft. co. At the junction of the two lines pltf.'s portmanteau was transferred to the luggage van of defts.' train, but could not be found at the journey's end. It was recovered three months later, the contents being then spoiled:—*Held:* defts. were liable for the damage done, apart from any question of contract, because, having accepted pltf. as a passenger by one of their trains, the duty was cast upon them of taking care of his portmanteau.—HOOPER *v.* LONDON & NORTH WESTERN RY. (1880), 50 L. J. Q. B. 103; 43 L. T. 570; 45 J. P. 223; 29 W. R. 241, D. C.

Annotation:—Distd. Baldwin *v.* L., C. & D. Ry. (1882), 9 Q. B. D. 582.

See, generally, Part III., Sect. 5, *ante.*

SECT. 6.—COMMENCEMENT OF LIABILITY.

820. Luggage received by porter—& put on platform—Nothing said by passenger or porter as to destination.]—Pltf., a commercial traveller, at 12.20 p.m. arrived at defts.' booking office, at V. Station, in a cab with a friend & a portmanteau. The next H. train was timed to leave at 12.45. When pltf. arrived, a porter took pltf.'s portmanteau & put it on the platform not far from the rack which contained the luggage labels, but nothing was said either by pltf. or the porter. The porter then left, & pltf., after standing a short time with his friend by the portmanteau, & failing to obtain the services of another porter, himself took an H. label from the rack, & put it on his portmanteau. After again trying to get a porter, but without success, pltf. left the portmanteau where it had originally been placed by the porter, & went with his friend to the refreshment room, where he remained ten or fifteen minutes. During this time pltf.'s friend went to the booking office & took a ticket for him to H. On returning to the platform the portmanteau was not to be found. Pltf. went by the 12.45 train to H., thinking the portmanteau had gone by another train, but it was never seen again. Pltf. was well acquainted with V. Station, & was aware that there was a left luggage office there. There was posted up within two yards of the place where the portmanteau was left a notice stating that the co. would not be responsible for articles left at the station unless deposited in the cloakroom & a fee of 2*d.* paid on each article:—*Held:* in the circumstances pltf.'s portmanteau was never in the custody of defts. as carriers.—AGRELL *v.* LONDON & NORTH WESTERN RY. CO. (1876), 34 L. T. 134, n., Ex. Ch.

Annotations:—Distd. Leach *v.* S. E. Ry. (1876), 34 L. T. 134; Lovell *v.* L. C. & D. Ry. (1876), 45 L. J. Q. B. 476.

821. —— —— Porter told destination.]—Pltf. on his arrival at defts.' station handed his bag to a porter, at the same time telling him he was going to W. The porter took the luggage to the platform & was about to have it labelled, when pltf. told him he would take it with him in the carriage. The porter then left suddenly, leaving the bag on the platform, & pltf. went to get a ticket. On his return the bag was found to be missing:—*Held:* (1) there was evidence to go to the jury that the bag was entrusted to the servant of defts. to go to W. as passenger's luggage; (2) there was no evidence of the bailment having been determined.—LEACH *v.* SOUTH EASTERN RY. CO. (1876), 34 L. T. 134; 40 J. P. 485, D. C.

Annotation:—As to (1) **Consd.** Bunch *v.* G. W. Ry. (1886), 17 Q. B. D. 215.

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q. —— *Special condition—Notice of.*]—Pltf.'s luggage was lost on the railway at a place beyond defts.' line, to which pltf. had taken a through ticket, on the face of which, in minute type, was a reference to the regulations & conditions of defts. as binding the passenger; & by such conditions defts. provided that they were not to be liable for loss occurring beyond their own railway. Pltf. did not read the printed matter, & could not have learned the condition without special enquiry:—*Held:* (1) defts. failed to do what was reasonably sufficient to give pltf. notice of the restriction of liability; (2) pltf. could recover from them the value of the lost luggage.—RYAN *v.* GREAT SOUTHERN & WESTERN RY. CO. (1898), 32 I. L. T. 108.—IR.

r. *Carriage through several countries—Law applicable to.*]—Where there is a contract for carriage through several countries, with distinct laws, the law of the country where the carrier has his principal office prevails.—BROWN *v.* CANADIAN PACIFIC RY. CO. (1887), 4 Man. L. R. 396.—CAN.

PART VI. SECT. 6.

s. *Luggage received by porter—Porter told destination—Luggage not addressed.*]—A party about to travel by a railway having obtained a ticket, his luggage was taken possession of by a railway porter, who was informed of the destination, in order to be placed upon the train. There was no address upon the luggage, &, on a change of carriages which took place in the course of the journey, the passenger did not inquire for his luggage. The luggage having been lost:—*Held:* by receiving it, the ry. co. undertook to convey it to the destination; having failed to do so, they were liable for its value.—CAMPBELL *v.* CALEDONIAN RY. CO. (1852), 14 Dunl. (Ct. of Sess.) 806.—SCOT.

822. —— Passenger going to booking office—Notices excluding liability for luggage left with porter.]—Pltf., an intending passenger by defts.' railway, reached the departure station about half an hour too early, in consequence of a mistake as to the time. Her luggage was taken from the cab by a porter, who directed her to get a ticket while he labelled the luggage, telling her that the booking office would be open in a few minutes. After pltf. had waited two minutes the office was opened, & pltf. took her ticket; but when she got on to the platform she discovered that one of the articles taken from the cab by the porter was missing. Defts. posted notices in their stations to say that their servants are strictly forbidden to take charge of any articles; & that any article which a passenger wishes to leave at a station should be deposited in the cloak-room; & that they will not be responsible for any article left on their premises in any other manner:—*Held:* (1) such notice did not apply to this case, where the luggage was taken charge of by the porter at the commencement of pltf.'s journey, and was not given to him to be left on the station for the convenience of pltf.; (2) the luggage was received by the porter within the scope of his authority, & delivery to him was delivery to defts. as carriers, & they were liable for the loss.—LOVELL *v.* LONDON, CHATHAM & DOVER RY. CO. (1876), 45 L. J. Q. B. 476; 34 L. T. 127; 40 J. P. 471; 24 W. R. 394.

Annotations:—As to (2) **Refd.** Bunch *v.* G. W. Ry. (1885), 2 T. L. R. 62; Soanes *v.* L. & S. W. Ry. (1919), 63 Sol. Jo. 318.

823. —— ——.]—Resp. arrived at P. Station of applts.' railway at 4.20 p.m. with a bag & two other articles of luggage, in order to travel by the 5 p.m. train. A porter labelled the two articles & took all the luggage to the platform, the train not then being at the platform. Resp. told the porter she wished the bag to be put into a carriage with her, & asked if it would be safe to leave it with him. He replied that it would be quite safe & that he would take care of the luggage & put it into the train. She then went to meet her husband & get her ticket. Ten minutes after she had left the luggage she & her husband returned together to the platform, & found that the two labelled articles had been put into the van of the train, but that the porter & the bag had disappeared:—*Held:* there was evidence (1) that the bag was in the custody of the railway co. for the purposes of present & not of future transit from the time when it was delivered to their porter until its disappearance, & (2) that its loss was due to their negligence.

(3) *Semble:* a railway co. accepting passengers' luggage to be carried in a carriage with the passenger, enter into a contract as common carriers, subject to this modification, that in respect of his interference with their exclusive control of his luggage, the co. are not liable for any loss or injury occurring during its transit, to which the act or default of the passenger has been contributory.—GREAT WESTERN RY. CO. *v.* BUNCH (1888), 13 App. Cas. 31; 57 L. J. Q. B. 361; 58 L. T. 128; 52 J. P. 147; 36 W. R. 785; 4 T. L. R. 356, H. L.; *affg.* S. C. *sub nom.* BUNCH *v.* GREAT WESTERN RY. CO. (1886), 17 Q. B. D. 215, C. A.

Annotations:—As to (3) **Consd.** Steers *v.* Mid. Ry. (1920), 36 T. L. R. 703. **Refd.** Soanes *v.* L. & S. W. Ry. (1918), 35 T. L. R. 101; Jenkyns *v.* Southampton Steam Packet Co., [1919] 2 K. B. 135. *Generally* **Refd.** Welch *v.* L. & N. W. Ry. (1885), 34 W. R. 166. **Mentd.** Nicholls *v.* N. E. Ry. (1888), 59 L. T. 137; Uitzen *v.* Nicols (1893), 38 Sol. Jo. 26.

824. —— Whether within reasonable time before train starting—Passenger temporarily leaving station.]—(1) A passenger having missed his intended train left his luggage on the platform in charge of a porter, saying that he would travel by the next train. This train was timed not to start for an hour. He left the station & went into the billiard-room of an hotel for that interval. His luggage was afterwards missed:—*Held:* luggage so left was not taken charge of by the porter on behalf of the co. for carriage, but was watched by the porter on his own responsibility.

(2) *Semble:* the co. would have been liable if pltf. had only gone to some other part of the same station for a purpose strictly necessary to travelling, such as to take a ticket, & for a brief period.—WELCH *v.* LONDON & NORTH WESTERN RY. CO. (1884), 34 W. R. 166; 2 T. L. R. 64, D. C.

825. —— ——.]—GREAT WESTERN RY. CO. *v.* BUNCH, No. 823, *ante*.

826. —— —— Passenger going to get meal—In refreshment room.]—Pltf., intending to travel by defts.' railway, went to the station, & as he had to wait for a train he went to have some tea at a refreshment room & entrusted his luggage to a porter in uniform, who appeared to be employed at that station, but who in fact was employed by defts. at another station, & at the time in question was off duty. The porter passed through the barrier to the platform in the ordinary way as any authorised servant does, & while the luggage was in his charge some of it disappeared & must have been stolen:—*Held:* (1) there was evidence for the jury that defts. had held out the porter as a person authorised to receive the luggage, & they were liable as common carriers; (2) the proper inference of fact to be drawn by the ct. under Ord. 58, r. 4, was that defts. held out the porter as their servant with authority to accept & take charge of the luggage.—SOANES *v.* LONDON & SOUTH WESTERN RY. CO. (1919), 88 L. J. K. B. 524; 120 L. T. 598; 35 T. L. R. 267; 63 Sol. Jo. 318, C. A.

827. Luggage put in compartment by inspector—Whether within reasonable time before train starting—Passenger going to get meal—Outside station.]—Pltf. booked two berths for himself & his wife in a sleeping car on defts.' railway, &, having arrived at the departure station more than an hour before the train was due to start, allowed one of defts.' inspectors to have the luggage put in the sleeping compartments on the inspector's assuring him that it would be perfectly safe. Pltf. then left the station to have a meal & on his return found that the luggage had been stolen:—*Held:* defts. had taken control of the luggage down to the time of its loss, & pltf. was entitled to recover its value.—STEERS *v.* MIDLAND RY. CO. (1920), 36 T. L. R. 703.

828. Luggage given to porter in fact employed at another station.]—SOANES *v.* LONDON & SOUTH WESTERN RY. CO., No. 826, *ante*.

829. Luggage given to man not in defendants' employment—But allowed to be put on defendants' ship.]—Pltf., an Army officer, was a passenger on a steamer of defts., who were common carriers, & he engaged a man who was not in defts.' employment to put his valise on board. Defts.' servants allowed this man to put it in the usual place with the other luggage. The valise contained a revolver,

t. *Luggage left in compartment by passenger—Train not due to start.*]—Pltf., an intending passenger by defts.' railway, a quarter of an hour before the train started entered a passenger car standing at the station at the original starting point, left his valise on a vacant seat, & went out; & on his return shortly afterwards, his valise was gone. It was not shown that at the time he left the valise any one was in charge of the train, or that there was any other passenger in the car:—*Held:* there was no sufficient delivery of the valise to defts. to render them liable.—KERR *v.* GRAND TRUNK RY. CO. (1874), 24 C. P. 209.—CAN.

Sect. 6.—Commencement of liability. Sects. 7 & 8: Sub-sects. 1, 2 & 3.]

ear defenders, a flash lamp & a pair of binoculars. There were no conditions with regard to luggage. During the passage pltf.'s valise disappeared. Pltf. sued the co., who contended that the valise had never been entrusted to them, & that the revolver & binoculars were not personal luggage :—*Held :* (1) there was evidence that the valise was entrusted to defts. ; (2) in the circumstances the revolver, ear defenders, flash lamp & binoculars were personal luggage.—JENKYNS *v.* SOUTHAMPTON, ETC., STEAM PACKET CO., [1919] 2 K. B. 135 ; 88 L. J. K. B. 965 ; 121 L. T. 186 ; 35 T. L. R. 435 ; 63 Sol. Jo. 477 ; 24 Com. Cas. 208, C. A.

Annotation :—As to (2) **Refd.** Gilbey *v.* G. N. Ry. (1920), 36 T. L. R. 562.

See, further, cases in Sect. 3, sub-sects. 2 & 3, *ante,* &, *generally,* Part III., Sect. 6, *ante.*

SECT. 7.—DURATION AND TERMINATION OF LIABILITY.

830. Porter employed to put luggage on cab.]—Where a railway co. employ porters at their stations to convey passengers' luggage from the railway carriages to the carriages or hired vehicles of the passengers, the liability of the co. as carriers continues until the porters have discharged their duty.

In case against a railway co. for the loss of a package, the first count of the declaration stated that defts. were the owners of a railway for the carriage of passengers & their luggage, etc., from A. to B., for hire ; that defts. were common carriers for hire on the railway ; that the wife of pltf., at their request, became a passenger on the railway, to be carried from A. to B., with her luggage, consisting of a dressing-case, etc., on the railway from A. to B., & there safely & securely delivered for pltf., etc. : the breach alleged was, that defts. did not use due & proper care in the carriage of the dressing-case from A. to B., but by their carelessness, negligence, & improper conduct, the dressing-case was lost. Pltf.'s wife had become a passenger by a first-class carriage, to be conveyed from A. to B. ; the dressing-case was placed in the carriage, under the seat ; on the arrival of the train at B., the porters of the co. took upon themselves the duty of carrying the lady's luggage from the railway carriage to her carriage ; on her arrival home, the dressing-case was missing :—*Held :* (1) the duty of defts. as common carriers continued until the luggage was placed in the hackney-carriage ; (2) the evidence entitled pltf. to a verdict upon the first count ; (3) it was not necessary to prove negligence, although it was alleged.—RICHARDS *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1849), 7 C. B. 839 ; 6 Ry. & Can. Cas. 49 ; 18 L. J. C. P. 251 ; 13 L. T. O. S. 139 ; 13 Jur. 986 ; 137 E. R. 332.

Annotations :—As to (1) **Folld.** Butcher *v.* L. & S. W. Ry. (1855), 16 C. B. 13. **Distd.** Stewart *v.* L. & N. W. Ry. (1864), 3 H. & C. 135. **Consd.** Patscheider *v.* G. W. Ry. (1878), 3 Ex. D. 153. **Apprvd.** G. W. Ry. *v.* Bunch (1888), 13 App. Cas. 31. **Refd.** Fearnley *v.* G. N. Ry. (1852), 16 J. P. 822 ; Mid. Ry. *v.* Bromley (1856), 17 C. B. 372 ; G. W. Ry. *v.* Talley (1870), 40 L. J. C. P. 9 ; Cohen *v.* S. E. Ry. (1876), 1 Ex. D. 217 ; Bergheim *v.* G. E. Ry. (1878), 3 C. P. D. 221. *Generally* **Refd.** Ultzen *v.* Nicols (1893), 42 W. R. 58. **Mentd.** Cooper *v.* L. & S. W. Ry. (1858), 4 C. B. N. S. 738 ; Munster *v.* S. E. Ry. (1858), 27 L. J. C. P. 308 ; Gill *v.* M. S. & L. Ry. (1873), 28 L. T. 587.

831. —— Delivery a question of fact.]—Pltf., a passenger by railway, brought with him into the carriage a carpet-bag containing a large sum of money, & kept it in his own possession until the arrival of the train at L. On alighting from the carriage with the bag in his hand, pltf. permitted a porter of the co. to take it from him for the purpose of securing for him a cab. The porter, having found a cab, within the station, placed the carpet-bag on the foot-board thereof, & then returned to the platform to get some other luggage belonging to pltf., when the cab disappeared, & the carpet-bag & its contents were lost :—*Held :* (1) this was a loss by the negligence of the co., for which they were responsible in damages ; (2) whether pltf. had accepted a delivery of the bag on the platform or elsewhere, in lieu of such delivery to a cab, was a question for a jury to determine.—BUTCHER *v.* LONDON & SOUTH WESTERN RY. CO. (1855), 16 C. B. 13 ; 24 L. J. C. P. 137 ; 1 Jur. N. S. 427 ; 3 W. R. 409 ; 3 C. L. R. 805 ; 139 E. R. 658.

Annotations :—As to (1) **Consd.** Bergheim *v.* G. E. Ry. (1878), 3 C. P. D. 221. **Apprvd.** G. W. Ry. *v.* Bunch (1888), 13 App. Cas. 31. **Refd.** Talley *v.* G. W. Ry. (1870), L. R. 6 C. P. 44. *Generally* **Refd.** Mid. Ry. *v.* Bromley (1856), 26 L. T. O. S. 272. **Mentd.** Cooper *v.* L. & S. W. Ry. (1858), 4 C. B. N. S. 738.

832. Luggage put on platform—Porter putting part in private room—At passenger's request—While waiting for connection.]—A. applied to a railway co. to take him to B., & was told that he could not be taken at once to B. by the train that was about to start, because it would pass through B. without stopping, but that he could be taken to D., & that if he waited at D. four hours, a train would then start for B. by which he might go. A. made up his mind to do this, & went to D. by the train about to start. When he got to D. his luggage, which consisted of, among other things, a case, containing jewels of value, was taken out of the luggage van & placed on the platform, & he then told one of the porters that he was going to B. by the train which would leave D. in four hours from that time, & wished to leave his luggage & particularly the jewel case, which was of considerable value, in a place of safety there. The porter put away the luggage except the jewel case in a waiting room, & the jewel case he took to a room marked "Private," in which was a clerk writing, & then in the presence of pltf. placed the jewel case in the room, &, after saying something to the clerk, told pltf. that the case would be safe, & that if the clerk left he would lock the door. Some time before the next train started, the luggage of pltf. was put on the platform, & the jewel case was stolen :—*Held :* the co. were not liable for it as common carriers.—FEARNLEY *v.* GREAT NORTHERN RY. CO. (1852), 16 J. P. 822.

833. —— At usual place of delivery—Reasonable time for passenger to take delivery.]—(1) It is the duty of a railway co. with regard to the luggage of a passenger, which travels by the same train with him but not under his control, when it has reached its destination, to have it ready for delivery upon the platform at the usual place of delivery

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PART VI. SECT. 7.

u. *Luggage put on platform—Porter placing it in baggage room—At passenger's request—Passenger leaving station.*]—Pltf. was a passenger from P. to S., with two trunks, checked. At S. the trunks were put on the platform, & he assisted defts.' servants to carry them into the baggage room, & went to an hotel. Later he sent for the trunks, but one of them had disappeared & the evidence showed that it had been stolen :—*Held :* defts. were not responsible ; their duty as common carriers ended when the trunk had been placed on the platform, & pltf. had had a reasonable time to remove it, as he clearly had here.—PENTON *v.* GRAND TRUNK RY. CO. (1869), 28 U. C. R. 367.—CAN.

833 i. —— *At usual place of delivery—Reasonable time for passenger to take delivery.*]—Where a person on arriving at his destination deliberately refrained at the time from applying for his luggage, & on sending for it on the following day, one of three trunks could not be found. In an action to

until the owner, in the exercise of due diligence, can receive it; & the liability of the co. does not cease until a reasonable time has been allowed to the owner to do so; (2) it is the owner's duty to call for & remove it within a reasonable time.—PATSCHEIDER *v.* GREAT WESTERN RY. CO. (1878), 3 Ex. D. 153; 38 L. T. 149; 42 J. P. 296; 26 W. R. 268.

Annotations:—As to (1) **Distd.** Hodkinson *v.* L. & N. W. Ry. (1884), 14 Q. B. D. 228. **Refd.** Firth *v.* N. E. Ry. (1888), 36 W. R. 467.

834. *S. P.* FIRTH *v.* NORTH EASTERN RY. CO. (1888), 36 W. R. 467, D. C.

835. Luggage taken by porter to adjoining railway—No proof as to time or place of loss.]—A., a passenger by the M. railway from G. to B., on arriving at the terminus at B., told a porter there that he wished to proceed by the B. & E. railway, whose station closely adjoined that of the M. railway, to T. The porter thereupon placed A.'s portmanteau on a truck with other luggage, entered the B. & E. station with the truck, passed down an incline from the arrival platform, crossed the lines of the railway, & ascended an incline to the departure platform of the B. & E. railway. There was no evidence that the portmanteau was ever afterwards seen, & it never reached T. In an action against the M. Co. for the loss:—*Held:* there was no evidence of a breach of their contract to deliver either to A., or at the departure platform of the B. & E. railway.—MIDLAND RY. CO. *v.* BROMLEY (1856), 17 C. B. 372; 2 Saund. & M. 139; 25 L. J. C. P. 94; 26 L. T. O. S. 272; 20 J. P. 118; 2 Jur. N. S. 140; 4 W. R. 258; 139 E. R. 1116.

Annotation:—**Mentd.** Trew *v.* Ry. Passengers Assce. (1860), 29 L. J. Ex. 218.

836. Luggage taken by porter to passenger's house—Loss en route.]—If, at the request of a passenger who has just arrived by train, a porter is told by a railway inspector to take luggage to the passenger's house, & a scale of fees is arranged by the railway co., the inspector so acting is presumed to have the railway co.'s permission & authority so to do, & the co. are estopped from denying that they are carriers for reward. If the luggage is lost the co. are liable.—REITH *v.* LONDON, TILBURY & SOUTHEND RY. CO. (1912), 47 L. Jo. 649.

837. Luggage left with porter—Re-delivery to porter as passenger's agent.]—Pltf. arrived at a station on defts.' railway with her luggage contained in two boxes which were taken from the luggage-van by a porter in the employ of the co. The porter asked pltf. if he should engage a cab for her. In reply she said she would walk to her destination, & would leave her luggage at the station for a short time, & send for it. The porter said: "All right; I'll put them on one side & take care of them." Thereupon pltf. quitted the station leaving her boxes in the custody of the porter. One of them was lost:—*Held:* the transaction amounted to a delivery of the luggage by the co. to pltf., & a redelivery of it by her to the porter as her agent to take care of, & the co. were not responsible for the loss.—HODKINSON *v.* LONDON & NORTH WESTERN RY. CO. (1884), 14 Q. B. D. 228; 32 W. R. 662, D. C.

See, generally, Part III., Sect. 7, *ante.*

SECT. 8.—MODIFICATION OF COMMON LAW CONTRACT.

SUB-SECT. 1.—CARRIERS ACT, 1830 (c. 68).

838. Applies to passengers' luggage—Silk dress.]—FLOWERS *v.* SOUTH EASTERN RY. CO., No. 327, *ante.*

839. ——.]—DYKE *v.* SOUTH EASTERN & CHATHAM RYS.' MANAGING COMMITTEE, No. 313, *ante.*

840. —— **Carried free of charge.**]—CASSWELL *v.* CHESHIRE LINES COMMITTEE, No. 315, *ante.*

See, also, No. 299, *ante, &, generally,* Part IV., Sect. 2, sub-sect. 1, *ante.*

SUB-SECT. 2.—RAILWAY AND CANAL TRAFFIC ACT, 1854 (c. 31), AND SUBSEQUENT ACTS.

841. Does not apply to passengers' luggage.]—STEWART *v.* LONDON & NORTH WESTERN RY. CO., No. 853, *post.*

842. Applies to passengers' luggage—Conveyed by water.]—COHEN *v.* SOUTH EASTERN RY. CO., No. 368, *ante.*

843. —— **Or goods treated as such.**]—WILKINSON *v.* LANCASHIRE & YORKSHIRE RY., No. 373, *ante.*

844. Does not apply beyond company's system.]—ZUNZ *v.* SOUTH EASTERN RY. CO., No. 367, *ante.*

845. Whether condition reasonable—Exemption from liability for luggage not properly addressed.]—CUTLER *v.* NORTH LONDON RY. CO., No. 418, *ante.*

Luggage deposited in cloak-room.]—*See* Sect. 9, *post.*

See, also, No. 376, *ante, &, generally,* Part IV., Sect. 2, sub-sect. 2, *ante.*

SUB-SECT. 3.—REGULATIONS AND BYE-LAWS.

846. Carriage of specified amount of personal luggage free of charge—Exemption from liability unless same booked & paid for—Knowledge of passenger.]—Pltf., previously to travelling by defts.' railway, paid for & took a second-class ticket & delivered her luggage into the hands of one of defts.' porters, & told him where she was going, & saw him label it. When she got to her journey's end, her box was missing, & it appeared that it had been stolen. She sued the co. for the value. The co., in their defence, relied on a bye-law made under the provisions of their private Act as exempting them from liability. The bye-law was in the following terms:—"Every second-class passenger will be allowed 56 lb. of

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recover its value:—*Held:* the liability of the ry. co. had ceased.—VINEBERG *v.* GRAND TRUNK RY. CO. (1886), 13 A. R. 93.—**CAN.**

833 ii. —— —— —— *Duty of carrier.*]—It is the duty of the ry. co., with regard to the baggage of a passenger which has reached its destination, to have the baggage ready for delivery upon the platform, at the usual place of delivery, till the owner, in the exercise of due diligence, can call & receive it; & it is the passenger's duty to call for & receive it within a reasonable time; if he does not so call for & receive it, it is the co.'s duty to put it into their baggage room & keep it for him.—BROWN *v.* CANADIAN PACIFIC RY. CO. (1886), 3 Man. L. R. 496.—**CAN.**

PART VI. SECT. 8, SUB-SECT. 1.

a. *Applies to passenger's luggage—Declaration of nature & value of goods.*]—RUSH *v.* MIDLAND GREAT WESTERN RY. CO. (1868), 2 I. L. T. 528.—**IR.**

b. —— —— *Notice.*]—COLLIS *v.* MIDLAND GREAT WESTERN RY. CO. (1868), 19 L. T. 150.—**IR.**

c. ——*Loss by felony of carrier's servant.*]—In an action by a passenger against a ry. co. for the loss of luggage containing jewellery the issue was, under Carriers Act, s. 8, whether the loss arose from the felonious act of defts.' servants:—*Held:* upon such issue, it was not enough that pltf.'s evidence disclosed a state of facts consistent with a felonious taking, but it lay upon him to prove a state of facts showing it to be more probable that the goods were stolen than that they were lost through accident or mistake.—GOGARTY *v.* GREAT SOUTHERN & WESTERN RY. CO. (1874), I. R. 9 C. L. 233.—**IR.**

Sect. 8.—Modification of common law contract: Subsects. 3 & 4.]

luggage, free of charge; but the co. will not be responsible for the care of the same unless booked & paid for accordingly." It did not appear that pltf. knew of the bye-law, or that the bye-law had been put up at the stations as directed by the Act:—*Held:* there was evidence to support judgment for pltf. for the full amount of the value of the luggage.—GREAT WESTERN RY. CO. *v.* GOODMAN (1852), 12 C. B. 313; 21 L. J. C. P. 197; 19 L. T. O. S. 296; 16 Jur. 862; 138 E. R. 925.

Annotation:—**Refd.** Wilton *v.* Atlantic Royal Mail Steam Co. (1861), 10 C. B. N. S. 453.

847. —— —— Validity of bye-law.]—5 & 6 Will. 4, c. cvii., which incorporated the Great Western Ry. Co., by s. 169 enacts that, without extra charge, it shall be lawful for every passenger travelling upon the railway to take with him articles of clothing, not exceeding forty lbs. in weight & four cubic ft. in dimensions; & that the co. shall in no case be responsible for any things whatsoever carried upon the railway with any passenger, other than such passenger's articles of clothing not exceeding that weight & those dimensions, provided that nothing in the sect. contained shall extend to make liable the co. further than where, according to law, stage-coach proprietors & common carriers would be liable. S. 144 enables the co. to make bye-laws for the good government of the affairs of the co., & for the management of the undertaking. The co. made a bye-law, that every first-class passenger should be allowed to carry 112 lbs. of luggage free of charge, but that the co. would not be responsible for the care of it, unless booked, & the carriage thereof paid for:—*Held:* the co. had no power to make the bye-law, since it was in contravention of s. 169.—WILLIAMS *v.* GREAT WESTERN RY. CO. (1854), 10 Exch. 15; 23 L. T. O. S. 162; 2 W. R. 520; 2 C. L. R. 1226; 156 E. R. 336.

848. —— Knowledge of passenger—Luggage containing merchandise.]—By their Act of Parliament & their published notices a railway co. were bound & professed to allow each passenger to take with him his ordinary luggage, not exceeding a given weight, without any charge for the carriage. Pltf., a passenger by the railway, who was found to have had no knowledge of the Act of Parliament or the notice, brought with him as luggage a box containing only merchandise, but not exceeding in weight the limit prescribed for personal luggage. On the box was written in large letters the word "Glass." No information was given by pltf. to the co.'s servants, nor was any inquiry made by them, as to the contents of the box, the box having been lost:—*Held:* (1) inasmuch as the box contained merchandise only, & not personal luggage, there was no contract on the part of the co. to carry it, & consequently they were not liable for the loss; (2) the mere fact that a package looks like merchandise & is marked "glass," is not enough to fix the co. with responsibility.

(3) *Semble:* the provisions of the Act of Parliament as to the gratuitous carriage of the personal luggage of passengers must be taken to have been known to pltf.—CAHILL *v.* LONDON & NORTH WESTERN RY. CO. (1862), 13 C. B. N. S. 818; 31 L. J. C. P. 271; 8 Jur. N. S. 1063; 10 W. R. 391; 143 E. R. 322, Ex. Ch.

Annotations:—*As to* (1) **Consd.** Macrow *v.* G. W. Ry. (1871), L. R. 6 Q. B. 612. **Distd.** Wilkinson *v.* L. & Y. Ry., [1907] 2 K. B. 222. *As to* (3) **Refd.** Austin *v.* G. W. Ry. (1867), 8 B. & S. 327.

What is personal luggage.]—*See* Sect. 2, *ante.*

Luggage left in charge of porters.]—*See* Sects. 6 & 7, *ante.*

SUB-SECT. 4.—SPECIAL CONDITIONS.

849. Issue of ticket subject to—Exemption from liability for loss—Unless bill of lading signed.]—Pltf., by his agent, took a ticket by defts.' ship from N. to L.; on the ticket was the following condition:—"The ship will not be accountable for luggage, goods, or other description of property unless bills of lading have been signed therefor; each passenger allowed twenty cubic feet of luggage free, but no jewellery, bullion, etc., etc., will be carried as luggage." The ship sailed & eventually was lost on the voyage by the negligence of defts.' servants, & with it pltf.'s luggage. Pltf. did not take a bill of lading, nor was one offered to him:—*Held:* such a stipulation for a bill of lading as a condition for defts. being accountable was absolute, &, as no bill of lading had been taken, they were not liable for the loss of any part of pltf.'s luggage; the stipulation for twenty cubic feet of luggage being an exemption from the charge so far, & no further, leaving the passenger at liberty to get a bill of lading, for all the luggage, for which he intended to make the ship accountable, & at the same time giving him the option of taking luggage under his personal control without a bill of lading, but in that case carrying it at his own risk.—WILTON *v.* ATLANTIC ROYAL MAIL STEAM CO. (1861), 10 C. B. N. S. 453; 30 L. J. C. P. 369; 4 L. T. 706; 8 Jur. N. S. 231; 9 W. R. 748; 142 E. R. 528.

Annotation:—**Refd.** Grill *v.* General Iron Screw Collier Co. (1866), L. R. 1 C. P. 600.

850. —— —— Arising off issuing company's lines.]—KENT *v.* MIDLAND RY. CO., No. 818, *ante.*

851. —— —— In any circumstances—Not liable for negligence.]—The ticket of a passenger by defts.' steamer contained a condition that defts. would not be responsible for any loss or damage to luggage in any circumstances. Pltf. fell ill of typhoid fever, & in accordance with a liberty reserved to defts. under the contract, was landed at K., insensible. His box was also landed on the wharf by defts. but pltf. never heard or saw anything of it afterwards:—*Held:* the condition exempted defts. from liability for the loss of the box; the words "in any circumstances" were sufficient to include loss or damage to luggage by negligence.—THOMPSON *v.* ROYAL MAIL STEAM PACKET CO. (1875), 5 Asp. M. L. C. 190, n.

Annotations:—**Consd.** Haigh *v.* Royal Mail Steam Packet Co. (1883), 52 L. J. Q. B. 640. **Refd.** Travers *v.* Cooper, [1915] 1 K. B. 73.

852. —— Excursion ticket—Passenger with notice—Fraud of passenger.]—(1) 17 & 18 Vict. c. ccxi. s. 39, provided that every passenger might take with him his ordinary luggage, not exceeding 150 lbs. in weight for first-class passengers, & other passengers in proportion, free of charge. Pltf. had taken a cheap first-class excursion ticket

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PART VI. SECT. 8, SUB-SECT. 4.

d. Issue of ticket subject to conditions—General rule.]—If a person receive a ticket & does not see or know that there is any writing on the ticket, he is not bound by the conditions contained on the ticket. If he knows there is writing, & knows or believes that the writing contains conditions, then he is bound by them. If he knows there is writing on the ticket, but does not know or believe that the writing contains conditions, nevertheless he is bound, if the delivery of the ticket to him is in such manner that he can see that there is writing upon it containing conditions.—STRETTON *v.* UNION S.S. CO., LTD. (1881), 1 E. D. C. 315.—S. AF.

subject to the express condition, of which he had notice, that no luggage was allowed. He had nevertheless, put his portmanteau, which weighed less than 150 lbs. into the train:—*Held:* he had waived the benefit of the above sect., & was bound to pay for the carriage of the portmanteau, & the co. were justified in detaining it.

(2) Where a person has, by fraud, induced another to perform a service for him, intending not to pay for the performance of it, still there is a liability implied by the law, which may be enforced in the same way as an obligation arising out of an express contract.—RUMSEY *v.* NORTH EASTERN RY. CO. (1863), 14 C. B. N. S. 641; 32 L. J. C. P. 244; 10 Jur. N. S. 208; 11 W. R. 911; 143 E. R. 596; *sub nom.* ROMSEY *v.* NORTH EASTERN RY. CO., 2 New Rep. 360; *sub nom.* RIMSEY *v.* NORTH EASTERN RY. CO., 8 L. T. 666.

Annotation:—As to (1) **Refd.** Mercantile Bank *v.* Gladstone (1868), L. R. 3 Exch. 233.

853. —— —— Specified amount taken free at passenger's risk—Passenger without notice.]—The holder of a railway excursion ticket, issued subject to the conditions contained in the co.'s time & excursion bills, one of which conditions was, that luggage under 60 lbs. should be carried free, at passenger's own risk, is bound by the terms of this special contract, which is not void under Railway & Canal Traffic Act, 1854 (c. 31), s. 7; he has consequently no claim against the co. for the loss of his luggage, although it be proved that he did not know the condition on which it was being carried.—STEWART *v.* LONDON & NORTH WESTERN RY. CO. (1864), 3 H. & C. 135; 4 New Rep. 64; 33 L. J. Ex. 199; 10 L. T. 302; 10 Jur. N. S. 805; 12 W. R. 689; 159 E. R. 478.

Annotations:—**Distd.** Henderson *v.* Stevenson (1875), L. R. 2 Sc. & Div. 470. **Overd.** Cohen *v.* S. E. Ry. (1877), 2 Ex. D. 253. **Refd.** Talley *v.* G. W. Ry. (1870), L. R. 6 C. P. 44; Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515; Parker *v.* S. E. Ry., Gabell *v.* S. E. Ry. (1877), 2 C. P. D. 416. **Mentd.** Lewis *v.* G. W. Ry. (1877), 3 Q. B. D. 195.

854. On ticket—Lex loci contractus.]—Resp. took a ticket in England from applts. for the conveyance of himself, family, & baggage from S. to A., & from P. to Mauritius. The ticket was issued subject to a condition signed by resp., that the co. did not hold themselves liable for damage to, or loss or detention of, passengers' baggage. In the course of the journey some articles of personal use were lost:—*Held:* (1) the contract was to be construed by the law of England; (2) at common law it is open to carriers to limit their common-law liability by special contract with the consignor of goods; (3) the loss of the resp. fell within the stipulated condition.—PENINSULAR & ORIENTAL NAVIGATION CO. *v.* SHAND (1865), 3 Moo. P. C. C. N. S. 272; 6 New Rep. 387; 12 L. T. 808; 11 Jur. N. S. 771; 13 W. R. 1049; 2 Mar. L. C. 244; 16 E. R. 103, P. C.

Annotations:—As to (1) **Consd.** *Re* Missouri S.S. Co. (1889), 42 Ch. D. 321. **Refd.** Lloyd *v.* Guibert (1865), 6 B. & S. 100; Moore *v.* Harris (1876), 1 App. Cas. 318; Jacobs *v.* Crédit Lyonnais (1884), 12 Q. B. D. 589; Crosland *v.* Wrigley (1895), 73 L. T. 60; British South Africa Co. *v.* De Beers Consolidated Mines, [1910] 2 Ch. 502. *As to* (2) **Consd.** Czech *v.* General Steam Navigation Co. (1867), L. R. 3 C. P. 14. **Refd.** Le Couteur *v.* L. & S. W. Ry. (1865), 6 B. & S. 961; Leuw *v.* Dudgeon (1867), 17 L. T. 145; The Duero (1869), L. R. 2 A. & E. 393; Nugent *v.* Smith (1875), 24 W. R. 237; The Glendarroch, [1894] P. 226.

855. —— Whether reasonable steps taken to bring to passenger's notice—Condition on back of ticket.]—(1) A ticket, having on its face only the words "Dublin & Whitehaven," was given to a passenger, who, without looking at it, paid for it, & went on board. Having lost all his luggage he brought an action against the co. The co. pleaded that on the back of the ticket there was an intimation that they were not to be liable for losses of any kind or from any cause:—*Held:* they were liable.

It would be extremely dangerous to hold that where a document is complete on the face of it, but having on the back of it something which has not been brought to the knowledge of a contracting party, he shall be held to have assented to that which he has not seen & of which he knows nothing (LORD CAIRNS, C.).

(2) A mere notice from the steam packet co. without the passenger's assent will not discharge them from performing the very essence of their duty, which is to carry safely & securely, unless prevented by unavoidable accidents (LORD CHELMSFORD).

(3) A ticket is in reality nothing more than a receipt for the money which has been paid (LORD HATHERLEY).

(4) When a co. desire to impose special & stringent terms upon their customers, there is nothing unreasonable in requiring that those terms shall be distinctly declared & deliberately accepted (LORD O'HAGAN).—HENDERSON *v.* STEVENSON (1875), L. R. 2 Sc. & Div. 470; 32 L. T. 709; 39 J. P. 596, H. L.

Annotations:—As to (1) **Consd.** Hood *v.* Anchor Line, [1918] A. C. 837. **Distd.** Parker *v.* S. E. Ry., Gabell *v.* S. E. Ry. (1877), 2 C. P. D. 416; Burke *v.* S. E. Ry. (1879), 5 C. P. D. 1. **Refd.** Woodgate *v.* G. W. Ry. (1884), 49 J. P. 196; Richardson, Spence *v.* Rowntree, [1894] A. C. 217; Acton *v.* Castle Mail Packets Co. (1895), 73 L. T. 158; Incandescent Gas Light Co. *v.* Cantelo (1895), 12 R. P. C. 262. *Generally* **Consd.** Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515; Watkins *v.* Rymill (1883), 10 Q. B. D. 178. **Refd.** Ryan *v.* Oceanic Steam Navigation Co., O'Connell *v.* Same, Scalon *v.* Same, O'Brien *v.* Same, [1914] 3 K. B. 731; Cooke *v.* Wilson (1915), 85 L. J. K. B. 888.

856. —— —— —— "Subject to further conditions on back hereof" printed in bold type on face of ticket—Reasonable notice to passenger.]—ACTON *v.* CASTLE MAIL PACKETS CO., LTD. (1895),

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854 i. *On ticket—Lex loci contractus.*]—A ticket issued in England containing a contract by which a S.S. Co. undertakes to convey a passenger's luggage from England to the Cape & which expressly limits the co.'s liability under Carriers Act, 1830, is governed by the law of England.—STRETTON *v.* UNION S.S. CO., LTD. (1881) 1 E. D. C. 315.—**S. AF.**

e. —— *Condition on back of ticket.*]—Pltf., a passenger from England to the Cape by defts.' steamship, received from defts. a passenger ticket, on the face of which ticket attention was called to the conditions printed on the back of the ticket, & among the conditions so printed on the back of the ticket were limitations of defts.' liability unless the passenger's luggage was placed under their care & a special rate paid; & the passenger saw there was printing on the ticket, but did not read the conditions or pay the special rate, & the luggage was lost:—*Held:* (1) the ticket contained the special contract between the parties; (2) defts. were not liable in damages for the loss of the luggage.—STRETTON *v.* UNION S.S. CO., LTD. (1881), 1 E. D. C. 315.—**S. AF.**

855 i. *On ticket—Whether reasonable steps taken to bring to passenger's notice.*]—Pltf. purchased from an agent of deft. co. a ticket, which was not transferable, & had printed on it a number of conditions, one of which limited the liability of the co. for baggage to wearing apparel not exceeding $100 in value, & another required the signature of the passenger for the purpose of identification & to prevent a transfer. The agent obtained pltf.'s signature to the ticket, explaining that it was for the purpose of identification, but did not read nor explain any of the conditions, & pltf. was unable to read them herself. On the trip pltf.'s luggage, valued at over $1,000, was destroyed. In an action for damages for such loss:—*Held:* the special conditions printed on the ticket not having been brought to pltf.'s notice were not binding on her, pltf. could recover.—BATE *v.* CANADIAN PACIFIC RY. CO. (1889), 18 S. C. R. 697.—**CAN.**

855 ii. —— —— *Admissibility of evidence.*]—ANDERSON *v.* CANADIAN PACIFIC RY. CO. (1889), 17 O. R. 747.—**CAN.**

f. *On receipt—Whether reasonable steps taken to bring to passenger's notice—Onus of proof.*]—LAMONT *v.* CANADIAN TRANSFER CO. (1909), 13 O. W. R. 1181; 19 O. L. R. 291.—**CAN.**

Sect. 8.—Modification of common law contract: Subsects. 4 & 5. Sect. 9.]

73 L. T. 158; 11 T. L. R. 518; 8 Asp. M. L. C. 73; 1 Com. Cas. 135.

Annotations:—**Refd.** Gibaud *v.* G. E. Ry., [1920] 3 K. B. 689. **Mentd.** Marriott *v.* Yeoward, [1909] 2 K. B. 987.

857. —— —— Loss by felonious act of carriers' servants.]—(1) Passengers' luggage was carried on board defts.' ship on the terms of a ticket containing a condition that defts. should not be responsible for any loss, damage, injury of or to passengers or their baggage or effects by whatsoever cause or whatever manner occasioned & whether arising from the act of God, King's enemies, thieves, whether on board or not, accidents to or by machinery, boilers or steam, unseaworthiness of the steamer even existing at the time of sailing, or from any act, neglect, or default whatsoever of the pilot, master mariners, or other servants of the steamer:—*Held:* the condition protected defts. from liability to make good a loss occasioned by the felonious act of their servants.

(2) Defts. had previously offered to send pltf. her ticket in exchange for the passage money several days before the vessel sailed, but pltf., for her own convenience, asked that it should be ready for her on the steamer when she embarked. At the time the ticket was issued pltf. saw it contained writing or printing in addition to her name, but did not know that the writing or printing contained conditions which were part of the contract of carriage:—*Held:* defts. had taken reasonable steps to bring the conditions on the ticket to pltf.'s notice, & the conditions formed part of the contract of carriage.—MARRIOTT *v.* YEOWARD BROTHERS, [1909] 2 K. B. 987; 79 L. J. K. B. 114; 101 L. T. 394; 25 T. L. R. 755; 53 Sol. Jo. 790; 11 Asp. M. L. C. 306; 14 Com. Cas. 279.

Annotation:—*Generally*, **Mentd.** The Luna, [1920] P. 22.

On cloak-room ticket.]—*See* Sect. 9, *post.*

See, generally, Part. IV., Sect. 1, sub-sects. 2 & 3, *ante.*

858. Carrier not liable for negligence—If vessel seaworthy—Whether vessel seaworthy.]—Pltfs. were passengers upon defts.' steamer. At the commencement of the voyage their personal luggage, owing to the crowded state of the vessel, was placed in a lavatory, which was not in use, but adjoined another which was. During the voyage the lavatory in use became stopped by cotton-waste improperly placed in it by some person, & an overflow occurred which damaged pltfs.' luggage. Upon the back of the ticket was printed a condition exempting defts. from liability for damage to passengers' luggage, although caused by negligence or default of defts.' servants, provided that reasonable diligence had been used by defts. to render the ship at starting seaworthy & fit for the voyage:—*Held:* defts. were liable for the damage to the luggage upon the ground that there was evidence which justified a finding of fact that the vessel in sailing with the luggage so stowed was not seaworthy with regard to the carriage of the luggage, & that reasonable diligence had not been used by defts. to render the ship seaworthy within the condition on the ticket.—UPPERTON *v.* UNION-CASTLE MAIL STEAMSHIP CO., LTD. (1902), 89 L. T. 289; 19 T. L. R. 687; 47 Sol. Jo. 738; 9 Asp. M. L. C. 475; 9 Com. Cas. 50, C. A.

SUB-SECT. 5.—COLONIAL STATUTES.

See cases, *infra.*

SECT. 9.—LUGGAGE DEPOSITED IN CLOAK-ROOMS.

859. Condition on ticket—Delivery up of luggage only on production of ticket—Liability for delay.]—Pltf., arriving in L. by defts.' railway on Saturday evening, left a portmanteau at the luggage & cloak office on the up platform of P. Station, & on paying 2*d.* received a ticket acknowledging the receipt with printed conditions, among which was a notice that the co. would not deliver up luggage except to persons producing the proper receipt. On Sunday evening, intending to leave L. by another railway, he came to P. Station for his portmanteau, & found the office shut. After some time he was told by a porter that the superintendent was on the other side; whereupon he went across to the down platform, from which a train was starting, & the superintendent sent a porter with a key of the office, & he obtained his portmanteau. He was thus delayed forty minutes, & prevented from leaving L. by the other railway that night:—*Held:* (1) by the ticket defts. were bound to deliver up the portmanteau on Sunday as well as on other days, on a reasonable request & within a reasonable time; (2) whether there had been an unreasonable delay was a question for the jury.—STALLARD *v.* GREAT WESTERN RY. CO. (1862), 2 B. & S. 419; 31 L. J. Q. B. 137; 26 J. P. 548; 8 Jur. N. S. 1076; 10 W. R. 488; 121 E. R. 1129; *sub nom.* STANNER *v.* GREAT WESTERN RY. CO., 6 L. T. 217.

See, also, No. 861, *post.*

PART VI. SECT. 8, SUB-SECT. 5.

g. Declaration of value — Notice limiting liability.]—Deft. co. sold pltf. a ticket containing the proviso that baggage liability was limited to wearing apparel only, & that each passenger was allowed 150 lbs. of baggage free, & not exceeding $100 in value. Pltf. paid $10 excess baggage. Part of the baggage, including lady's apparel, men's suits & wolf robes, to the value of $560 was lost. Pltf. sued for full amount:—*Held:* defts. were liable for more than $100, but under R. S. C. (1886), c. 82. s. 3, for not more than $500.—WENSKY *v.* CANADIAN DEVELOPMENT CO. (1901), 8 B. C. R. 190.—**CAN.**

h. —— Absence of — Articles of special value lost in transit.]—Pltf. who was a passenger on deft. railway booked three packages. One of them contained silver & silk articles of the description mentioned in the second schedule to Indian Railways Act, 1890, s. 75, as articles which must be declared, but pltf. did not do so. The package was lost & pltf. brought suit for damages:—*Held:* (1) above sect. is one of general applicability to all classes of goods; (2) inasmuch as pltf. did not declare the contents of the lost package the ry. co. was freed from all liability for the loss thereof, both as regards scheduled & non-scheduled articles contained therein.—EAST INDIAN RY. CO. *v.* ROY (1915), I. L. R. 37 All. 463.—**IND.**

i. Baggage checked free of charge — Limitation of liability.]—The Railway Commission has power under Railway Act, s. 340, to sanction the limitation of the carrier's liability to $100 in the case of baggage checked free of charge, & the limitation is a reasonable one.—*Re* BAGGAGE CAR TRAFFIC RULES (1915), 33 W. L. R. 54.—**CAN.**

j. Merchandise booked as luggage.]—A passenger took a journey on a railway & booked as his "luggage" a package containing merchandise. The package was lost & consequently not delivered at the end of his journey. He sued the ry. co. for damages caused by its loss:—*Held:* the case was governed by Indian Railways Act (1890), s. 72, & the co. was liable for the loss.—VELAYAT HOSSEIN *v.* BENGAL & NORTH WESTERN RY. CO. (1909), I. L. R. 36 Calc. 819.—**IND.**

k. Limitation of liability — Form of approved contract.]—Although the Dominion Board of Railway Comrs. under R. S. C., 1906, c. 37, s. 353, approved of the form of contract used by a carrier "as the only form to be used," that means the only form of contract "impairing, restricting, or limiting the liability of" the carrier, there is nothing to prevent the carrier carrying goods without limiting his liability.—WILKINSON *v.* CANADIAN EXPRESS CO. (1912), 27 O. L. R. 283; 23 O. W. R. 682; 4 O. W. N. 290; 7 D. L. R. 450.—**CAN.**

l. —— "Personal baggage"—General Order No. 151 of Board of Railway Commissioners.]—SHERLOCK *v.* GRAND TRUNK RY. CO. (1920), 19 O. W. N. 73.—**CAN.**

860. —— Exemption from responsibility for package exceeding stated value—Application of Carriers Act, 1830 (c. 68)—& Railway & Canal Traffic Act, 1854 (c. 31), s. 7.]—Pltf., a passenger by the South Eastern Ry., on arriving at L., deposited in the cloak-room there a bag containing wearing apparel & jewellery to a value considerably exceeding £10, receiving as a voucher a ticket on the back of which was printed the following notice:—"The co. will not be responsible for articles left by passengers at the station, unless the same be duly registered, for which a charge of 2*d.* per article will be made, & a ticket given in exchange; & no article will be given up without the production of the ticket, or satisfactory evidence of the ownership being adduced. A charge of 1*d. per diem*, in addition, will be made on all articles left in the cloak-room for a longer period than twenty-four hours. The co. will not be responsible for any package exceeding the value of £10." A similar notice printed in large characters was posted up in the office, but pltf. swore that she did not see it. She was not asked whether or not she had seen the notice on the back of the ticket, but she produced it when she applied for the bag. Through the negligence of the co.'s servants, part of the contents of the bag were abstracted whilst it was in their custody:—*Held:* (1) the co., having received the deposit, not as carriers, but as ordinary bailees, upon the terms contained in the printed notice, which pltf., having the means of ascertaining them, must be taken to have consented to be bound by, were not responsible for the loss; (2) the case was neither within Carriers Act, 1830, nor (3) Railway & Canal Traffic Act, 1854, s. 7.—VAN TOLL *v.* SOUTH EASTERN RY. Co. (1862), 12 C. B. N. S. 75; 31 L. J. C. P. 241; 6 L. T. 244; 8 Jur. N. S. 1213; 10 W. R. 578; 142 E. R. 1071.

Annotations:—As to (1) **Consd.** Watkins *v.* Rymill (1883), 10 Q. B. D. 178. **Refd.** Malpas *v.* L. & S. W. Ry. (1866), Har. & Ruth. 227; Lewis *v.* M'Kee (1868), L. R. 4 Exch. 58; Parker *v.* S. E. Ry., Gabell *v.* S. E. Ry. (1877), 2 C. P. D. 416; Pratt *v.* S. E. Ry. (1897), 45 W. R. 503; Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

861. —— —— Liability for loss—& for delay.]—Where an article deposited in the cloak-room of a railway co. exceeds £10 in value, a notice on the ticket given to the depositor that the co. will not be responsible for any package exceeding the value of £10 protects the co. from liability, not only for the loss of such an article, but also for delay in delivering it, at least where the delay is caused by no wilful act or default of the co., & without their privity or knowledge.—PEPPER *v.* SOUTH EASTERN RY. Co. (1868), 17 L. T. 469.

See, also, No. 859, *ante.*

862. —— —— —— Or for damage.]—The co. will not be responsible for any package exceeding the value of £10:—*Held:* to mean that the co. would not be responsible either for loss or for damage.—PRATT *v.* SOUTH EASTERN RY. Co., [1897] 1 Q. B. 718; 66 L. J. Q. B. 418; 76 L. T. 465; 45 W. R. 503; 13 T. L. R. 326, D. C.

Annotation:—**Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

863. —— —— Value not declared—Negligence of carrier's servants.]—Pltf. claimed damages for the loss of a bicycle deposited by him with defts. at one of their stations. Upon leaving the bicycle he received a ticket upon which was printed the following condition: "The co. will not be in any way responsible in respect of any article deposited the value whereof exceeds £5 unless at the time of deposit the true value & nature of the article shall have been declared, & 1*d. per* £1 sterling of the declared value be paid for each day or part of a day in addition to the ordinary cloak-room charges." Pltf. did not declare the value of the bicycle, which exceeded £5, at the time of the deposit, & only paid the ordinary cloak-room fee. The bicycle was not put by defts.' servants in the cloak-room, but was left in the booking hall without protection, & owing to this negligence was stolen:—*Held:* defts. were protected by the condition, although the bicycle had not been deposited within the cloak-room.—GIBAUD *v.* GREAT EASTERN RY. Co., [1921] 2 K. B. 426; 90 L. J. K. B. 535; 125 L. T. 76; 37 T. L. R. 422; 65 Sol. Jo. 454, C. A.

Annotations:—**Refd.** The Cap Palos, [1921] P. 458. **Mentd.** Armour *v.* Walford, [1921] 3 K. B. 473.

864. —— Assent of passenger to—Inferred.]—VAN TOLL *v.* SOUTH EASTERN RY. Co., No. 860, *ante.*

865. —— —— Immaterial.]—The conditions at the back of a railway cloak-room ticket, which has on its face a reference to such conditions, bind the person taking it, whether he reads them or not.

Pltf. having been a passenger by defts.' railway, H., her agent, delivered her luggage to defts. at their cloak-room, paid 4*d.* & received a ticket. On the one side of such ticket was a duly filled up table of articles deposited with a memorandum that the luggage of pltf. was left subject to the conditions on the other side. H. neither read nor knew of these conditions, which were (*inter alia*) that defts. would not be liable for loss of packages above the value of £5, unless the value should be declared, & an increased charge paid, & that defts. would not be responsible in any circumstances for loss or injury to articles, except left in the cloak-room. The luggage was above the value of £5 & not declared. It was not deposited in the cloak-room, but in a vestibule, from which it was stolen:—*Held:* (1) defts. were not liable for the loss; (2) pltf. was bound by the conditions of the ticket.—HARRIS *v.* GREAT WESTERN RY. Co. (1876), 1 Q. B. D. 515; 45 L. J. Q. B. 729; 34 L. T. 647; 40 J. P. 628.

Annotations:—As to (1) **Consd.** Skipwith *v.* G. W. Ry. (1888), 59 L. T. 520. *As to* (2) **Consd.** Parker *v.* S. E. Ry., Gabell *v.* S. E. Ry. (1877), 2 C. P. D. 416; Watkins *v.* Rymill (1883), 10 Q. B. D. 178. **Refd.** Acton *v.* Castle Mail Packets Co. (1895), 73 L. T. 158. *Generally,* **Folld.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426. **Refd.** Burke *v.* S. E. Ry. (1879), 5 C. P. D. 1.

866. —— —— Proper direction to jury.]—Pltf. deposited his bag in the cloak-room of a station on defts.' railway, & paid 2*d.* He received in return a printed ticket, bearing on the face of it a receipt for one article, & at the bottom the words, "See back." At the back of the ticket were the words, "The co. will not be responsible for any package exceeding the value of £10." The same conditions were also printed on a placard

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PART VI. SECT. 9.

860 i. *Condition on ticket—Exemption from responsibility for package exceeding stated value—Notice of condition.*]—M. delivered a package of a value exceeding £5 at the cloak-room of the railway station & received a ticket on which was printed in red ink diagonally across the face "The department is not responsible for any article exceeding the value of £5." These words were partly hidden by the clerk's entry of the description of the article deposited. M. did not know that the printing contained any conditions limiting liability. His attention was not directed to the condition, nor was any notice placarded in the cloak-room calling attention to the condition. The package was lost:—*Held:* the railway had not done what was reasonably sufficient to give M. notice of the condition, & he was entitled to recover the value of the package.—CENTRAL SOUTH AFRICAN RYS. *v.* MCLAREN (1903), T. S. 727.—**S. AF.**

m. *Whether status of carrier or warehouseman.*]—HAMEL *v.* GRAND TRUNK RY. Co. (1911), 19 O. W. R. 533; 2 O. W. N. 1286.—**CAN.**

Sect. 9.—*Luggage deposited in cloak-rooms. Sect.* 10. *Part VII. Sect.* 1: *Sub-sects.* 1 & 2. *Sect.* 2.]

hung up in the cloak-room. In an action against the co. for the loss of the bag while thus in their cloak-room, pltf. claimed more than £10 for the value of the bag & its contents. Defts. resisted the claim, on the ground that they were relieved from responsibility by the above conditions. The judge at the trial left two questions to the jury:—(1) did pltf. read, or was he aware of the special terms of the contract; (2) if not, was he guilty of negligence in being unaware of them:—*Held:* there had been a misdirection; the proper question for the jury was whether defts. had done what was reasonably sufficient to give pltf. notice of the condition; if that question were answered in the affirmative, judgment should be given for defts.—PARKER *v.* SOUTH EASTERN RY. CO., GABELL *v.* SOUTH EASTERN RY. CO. (1877), 2 C. P. D. 416; 46 L. J. Q. B. 768; 36 L. T. 540; 41 J. P. 644; 25 W. R. 564, C. A.

Annotations:—**Consd.** Watkins *v.* Rymill (1883), 10 Q. B. D. 178; Woodgate *v.* G. W. Ry. (1884), 51 L. T. 826. **Apprvd.** Richardson, Spence *v.* Rowntree, [1894] A. C. 217. **Apld.** Acton *v.* Castle Mail Packets Co. (1895), 73 L. T. 158. **Folld.** Hooper *v.* Furness Ry. (1907), 23 T. L. R. 451. **Apld.** Marriott *v.* Yeoward, [1909] 2 K. B. 987. **Consd.** Hood *v.* Anchor Line, [1918] A. C. 837; Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76. **Refd.** Burke *v.* S. E. Ry. (1879), 5 C. P. D. 1; G. N. Ry. *v.* Palmer (1895), 72 L. T. 287; Incandescent Gas Light Co. *v.* Cantelo (1895), 12 R. P. C. 262; Ryan *v.* Oceanic Steam Navigation Co., O'Connell *v.* Same, Scalon *v.* Same, O'Brien *v.* Same, [1914] 3 K. B. 730; Cooke *v.* Wilson (1915), 85 L. J. K. B. 888; Lyons *v.* Houghton, [1915] 1 K. B. 489; Roe *v.* Naylor (1918), 87 L. J. K. B. 958. **Mentd.** Foreman *v.* G. W. Ry. (1878), 38 L. T. 851.

867. —— Exemption from "loss" of luggage—Misdelivery included.]—The owner of a bag exceeding the value of £5 deposited it for safe custody in a railway station cloak-room paying 2*d.* & receiving a ticket with the following condition, of which he had notice, upon it: "The co. are not to be answerable for loss or detention of, or injury to, any article or property exceeding the value of £5 unless at the time of its delivery to them the true value & nature thereof be declared by the person delivering the same, & a sum, at the rate of 1*d.* for every 20*s.* of the declared value be paid for such article of property for each day, or part of a day, for which the same shall be left, in addition to the above-mentioned charge." The bag was delivered by mistake by a servant of the co. to a wrong person & never recovered:—*Held:* as the word "loss" in Carriers Act, 1830 (c. 68), s. 1, & Railway & Canal Traffic Act, 1854 (c. 31) s. 7, the words of which were followed by the condition to be construed, had been held to include "misdelivery" the word "loss" in the condition must be construed as having the same meaning, & judgment must be entered for defts.—SKIPWITH *v.* GREAT WESTERN RY. CO. (1888), 59 L. T. 520; 4 T. L. R. 589, D. C.

See, also, No. 307, *ante.*

868. What amounts to deposit—Luggage left in cloak-room.]—HARRIS *v.* GREAT WESTERN RY. CO., No. 865, *ante.*

869. —— Bicycle left in booking-hall.]—GIBAUD *v.* GREAT EASTERN RY. CO., No. 863, *ante.*

See, further, Part IV., Sect. 1, sub-sect. 3, *ante;* BAILMENT, Vol. III., pp. 83 *et seq.*

Carrier's lien.]—*See* Part XI., Sect. 1, sub-sect. 4, A. (*a*), *post.*

SECT. 10.—**LUGGAGE DETAINED FOR CHARGES.**

870. Duty of company to deliver—Right of company to charge warehouse rent—Remedy of passenger.]—When a passenger leaves an article at a railway station the co. are not bound to send it to his residence without a reasonable charge for so doing, nor liable for its non-delivery when sent for, unless reasonable means are afforded to them of finding & identifying it, but they cannot charge warehouse room for it; if, however, they afterwards detain it for any petty charge, the proper course is to pay the charge, & sue to recover it in the County Ct.; & if the article is ready for delivery the damage may properly be only nominal, whether on a special count or on a count in trover.—DIMSDALE *v.* LONDON & BRIGHTON RY. CO. (1862), 3 F. & F. 167, N. P.

See, also, No. 852, *ante.*

Carrier's lien.]—*See* Part XI., Sect. 1, sub-sect. 4, A. (*a*), *post.*

Part VII.—Carriage of Animals.

SECT. 1.—**APART FROM RAILWAY AND CANAL TRAFFIC ACT, 1854 (c. 31).**

See, now, Railways Act, 1921 (c. 55), ss. 42, 41 (3), 56, Sched. VI.

SUB-SECT. 1.—RIGHTS OF CARRIERS.

871. To preclude passengers from taking animals in carriages.]—LAWTON *v.* GREAT WESTERN RY. CO., No. 473, *ante.*

Recovery of expenses reasonably incurred.]—*See* No. 208, *ante;* ANIMALS, Vol. II., p. 277.

SUB-SECT. 2.—LIABILITIES OF CARRIERS.

See, also, ANIMALS, Vol. II., pp. 275–277.

872. Injury during transit—Animals straying from station yard on to the line—Whether duty to fence.]—(1) A railway co. carrying living animals is not bound to provide fences or guards at the station where the animals may be landed, between the line and the station yard, so as to prevent them straying on to the line.

(2) A bull with other cattle, which had been brought by a railway, being in the station yard, a place unlighted & not fenced from the railway, a porter came out of the office with a lantern, such as were ordinarily used by porters, in his hand; the light startled some of the beasts, & caused pltf.'s bull to run upon the line, where it was knocked down & killed by a passing train:—*Held:* no evidence for the jury that the railway co.'s servants had been guilty of negligence.

(3) A count against a railway co. as common carriers for loss of an animal:—*Held:* answered by the terms of a special condition against any

n. *Recovery of expenses reasonably incurred—For food during transit.*]—Where, owing to the length of the journey or other special circumstances, it is reasonably necessary that animals should be fed during transit, a request on the part of the consignor that the ry. co. shall feed them may be implied. The co. supplying food & water in such circumstances may recover additional charges made in respect thereof from the consignor or consignee as provided by 41 & 42 Vict. c. 74, s. 33 (5). — GREAT SOUTHERN & WESTERN RY. CO. *v.* HOURIGAN (1910), 44 I. L. T. 86.—IR.

loss occurring in course of transit.—ROBERTS *v.* GREAT WESTERN RY. CO. (1858), 4 C. B. N. S. 506; 27 L. J. C. P. 266; 22 J. P. 723; 4 Jur. N. S. 1240; 140 E. R. 1188.

Annotations :—As to (1) **Consd.** Rooth *v.* N. E. Ry. (1867), L. R. 2 Exch. 173. **Refd.** Hounsell *v.* Smith (1860), 8 W. R. 277.

873. —— Horse strangled—No evidence as to how accident occurred—Company primâ facie liable.]—PRIOR *v.* LONDON & SOUTH WESTERN RY. CO. (1885), 2 T. L. R. 89, D. C.

874. —— Horse improperly fastened—Company liable.]—ROBINSON *v.* LONDON & SOUTH WESTERN RY. CO. (1888), 4 T. L. R. 454, N. P.

875. —— Delay—& numerous shuntings—Company liable for injuries caused thereby.]—AINSBY *v.* GREAT NORTHERN RY. CO. (1891), 8 T. L. R. 148, D. C.

876. —— ——.]—At 1.30 p.m. the son of G., applt., loaded twelve cows at M. station on a truck of resp. co. The cows were consigned to C. another station twenty-five miles distant, & at the time of loading were in good condition. Applt. had on other occasions sent cattle from M. to C. & they had usually arrived by 8 p.m. On this occasion they did not arrive till after midnight, & were then found to be in a damaged & exhausted condition. G. then brought an action against resp. co. on the ground that the injuries had been caused by the resps.' negligence. After evidence had been given in support of pltf.'s case, counsel for the defence submitted that there was no evidence of negligence to go to the jury, but the judge held that a *primâ facie* case had been made out. Evidence was then given by the co. to the effect that the delay in the arrival of the cattle was due solely to shunting operations to avoid passenger trains. The judge thereupon withdrew the case from the jury, & gave judgment for the co. :—*Held :* though the judge was wrong in withdrawing the case from the jury, & should have left it to them with a strong direction to find a verdict for defts., yet it would be useless to send the case back for trial, as the only verdict that could be found on the evidence must be a verdict for defts.—GODDARD *v.* MIDLAND RY. CO. (1899), 80 L. T. 624, D. C.

——.]—*See, also,* Nos. 18, 88, 145, 164, 165, 170, *ante.*

877. Injury after transit.]—SHEPHERD *v.* BRISTOL & EXETER RY. CO., No. 198, *ante.*

878. "Permitting" carriage causing "unnecessary suffering."—Whether company "person in charge."]—*Held :* when a railway co. carry cows they neither permit them to be carried, nor are the person in charge of them, within Animals (Transit & General) Order, 1912, clause 12, & are not liable to conviction for carrying them under the conditions therein described.—NORTH STAFFORDSHIRE RY. CO. *v.* WATERS (1913), 110 L. T. 237; 78 J. P. 116; 30 T. L. R. 121; 24 Cox, C. C. 28; 12 L. G. R. 289, D. C.

See, generally, ANIMALS, Vol. II., pp. 284 *et seq.*

Under special contract.]—*See* Sect. 3, *post.*

SECT. 2.—UNDER RAILWAY AND CANAL TRAFFIC ACT, 1854 (c. 31).

See, now, Railways Act, 1921 (c. 55), s. 65 (4), Sched. VI.; *&, also,* ANIMALS, Vol. II., pp. 278–280.

PART VII. SECT. 1, SUB-SECT. 2.

874 i. *Injury during transit—Horse improperly fastened—Company liable.*]—A horse, which was delivered to a ry. co. for conveyance, was tied up in a truck by one of the co.'s porters in presence of the owner, & before the journey was ended the horse was found dead :—*Held :* death having resulted from the animal being imperfectly tied, & that owing to the fault of one of their servants, the co. were liable for the value of the horse.—PAXTON *v.* NORTH BRITISH RY. CO. (1870), 9 Macph. (Ct. of Sess.) 50; 43 Sc. Jur. 25.—**SCOT.**

874 ii. —— *Horse not placed in suitable van—Company liable.*]—A colt, coming four years, was booked at deft. co.'s risk, at the higher rate, from B. to C.; the partition of the box the colt travelled in was not a good one, but was strained. The colt went into the waggon quietly, but afterwards plunged hard at the closing of the door & some shunting, & was injured :—*Held :* the co. were bound as common carriers to carry young colts, & were bound to provide for the natural fright of a young animal in being put for the first time in a new position in a railway truck, & under unaccustomed restraint; for without vice the young animal might struggle to get free.—BARRY *v.* GREAT SOUTHERN & WESTERN RY. CO. (1896), 31 I. L. T. Jo. 241.—**IR.**

o. —— *Placing dog & bird in same van—Bird killed—Company liable.*]—Pltf. had a valuable cock which he entrusted to defts. for conveyance to Strabane Show. The bird was placed in a basket but was devoured by a dog that was in the same van :—*Held :* defts. were liable.—WATSON *v.* GREAT NORTHERN RY. CO. (1900), 34 I. L. T. Jo. 131.—**IR.**

p. —— *Horse killed—Damages.*]—HOCKLEY *v* GRAND TRUNK RY. CO., DAVIS *v.* GRAND TRUNK RY. CO. (1905), 5 O. W. R. 572.—**CAN.**

q. —— *Delay—& exposure.*]—Where, owing to the very circuitous route taken by a goods train, but which route was the co.'s ordinary one for goods trains, there was long delay & exposure, in consequence of which pltf.'s cow died :—*Held :* (1) it was for pltf. to have ascertained the time required for the transit in ordinary course by such goods train; (2) the ry. co. were not liable.—M'NALLY *v.* LONDON & NORTH WESTERN RY. CO. (1892), 26 I. L. T. 138.—**IR.**

r. —— *Company's rules violated by hooking clerk.*]—A ry. co.'s clerk violated an order of the co. with respect to the booking of pltf.'s cattle : pltf. had no notice of the violation, & his cattle suffered injury :—*Held :* the public were justified in supposing that the clerk had not departed from his directions & had authority to determine what acts were equivalent to a delivery of the cattle to the co.—PAGE *v.* LONDON & NORTH WESTERN RY. CO. (1868), 2 I. L. T. 77.—**IR.**

s. *Loss during transit — Changing fastening.*]—Defts. received for carriage by their railway a dog, which, while in charge of defts.' servants, escaped & was never recovered. In an action for damages :—*Held :* defts. having altered for their own convenience the way in which the dog was secured were liable for the loss.—MCCORMACK *v.* GRAND TRUNK RY. CO. (1903), 6 O. L. R. 577.—**CAN.**

t. —— *Delivery to servant of carrier—Custom unknown to consignor.*]—UNION S.S. CO. *v.* EWART (1893), 13 N. Z. L. R. 9.—**N.Z.**

u. —— *Dog improperly secured—Bye-law waiver.*]—A ry. co. had a bye-law as to the carriage of dogs that they would not be responsible for their safe carriage unless secured with a proper chain, collar, & muzzle; the co. received a dog for carriage not so properly secured, which was lost in transit through the negligence of one of the co.'s servants :—*Held :* the co. by their conduct had waived the bye-law, & were responsible.—SLOAN *v.* GREAT NORTHERN RY. CO. (1898), 33 I. L. T. 79.—**IR.**

v. *Commencement of liability — What amounts to delivery—Evidence.*]—GRIFFIN *v.* GREAT WESTERN RY. CO. (1858), 15 U. C. R. 507.—**CAN.**

w. *Not closing door of horse-box — Duty of conductor.*]—The owner of a horse shipped in a box car, the doors of which can only be fastened from the outside, has a right to expect that the conductor of the train will see that the door of the car is closed & properly fastened before the train is started : if not so fastened the co. is liable for any loss.—LAVOIE *v.* R. (1892), 3 Exch C. R. 96.—**CAN.**

x. *To carry within reasonable time—Delivery within reasonable time —Reasonableness of ordinary traffic arrangements.*]—Deft. co. accepted cattle of pltf. at L. at 1.30 a.m. for carriage to M. These cattle left L. at 3.40 p.m., & reached M., by special train, at 10 p.m. Deft. co. published no time-tables of their arrangements for carriage of cattle, & the first ordinary train to M. by which these cattle could have been conveyed only started from L. at 9.30 p.m. :—*Held :* (1) pltf. could not recover for breach of contract to carry the cattle within a reasonable time; (2) apart from special contract, a consignor is bound by the ordinary traffic arrangements of a ry. co., whether published or not; & the reasonableness of such arrangements, which is a matter for the Railway Commission, cannot be submitted to a jury.—TOBIN *v.* LONDON & NORTH WESTERN RY. CO., [1895] 2 I. R. 22.—**IR.**

PART VII. SECT. 2.

a. *Carrier exempted from liability for delay—& from all liability in loading & unloading—Shipper compelled to point out injury on unloading.*]—A

Sect. 2.—Under Railway and Canal Traffic Act, 1854 (c. 31). Sect. 3.]

879. Carrier exempted from liability for any loss or damage—Free pass.]—PARDINGTON *v.* SOUTH WALES RY. CO., No. 402, *ante*.

880. —— Declaration as to value.]—M'CANCE *v.* LONDON & NORTH WESTERN RY. CO., No. 134, *ante*.

881. ——.]—M'MANUS *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 403, *ante*.

882. ——.]—GREGORY *v.* WEST MIDLAND RY. CO., No. 394, *ante*.

883. ——.]—DOOLAN *v.* MIDLAND RY. CO., No. 370, *ante*.

884. Carrier exempted from liability "in any case" above declared value.]—STEVENS *v.* LONDON,

special contract for the conveyance of horses by railway was signed by the person sending them, whereby it was agreed that defts. should in no case be responsible for the delivery of the horses at any particular time; should be free from all liability with respect to them, whether in loading or unloading during conveyance; or while in the co.'s vehicles or on their premises. This contract was contained in a printed form, & was called condition A. Under condition B., at a higher rate, the co. were to be liable for any injury pointed out at delivery. Pltf. paid at lower rate. The horses were injured in transit:—*Held:* (1) condition A., by itself, was unreasonable; (2) condition B. was unreasonable in obliging the party to point out the injury at the time of unloading.—LLOYD *v.* LIMERICK & WATERFORD RY. CO. (1863), 9 L. T. 89.—**IR.**

b. *Carrier exempted from liability for injury "caused by fear or restiveness."*]—In an action against a ry. co., as carriers, for negligence, whereby a horse delivered to them by pltf. was injured at one of their stations defts. pleaded that they received the horse under a special contract containing a condition that defts. should not be liable for injuries occasioned by the fear or restiveness of animals:—*Held:* (1) the condition did not embrace cases in which the injury immediately flowed from the fear or restiveness of the animals, directly occasioned by some act of negligence or want of care on the part of defts., but applied only to injury from fear or restiveness, caused by the transit, with its ordinary incidents, & without any negligence or default on the part of the co.; (2) the condition was not unreasonable.—MOORE *v.* GREAT NORTHERN RY. CO. (1882), 10 L. R. Ir. 95.—**IR.**

c. *Carrier exempted from all liability for wilful misconduct—Land & sea carriage.*]—An action was brought against a ry. co. for injuries to pltf.'s cattle on the way from D. to M., *via* L., caused by the wilful misconduct & default of defts.' servants, on the voyage between D. & L. Defts. pleaded that under an arrangement with D. S. Packet Co., cattle were carried by sea from D. to L., & booked through at alternative rates, *i.e.* at the ordinary rate per waggon, without any condition limiting defts.' liability; that defts. had another & reduced rate per waggon, upon the terms of the owner taking upon himself all risk connected with the sea part of the journey, & becoming subject to certain special conditions; pltf., having been informed of both rates, selected the reduced rate, & signed a special contract for the carriage of the cattle. One of the conditions of the contract was that the co., in consideration of the reduced rate of freight charged, would not be accountable for loss caused by delay or injury taking place before or at shipment, on the journey, or at or after landing; nor for loss or injury, whether arising from or consequent upon the dangers or accidents of the sea, or navigation, or from the act of God, etc. . . . improper, careless, or unskilful navigation, or from accidents connected with machinery or boilers, or for any fault, negligence, or mistake of the master, officers, seamen, or crew of the vessels, or other servants of the D. S. Packet Co.:—*Held:* (1) the contract did not in its terms exempt defts. from liability for acts of wilful misconduct on the part of the seamen & crew; (2) a contract exempting them from liability for such acts would be unreasonable.—RONAN *v.* MIDLAND RY. CO. (1884), 14 L. R. Ir. 157.—**IR.**

d. *Carrier exempted from liability not occasioned by misconduct.*]—Defts., a ry. co., carried pltf.'s cattle under a special contract signed by the consignor, which stated that the co. had two rates for the conveyance of cattle; one, the full rate, when they undertook the ordinary duties of carriers for hire, subject to conditions printed thereon & their statutory rights; the other, a reduced rate, when the co. received, carried, & delivered at the owner's risk & exempt from all liability not occasioned by the wilful misconduct of their servants acting within the scope of authority. Pltf. elected the reduced rate. The cattle arrived at their destination seriously injured. In an action for damage to the cattle:—*Held:* the conditions were bad, & did not exempt the co. from negligence.—BOLLAND *v.* WATERFORD, LIMERICK & WESTERN RY. CO. (1897), 31 I. L. T. 62.—**IR.**

884 i. *Carrier exempted from liability above declared value.*]—Pltfs. sent horses to be carried on defts.' line, & signed a declaration that the value of each horse did not exceed £10:—*Held:* pltfs. having signed a declaration that the horses were under the value of £10 each were precluded from objecting that the conditions were unreasonable as exempting the co. from liability beyond that amount, even in case of wilful misconduct.—NEVIN *v.* GREAT SOUTHERN & WESTERN RY. CO. (1891), 30 L. R. Ir. 125.—**IR.**

f. *Declaration of value — Insurance rate.*]—Where a consignment note, signed by a person delivering a dog for carriage to a ry. co. in Ireland, contained a condition providing that the co. would not be responsible for any damages for loss thereof or injury thereto beyond the sum of £2 unless a higher value was declared, & an insurance rate of £5, for journeys exceeding 150 miles, paid for every £100 over £2:—*Held:* the insurance rate was too high, &, consequently, that the condition with reference thereto was unreasonable, & did not protect the ry. co. from liability to an amount exceeding £2 in respect of damage done to the dog through the negligence of their servants.—GALLAGHER *v.* GREAT NORTHERN RY. CO. (1903), 42 I. L. T. 267.—**IR.**

g. *Failure to comply with statutory requirement—No horse-box provided.*]—Pltf. required defts. to provide facilities to carry a horse to A., where a horse fair was about to be held; they failed to carry the horse, as they were unable to furnish a horse-box:—*Held:* defts. had committed a breach of their statutory duty, & were liable in damages.—FLAHERTY *v.* MIDLAND GREAT WESTERN RY. CO. (1914), 48 I. L. T. 216.—**IR.**

h. *What is just & reasonable — In general—Question of law.*]—As an alternative to a carriers' contract which admittedly contained unreasonable conditions, the carriers offered to carry at certain reasonable rates, but subject to a condition that they would not be accountable for the correct selection of the owner's cattle on landing, nor on loading into the waggon, nor on unloading at destination:—*Held:* this condition, upon its fair construction, would extend to exempt the carriers from responsibility for negligence or default on their own part in the selection of the cattle on landing, & was therefore unreasonable & unjust.—M'NALLY *v.* LANCASHIRE & YORKSHIRE RY. CO. (1880), 8 L. R. Ir. 81.—**IR.**

i. —— —— —— *Carrier exempted from responsibility in any case above declared value.*]—SHERIDAN *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND (1888), 24 L. R. Ir. 146.—**IR.**

k. —— *Onus of proof.*]—In an action against a ry. co., as carriers, for breach of an alleged contract, in failing to carry pigs of pltf. from a station on their railway in I. to L., within a reasonable time, defts. pleaded that the pigs were received by them under a condition, signed by pltf., providing that, in consideration of carriage at a reduced rate or charge below the ordinary rate, deft. co. should be free from all liability for injury or delay in the transit or conveyance of the pigs, unless occasioned by the intentional & wilful misconduct of the defts.' servants:—*Held:* the burden of proving that the condition relied on was a reasonable one lay upon defts.; that therefore the question whether an alternative higher rate, at which, as the co. alleged, they offered to carry upon the ordinary carriers' liability, was a reasonable alternative, should not have been withdrawn from the jury, & that, under the reservation, pltf. was entitled to the verdict.—RUDDY *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND (1880), 8 L. R. Ir. 224.—**IR.**

l. —— *Whether fair alternative offered.*]—Defts., a ry. co., contracted to carry pltfs.' cattle from D. to towns in E. During the sea part of the journey some of the animals were injured & others killed, through alleged negligence in securing & stowing them. In an action for the loss of the cattle, defts. pleaded that the ordinary rate charged by them for carriage of the cattle to the places to which pltfs.' cattle were booked was a reasonable rate, & that at such rate they undertook the carriage of cattle to those places, without, as regarded the sea portion of the journey, any limitation to their liability so far as imposed by law &, as regarded the land portion, without any unjust or unreasonable conditions; of which pltfs. had notice when delivering their cattle for carriage; & that pltfs. elected & contracted to have their cattle carried at a certain reduced rate, upon a special contract that the same should be conveyed at owners' sole risk in connexion with the sea part of the transit. Pltfs. replied that the alternative contract of carriage at ordinary rates offered by defts. was not, as regarded the land portion of the carriage, without any unjust or unreasonable conditions imposed, but was subject to a condition that, where the charge of conveyance was per waggon, as the owner or his servant was required to superintend the loading of the stock, & was allowed to place as many animals in such waggon as he considered may be conveyed with safety, the co. would not be responsible for loss arising in any way from the

BRIGHTON & SOUTH COAST RY. CO., No. 409, *ante*.

See, also, Nos. 372, 424, 443, *ante*.

SECT. 3.—**UNDER SPECIAL CONTRACT.**

See, now, Railways Act, 1921 (c. 55), s. 56, Sched. VI.; *&, also*, ANIMALS, Vol. II., pp. 280–282.

885. Exemption from loss or damage—"However caused."—Defective horse-box or truck.]—A declaration alleged that defts. were proprietors of a railway & of carriages for the conveyance of passengers, cattle, goods, etc. for reward; that pltf. delivered to them, & they received from him, a horse of pltf. to be "safely & securely" carried by them upon their carriages, & to be safely & securely delivered to pltf., at a place mentioned, for reward. Pltf. had pointed out a defect in one of the partitions of a horse-box shown to him for the reception of his horse; a servant of defts. then endeavoured to secure the partition, & had assured pltf. that he had done so; the horse was carried in that box, & the horse's death was occasioned during the journey by the insecurity of the partition. A receipt was given to pltf. for the amount paid for conveyance of the horse, at the foot of which receipt was written: "N.B. This ticket is issued subject to the owner's undertaking all risks of conveyance whatsoever, as the co. will not be responsible for any injury or damage, however caused, occurring to horses or carriages, while travelling, or in loading or unloading": —*Held:* the terms of the memorandum formed part of the contract for the conveyance of the horse, & disproved the averment in the declaration that defts. received the horse to be safely & securely carried.

Qu.: whether, notwithstanding the terms of the memorandum, pltf. might not have alleged that it was the duty of defts. to provide a sufficient carriage, & have charged them with the damage arising from a breach of that duty.—SHAW *v.* YORK & NORTH MIDLAND RY. CO. (1849), 13 Q. B. 347; 6 Ry. & Can. Cas. 87; 18 L. J. Q. B. 181; 13 L. T. O. S. 43; 13 Jur. 385; 116 E. R. 1295.

Annotations:—**Expld.** Austin *v.* M. S. & L. Ry. (1851), 15 Jur. 670; Chippendale *v.* L. & Y. Ry. (1851), 15 Jur. 1106; Simons *v.* G. W. Ry. (1857), 2 C. B. N. S. 620. **Consd.** Peck *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. **Refd.** Austin *v.* M. S. & L. Ry. (1852), 10 C. B. 454; McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Harrison *v.* L. B. & S. C. Ry. (1862), 2 B. & S. 152; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. **Mentd.** Carr *v.* L. & Y. Ry. (1852), 7 Exch. 707; MacAndrew *v.* Electric Telegraph Co. (1855), 17 C. B. 3.

886. ——— ——— ———.]—Pltf., who had some cattle conveyed by a railway co., received for them a ticket, which he signed, containing the terms on which the railway co. carried the cattle. At the foot of the ticket there was a clause: "N.B.—This

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overcrowding of such waggons, or for injuries done in the loading or unloading thereof, or in consequence of one animal injuring another:—*Held:* both the condition respecting the sea part of the transit to which the special contract was subject, & the condition alleged in the replication to have been annexed in the alternative contract of carriage offered, were unjust & unreasonable.—CORRIGAN *v.* GREAT NORTHERN & MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. COS. (1879), 6 L. R. Ir. 90.—**IR.**

m. ——— *Effect of alternative rates.*]—Pltfs. sent horses by an ordinary goods train to be carried on defts.' line from C. There were no horse-boxes at the station, but the porters of defts.' co., without objection by pltfs., put them into an ordinary goods waggon. Defts. had different rates for conveyance of horses—two rates for horse-boxes, & a specially reduced rate for waggons, at which the animals were to be carried at the owner's risk, & the co. to be exempt from all liability, except from loss or damage caused by wilful misconduct of their servants; & at the waggon rate in case of loss or damage, however caused, no claim exceeding £10 should be allowed for any one horse. At the full rate for horse-boxes, defts. undertook the ordinary duties of carriers. This condition, amongst others, was indorsed on the loading docket, signed by defts., & they also signed a declaration that the horses were delivered to defts. for conveyance in cattle or goods waggons, & were to be carried entirely at owner's risk:—*Held:* having regard to the alternative rates the contract of carriage was a reasonable one & was not rendered unreasonable by the want of horse-boxes at the station, in the absence of any requisition for them by pltfs.—NEVIN *v.* GREAT SOUTHERN & WESTERN RY. CO. (1891), 30 L. R. Ir. 125.—**IR.**

PART VII. SECT. 3.

q. *Contract not relieving carrier of liability for negligence—"Shipper's risk."*]—A receipt given on the payment of freight was as follows: "Received from D. £136 10s. being the freight of horses to be shipped to T., on deck at shipper's risk, he being perfectly satisfied with the accommodation":—*Held:* the words "shipper's risk" did not exempt the co. from liability for negligence.—DUNNE *v.* AUSTRALIAN STEAM NAVIGATION CO. (1876), 14 N. S. W. S. C. R. 131.—**AUS.**

r. ——— *"Owners' risk"—"Car load shipments."*]—Several boxes of foxes were shipped under a contract containing a clause providing that in case of "car load shipments," if the owner or attendant travelled, accompanying the animals, free transportation would be furnished the attendant, & the animals during transportation in charge of the attendant would be at owner's risk. One of the owners travelled on the same train as the foxes, but not in the same car, the foxes being in the express car with other express parcels. No free transportation was furnished:—*Held:* the contract did not apply to the shipment in question, & the co. was liable if the foxes died during the transportation through its negligence.—TRENHOLM *v.* DOMINION EXPRESS CO. (1914), 43 N. B. R. 98.—**CAN.**

s. *Exemption from loss or damage—Contract signed after happening of damage.*]—M. made a verbal arrangement with defts. to deliver three horses, to be shipped & carried by them, nothing being said about any conditions limiting defts.'s liability. One of the horses was killed. Subsequently a receipt was given to pltf. for freight which stated the horses were "to be carried at owner's risk":—*Held:* pltf. was not bound by the terms of this contract, which was not entered into until after the horse was killed.—MCWHINNIE *v.* UNION S.S. CO. OF NEW ZEALAND (1887), 9 N. S. W. L. R. 1.—**AUS.**

t. ——— ———.]—Pltf.'s horse was taken by his groom to a railway station, to be sent to D. A porter in the employment of defts. tried to put the horse into a box, but failed in the attempt, & the horse slipped & received serious injuries. The attempt to box the horse was afterwards successfully carried out. The groom, after the injuries were done, signed a contract in writing for the carriage of the horse at defts.' reduced rate, subject to condition that carriage should be at "owner's risk":—*Held:* defts. were not liable.—KNOX *v.* GREAT NORTHERN RY. CO., [1896] 2 I. R. 641.—**IR.**

u. ——— *Consignor's knowledge of condition.*]—Pltf. sent by defts.' railway, signing a paper which declared that he undertook all risk of loss, injury, or damage, in conveyance & otherwise, whether arising from the negligence, default, or misconduct, criminal or otherwise, on the part of defts. & their servants. He was told by the station-master that he would have to sign these conditions, which he did without taking time to read them. In an action for negligence in carriage of the cattle by which five of them were killed:—*Held:* pltf. was bound by the conditions, though he might not have read or understood the paper.—O'ROURKE *v.* GREAT WESTERN RY. CO. (1864), 23 U. C. R. 427.—**CAN.**

v. ——— *Overcrowding or suffocation—Bruised or injured by other animal.*]—Where injury occurred in transit to a bullock owing to the animal losing its footing in the truck, & the conditions signed by pltf. stipulated that the co. should not be responsible for any loss or injury caused by overcrowding in waggons or suffocation, or being trampled on, bruised, or otherwise injured in transit by each other:—*Held:* the co. were not liable.—M'CONNELL *v.* GREAT NORTHERN RY. CO. (1897), 32 I. L. T. 12.—**IR.**

w. ——— *Accidents to machinery—Steering gear giving way.*]—An action was brought by a cattle-dealer for injuries & deterioration caused to his cattle by reason of an accident to the steering gear of the vessel in which his cattle were being carried under a contract; there was a condition on the back of the contract that the co. would not be accountable for any loss or damage caused by accidents to machinery; that the co. did not undertake that vessels should start & arrive as advertised, & would not hold themselves responsible for non-arrival or non-delivery in time for any particular market:—*Held:* (1) the fact of the steering gear giving way under a severe strain did not amount to unseaworthiness of the vessel; (2) the co. were not liable.—O'CONNOR *v.* CITY OF CORK STEAM PACKET CO. (1897), 31 I. L. T. Jo. 418.—**IR.**

Sect. 3.—Under special contract. Sect. 4. Part VIII.]

ticket is issued subject to the owner undertaking all risks of conveyance whatever, as the co. will not be liable for any injury or damage howsoever caused, and occurring to live stock of any description travelling upon the L. & Y. Ry., or in their vehicles." Pltf. saw the cattle put into the truck. During the journey some of the cattle got alarmed, & broke out of the truck & were injured. The truck was so defectively constructed as to be unfit & unsafe for the conveyance of cattle:—*Held:* (1) there was no implied stipulation that the truck should be fit for the conveyance of cattle; (2) the co. were protected by the terms of the ticket from liability to pltf. for the damage to the cattle.—CHIPPENDALE *v.* LANCASHIRE & YORKSHIRE RY. CO. (1851), 7 Ry. & Can. Cas. 824; 21 L. J. Q. B. 22; 15 Jur. 1106.

Annotations:—As to (1) **Refd.** McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327. *As to* (2) **Folld.** McManus *v.* L. & Y. Ry. (1858), 2 H. & N. 693. **Consd.** Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. **Refd.** Carr *v.* L. & Y. Ry. (1852), 7 Exch. 707; Harris *v.* G. W. Ry. (1876), 1 Q. B. D. 515.

887. —— —— ——.]—Pltf. delivered horses to deft. to be carried from W. *via* M. to L. The horses were carried by deft. by steamer from W. to M. & were there loaded into trucks of the G. Co. for carriage to L. The trucks were in a very defective state & complaints were made to the railway servants but nothing was done & in consequence of the state of the trucks the horses were much injured during the transit. Pltf. had signed a "risk" note exempting deft. from liability for any risk in transit & from damage from any cause:—*Held:* pltf. had no cause of action against deft.—GANNELL *v.* FORD (1862), 5 L. T. 604.

888. —— —— **Collision.**]—A contract entered into with a common carrier by the party who delivers goods to be conveyed, by which contract the carrier is exempted from all liability for any loss occasioned by his negligence, is binding upon both parties. A declaration stated, that defts. were the owners of a certain railway, & that they conveyed horses & cattle thereon as common carriers; that pltf. delivered to defts. a horse, to be carried by them for hire on their railway from A. to B., subject to certain conditions assented to by pltf., & contained in a notice at the foot of the ticket of deft. co. for the conveyance of the horse; the ticket stated that it was issued subject to the owners taking all risks of conveyance whatsoever, as the co. would not be responsible for any injury or damage, howsoever caused, occurring to live stock travelling upon their line. The declaration then stated, that, whilst the horse was in the custody of defts., it was injured by the horse-box, in which the animal was, being propelled against some trucks, through the gross negligence of the co.:—*Held:* defts. had engaged to carry pltf.'s horse under a special contract, the terms of which were contained in the notice; & by that notice, pltf. had agreed that defts. should not be responsible for such a loss, although it were occasioned through their negligence; & consequently, the declaration was bad after verdict.—CARR *v.* LANCASHIRE & YORKSHIRE RY. CO. (1852), 7 Exch. 707; 7 Ry. & Can. Cas. 426; 21 L. J. Ex. 261; 19 L. T. O. S. 124; 17 Jur. 397; 155 E. R. 1133.

Annotations:—**Distd.** McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327. **Folld.** Gannell *v.* Ford (1862), 5 L. T. 604. **Consd.** Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; Gallin *v.* L. & N. W. Ry. (1875), L. R. 10 Q. B. 212; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373. **Refd.** Harrison *v.* L., B. & S. C. Ry. (1862), 2 B. & S. 152; Lloyd *v.* General Iron Screw Collier Co. (1864), 3 H. & C. 284; Grill *v.* General Iron Screw Colliery Co. (1868), L. R. 3 C. P. 476; Blower *v.* G. W. Ry. (1872), L. R. 7 C. P. 655; Hall *v.* N. E. Ry. (1875), L. R. 10 Q. B. 437; Thompson *v.* Mid. Ry. (1875), 34 L. T. 34. **Mentd.** Seymour *v.* Greenwood (1861), 30 L. J. Ex. 189.

889. —— —— —— **Carriers Act, 1830 (c. 68).**]—GREAT NORTHERN RY. CO. *v.* MORVILLE, No. 348, *ante*.

890. —— —— **Breaking of axle.**]—A railway co. letting trucks for hire for the conveyance of horses, delivered to the owner of the horses a ticket, in which it was stated that the owners were to undertake all risk of injury by conveyance & other contingencies, & further stipulated that the co. would not be liable for any damages, however caused, to horses or cattle:—*Held:* the owner of the horses could not recover for damage done to them through the breaking of an axle, which was attributable to the culpable negligence of the co.'s servants.—AUSTIN *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1852), 10 C. B. 454; 7 Ry. & Can. Cas. 300; 21 L. J. C. P. 179; 19 L. T. O. S. 256; 16 Jur. 763; 138 E. R. 181.

Annotations:—**Consd.** Carr *v.* L. & Y. Ry. (1852), 7 Exch. 707. **Folld.** York, Newcastle & Berwick Ry. *v.* Crisp (1854), 14 C. B. 527. **Consd.** Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473. **Refd.** Morville *v.* G. N. Ry. (1852), 16 Jur. 528; McManus *v.* L. & Y. Ry. (1859), 4 H. & N. 327; Harrison *v.* L. B. & S. C. Ry. (1862), 2 B. & S. 152; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373; Travers *v.* Cooper, [1915] 1 K. B. 73. **Mentd.** MacAndrew *v.* Electric Telegraph Co. (1855), 17 C. B. 3; Phillips *v.* Clark (1859), 5 Jur. N. S. 1081.

Special contracts under Carriers Act, 1830 (c. 68).—*See* Part IV., Sect. 2, Sub-sect. 1, *ante*.

891. —— **"To any horses conveyed."—Defective horse-box.**]—SKIPPER *v.* GREAT WESTERN RY. CO. (1851), 17 L. T. O. S. 42, 83.

892. For delivery within definite time—Delivery within reasonable time.]—HUGHES *v.* GREAT WESTERN RY. CO., No. 232, *ante*.

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a. —— *Unless caused by wilful neglect or misconduct.*]—Pigs were delivered for carriage by pltf. under a special contract at a reduced rate subject to a condition exempting the carrying co. from all liability, including liability for loss, injury, or delay, unless occasioned by intentional & wilful neglect or misconduct of the co.'s servants acting within the scope of their authority. On the lot arriving some of the pigs consigned were not forthcoming. On the facts:—*Held:* pltf. was entitled to a decree.—CURRAN *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND, [1896] 2 I. R. 183.—**IR.**

b. —— *Unless caused by negligence—Onus of proof.*]—M'LACHLAN *v.* LONDON & NORTH WESTERN RY. CO. (1907), 41 I. L. T. 139.—**IR.**

c. *Whether common law liability excluded.*]—Deft. co. received cattle to be carried for pltf. Condition that pltf. undertook all risks whether arising from negligence, default, or misconduct on the part of deft. co. or their servants; & that deft. co. were not to be responsible for delivery within any certain time or for any particular market. Pltf. sued deft. co. for negligence as common carriers in leaving the cattle in an exposed place causing two of them to die, & for unreasonable delay whereby pltf. lost a market:—*Held:* pltf. could not recover as he had entered into a special contract with deft. co.—BATES *v.* GREAT WESTERN RY. CO. (1865), 24 U. C. R. 544.—**CAN.**

d. ——.]—HOOD *v.* GRAND TRUNK RY. CO. (1870), 20 C. P. 361.—**CAN.**

e —— *Free pass.*]—Pltf. delivered to defts., at S., hogs, to be carried to G. He got at S. a drover's pass to pass him in charge of his stock. Pltf. went as far as T. with the hogs, & thence went on by express. By some error the car went round by H.; a delay of several days occurred, by which the hogs were injured, & several died; & when the car reached G. nine were missing. Upon the shipping bill, as well as upon pltf.'s pass, was indorsed a condition that upon a free pass being given, defts. would not be responsible for any negligence, default, or misconduct, gross, culpable, or otherwise, on the part of defts. or their servants, or of any other person, causing or tending to cause the death, injury, or detention of the goods:—*Held:* the condition protected defts., for it sufficiently appeared that the loss must have happened from some cause within it.—FARR *v.* GREAT WESTERN RY. CO. (1874), 35 U. C. R. 534.—**CAN.**

893. Evidence of contract.]—A. took some cattle to a railway station to be carried along the railway. He hired a truck for the cattle, paid for their carriage, & thereupon received from the railway clerk a ticket which contained terms exonerating the railway co. from liability in case of injury to the animals or delay in the delivery. In an action by A. against the co. for an injury to the animals & delay in delivering them :—*Held :* on these facts it was a misdirection to leave it to the jury to say whether the railway co. were common carriers of cattle for hire, & whether they received pltf.'s cattle for carriage as common carriers for hire, or whether they received them under a special contract on the terms contained in the ticket ; there was no evidence of the co. being common carriers of cattle for hire, nor of any other contract but that contained in the ticket, & the judge ought to have told the jury that there was either a special contract or no contract at all.—YORK, NEWCASTLE & BERWICK RY. Co. *v.* CRISP (1854), 14 C. B. 527 ; 23 L. J. C. P. 125 ; 23 L. T. O. S. 78 ; 18 J. P. 361 ; 18 Jur. 606 ; 2 W. R. 428 ; 139 E. R. 217 ; *sub nom.* CRISP *v.* YORK & NEWCASTLE RY. Co., 2 C. L. R. 1357.

Annotations :—**Expld.** Slim *v.* G. N. Ry. (1854), 14 C. B. 647. **Consd.** Lewis *v.* McKee (1868), L. R. 4 Exch. 58 ; Parker *v.* S. E. Ry. (1876), 1 C. P. D. 618. **Refd.** Hughes *v.* G. W. Ry. (1854), 14 C. B. 637 ; White *v.* G. W. Ry. (1857), 2 C. B. N. S. 7 ; Brown *v.* Bristol & Exeter Ry. (1861), 4 L. T. 830 ; Peek *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473.

See, further, Part IV., Sect. 1, *ante*.

—— **Admissibility of parol evidence—To supplement consignment note.**]—*See* EVIDENCE.

SECT. 4.—**UNDER COLONIAL STATUTES.**

See cases, *infra*.

Part VIII.—Carriage of Explosives and Dangerous Goods.

See, now, Railways Act, 1921 (c. 55), ss. 44 (3), 50.

894. Notice to carrier—Duty of sender.]—One who employs a carrier to carry an article of such a dangerous nature as to require extraordinary care in its conveyance, must communicate the fact to the carrier, or he will be responsible for any injury which may result to the carrier or his servants from his omission to do so.

Deft. being desirous of sending a carboy of nitric acid to C., his foreman gave it to one R., the servant of a railway carrier, who, as the railway

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893 i. *Evidence of contract.*]—B. wishing to transmit cattle to W. from D., shipped the cattle on board the Chester & Holyhead Ry. Co.'s steamer at D., receiving at the time a "red ticket," entitling him to a free passage from D., no other ticket being then given to him, nor did any general agreement appear to have been made as to the transmission of the cattle. After the cattle were placed in the trucks at H., the traffic-manager handed to B. a "live stock" ticket, stating that the co. undertook the conveyance of live stock free from all responsibility, as they would not be liable for damage arising in any way whatever, nor hold themselves responsible to forward cattle by any particular train, or in time for any particular market. The fare for the carriage of the cattle was to be paid on B.'s return to D. B. brought action to recover compensation for injuries to the cattle in transit :—*Held :* (1) the putting the cattle on board the steamer at D., coupled with the fact that the cattle were conveyed to W., afforded some evidence of a contract to convey as carriers from D. to W. ; (2) it was wrong to direct the jury that the only contract proved was a contract subject to the terms endorsed on the ticket.—BYRNE *v.* CHESTER & HOLYHEAD RY. Co. (1856), 8 Ir. Jur. 174.—**IR.**

f. *Journey over several systems—Liability of issuing company.*]—By a consignment note addressed to deft. co. cattle were consigned from M. to D. The note set out the freight to be paid, which was the freight to D. Pltf. gave verbal directions at the station in M. that the cattle were to be forwarded to Y. Across the face of the note were written in pencil the words "*viâ* G. & H.," & at the bottom "For H. for York." The note was signed by pltf. & retained by deft. co. On the back a condition was set out limiting the liability of deft. co. "in respect of live stock to be booked beyond the co.'s line by sea" :—*Held :* (1) it amounted to a through contract of carriage to Y. ; (2) defts. were liable for the safety of the cattle until they reached that place.—HAGAN *v.* SLIGO, LEITRIM & NORTHERN COUNTIES RY. Co. (1914), 48 I. L. T. Jo. 127.—**IR.**

g. —— *Issuing company not liable—Sale by non-issuing company.*]—Race-horses consigned through N. G. R. from D. to G. in T., were injured in an accident on a section of the railway under the control of the C. S. A. R. They were thereafter conveyed to their destination. Delivery was tendered to the consignee, but refused, & the horses were sold by order of the C. S. A. R. The consignment-note provided that the stock was conveyed subject to the published bye-laws, laws, & regulations of the various railway administrations. In an action by the owner of the horses against the N. G. R., for recovery of the sum of £4,370, the value of the horses :—*Held :* (1) deft.'s contract was merely to carry the horses to G ; (2) the C. S. A. R. had sold the horses ; (3) deft. was not liable.—PICCIONE *v.* NATAL GOVERNMENT (1909), 30 N. L. R. 469.—**S. AF.**

h. *Failure to provide horse-boxes—Loss of sale—Measure of damages.*]—A ry. co. having failed to provide horse-boxes, pursuant to contract, for the conveyance of horses for sale by auction in D. on the day but one following, the owner was compelled to send them by road, a distance of 24 miles, in order that they might arrive in due time for the sale, & for previous inspection by purchasers. The horses, which were valuable hunters, were in soft condition at the time. They were deteriorated in appearance by the fatigue of the road journey ; one of them was lamed ; & such as were sold realised prices below what would have been otherwise obtained, the others being left on the owner's hands. Had they been in hardfed condition they would have borne the journey without injury. The co.'s stationmaster was, at the time of the contract, aware of the intended sale, & of the day on which it was to take place :—*Held :* the co. were not liable in damages for the entire loss which the owner sustained in consequence of the injuries occasioned to the horses by the road journey, but the measure of damages was the deterioration which the horses, if in ordinary condition & fit to make the journey, would have suffered thereby, & the time & labour expended on the road.—WALLER *v.* MIDLAND GREAT WESTERN RY. Co. OF IRELAND (1879), 4 L. R. Ir. 376.—**IR.**

PART VII. SECT. 4.

i. *Carrier exempted from liability for damage "however caused"—Railway Act, 1859, No. 19.*]—CHEEKE *v.* RAILWAYS COMR. (1869), 8 N. S. W. S. C. R. 111.—**AUS.**

k. *Pens for herding cattle essential—Liability for nuisance caused—Dominion Railway Act.*]—BENNETT *v.* GRAND TRUNK RY. Co. (1901), 2 O. L. R. 425.—**CAN.**

l. *Extent of liability—Whether negligence excluded—Dominion Railway Act.*]—BOOTH *v.* CANADIAN PACIFIC RY. Co. (1906), 7 O. W. R. 593.—**CAN.**

m. *Declaration of value—Notice of claim—R. S. C.* 1906, *c.* 37, *ss.* 284, 340.]—MERCER *v.* CANADIAN PACIFIC RY. Co., (1908) 17 O. L. R. 585 ; 12 O. W. R. 1212 ; 8 Can. Ry. Cas. 372.—**CAN.**

n. —— —— ——.]—SUTHERLAND *v.* GRAND TRUNK RY. Co. (1909), 18 O. L. R. 139 ; 13 O. W. R. 321 ; 8 Can. Ry. Cas. 389.—**CAN.**

o. —— *Whether liability for negligence excluded.*]—COSTELLO *v.* GRAND TRUNK RY. Co. (1906), 7 O. W. R. 846.—**CAN.**

PART VIII.

894 i. *Notice to carrier—Duty of sender.*]—There is a duty on all who deliver dangerous substances to be carried by other persons to take reasonable precautions & to give notice of the dangerous nature of the substance, if they are aware of it ; & in the case of a substance like bichromate of potash, the nature of which is not a matter of common knowledge,

Parts VIII. & IX. Sect. 1.]

co. would only carry articles of that dangerous character on one day in each week, handed it to pltf., the servant of a C. carrier, without communicating to him (& there being nothing in its appearance to indicate) its dangerous nature. While being carried by pltf. to the cart, the carboy from some unexplained cause burst, & its contents flowed over & severely injured pltf. :—*Held :* deft. was liable for the injury thus resulting from his breach of duty.—FARRANT *v.* BARNES (1862), 11 C. B. N. S. 553 ; 31 L. J. C. P. 137 ; 8 Jur. N. S. 868 ; 142 E. R. 912.

Annotations :—**Consd.** Indermaur *v.* Dames (1866), L. R. 1 C. P. 274 ; Cribb *v.* Kynoch, [1907] 2 K. B. 548 ; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94 ; Blacker *v.* Lake & Elliot (1912), 106 L. T. 533. **Refd.** Gautret *v.* Egerton (1867), L. R. 2 C. P. 371 ; Ward *v.* Hobbs (1878), 27 W. R. 114 ; Heaven *v.* Pender (1883), 52 L. J. Q. B. 702.

895. Implied warranty by sender.]—First count : that pltfs. were owners of a general ship ; that defts. caused a corrosive substance to be packed in casks, & delivered to pltfs., as casks of bleaching powder, to be carried in the ship ; that pltfs. & their agents were ignorant that bleaching powder contained a corrosive substance, & the casks outwardly appeared to be sufficient ; but that the casks were insufficient, & the contents were improperly packed, that the corrosive contents escaped & destroyed the cargo. Second count : that defts. shipped a dangerous article, knowing it to be such, without notice of its danger ; & pltfs. without knowledge of its dangerous nature, received it, & stowed it in the hold, where it did mischief. Plea 3, to so much of the first count as relates to the insufficiency of the packages : that defts. purchased the goods ready packed from third persons, named, & were not themselves, or by their servants, guilty of negligence. Plea 4, to first count : that the persons employed on the ship knew & had the means of judging of the sufficiency of the casks. Plea 10, to the second count : that the master of the ship knew, or had the means of knowing, the dangerous nature of the goods. On demurrer to the pleas :—*Held :* there is an implied undertaking on the part of skippers of goods on board a general ship that they will not deliver to be carried on the voyage packages of a dangerous nature, which those employed on behalf of the shipowner may not on inspection be reasonably expected to know to be of a dangerous nature, without giving notice ; consequently, both counts were good, & the third plea bad ; the fourth & tenth pleas, which the ct. construed to amount to an allegation of facts equivalent to notice, were good.—BRASS *v.* MAITLAND (1856), 6 E. & B. 470 ; 26 L. J. Q. B. 49 ; 27 L. T. O. S. 249 ; 2 Jur. N. S. 710 ; 4 W. R. 647 ; 119 E. R. 940.

Annotations :—**Consd.** Hutchinson *v.* Guion (1858), 5 C. B. N. S. 149. **Apld.** Farrant *v.* Barnes (1862), 11 C. B. N. S. 553. **Consd.** Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412 ; Acatos *v.* Burns (1878), 3 Ex. D. 282 ; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94 ; Blacker *v.* Lake & Elliot (1912), 106 L. T. 533 ; Mitchell Cotts *v.* Steel, [1916] 2 K. B. 610. **Refd.** Dutton *v.* Powles (1861), 2 B. & S. 174 ; Blower *v.* G. W. Ry. (1872), L. R. 7 C. P. 655 ; Searle *v.* Laverick (1874), L. R. 9 Q. B. 122 ; Greenshields Cowie *v.* Stephens, [1908] 1 K. B. 51. **Mentd.** Dunn *v.* Bucknall, [1902] 2 K. B. 614.

896. ——.]—Defts., who carried on business as carriers & forwarding agents, delivered to pltf.'s husband, the owner of a canal boat, for carriage by him from G. to S. on such boat as a common carrier a certain quantity of a chemical known as ferro-silicon packed in casks. It was delivered to pltf.'s husband under the description of "general cargo," & he was not informed by defts. that it was ferro-silicon. During the carriage of the ferro-silicon from G. to S. on pltf.'s husband's boat, it gave off poisonous gases, in consequence of which pltf.'s husband died, & pltf., who was on board, & assisted her husband in the management & working of the boat, was rendered seriously ill. Pltf. brought an action, as administratrix of her husband, against defts. for damage suffered by her by reason of the death of her husband, & also for injury & damage sustained by herself. Defts. did not know when they shipped the casks containing ferro-silicon that it was a dangerous substance :—*Held :* (1) (VAUGHAN WILLIAMS, L.J.) defts. owed a duty to pltf.'s husband to communicate such information as they had as to the nature of the goods to be sent in the canal boat, & through their servants they were guilty of negligence, & want of care in not communicating to the carrier the name, which they knew, of this particular cargo ; (2) (FLETCHER MOULTON & FARWELL, L.JJ.) a consignor who tenders goods to a common carrier to be carried by him in performance of his common law obligation to carry thereby impliedly warrants to the carrier that the goods so tendered are fit to be carried in the ordinary way, & are not dangerous ; (3) that implied warranty is displaced by evidence that the carrier in accepting the goods knew of their unfitness or dangerous character whether such knowledge arises from express information or from the general knowledge of mankind of the natural incidents of the goods tendered for carriage.—BAMFIELD *v.* GOOLE & SHEFFIELD TRANSPORT CO., LTD., [1910] 2 K. B. 94 ; 79 L. J. K. B. 1070 ; 103 L. T. 201, C. A.

Annotations :—*As to* (1) **Refd.** Blacker *v.* Lake & Elliot (1912), 106 L. T. 533. *As to* (2) **Refd.** The West Cock, [1911] P. 208.

897. What are dangerous goods — Railways Clauses Consolidation Act, 1845 (c. 20)—Rates & Charges Orders — Liquid metal polish.]—Liquid metal polish having a flash point of over 73° Fahr. (Abel Close Test) in securely closed tins in cases, is "dangerous goods" within the meaning of Pt. 4 of the schedule to the Railway Rates & Charges Orders ; & the Board of Trade have no jurisdiction under Railway & Canal Traffic Act, 1888 (c. 25), s. 24 (11), to classify the same, as such goods are already classified in the "Exceptional Class" in Pt. 4 as "dangerous goods."

The statutory schedule & classification in the Rates & Charges Orders Confirmation Acts do not in any way fetter or limit the power given to a railway co. by Railways Clauses Consolidation Act, 1845, s. 105, to decide what goods are "in the judgment of the co." dangerous goods ; & if a railway co. in the *bonâ fide* exercise of their discretion come to the conclusion that goods, which are not included in any part of the classification, are in their judgment dangerous goods, then such goods are "dangerous goods" within the "Exceptional Class" in Pt. 4 of the statutory schedule to the Rates & Charges Orders.—NORTH EASTERN RY. CO. *v.* RECKITT & SONS, LTD. (1913), 109

the duty is not discharged by merely informing the carrier of the name of the substance.—HOEY *v.* HARDIE (1912), 12 S. R. N. S. W. 268.—AUS.

894 ii. —— ——.]—A person, who sends an article of a dangerous & explosive nature to a ry. co. to be carried by such co., without notifying to the servants of the co. the dangerous nature of the article, is liable for the consequences of an explosion, whether it occurs in a manner which he could not have foreseen as probable or not ; & such person is liable for the consequences of an explosion occurring in a manner which he could not have foreseen, if he omits to take reasonable precautions to preclude the risk of explosion.—LYELL *v.* GANGA DAI (1875), I. L. R. 1 All. 60.—IND.

L. T. 327 ; 29 T. L. R. 573 ; 15 Ry. & Can. Tr. Cas. 137.

Annotations :—**Consd.** Traders' Traffic Conference *v.* Mid. Ry. (1917), 16 Ry. & Can. Tr. Cas. 232. **Refd.** Mid. Ry. *v.* Brotherton (1920), 36 T. L. R. 679.

898. —— —— —— Benzole, naphtha, toluol.]—Benzole, naphtha, & toluol are not "spirits of tar" within Class II. of the statutory classification of merchandise traffic, but come under Pt. IV. as being dangerous goods.—TRADERS' TRAFFIC CONFERENCE (INCORPORATED) *v.* MIDLAND RY. CO. (1917), 34 T. L. R. 141 ; 16 Ry. & Can. Tr. Cas. 232.

Explosives carried by passenger.]—*See* No. 496, *ante*.

899. Criminal liability—Onus of proof.]—Where the law presumes the affirmative of any fact, the negative of such fact must be proved by the party averring it in pleading. So where any act is required to be done by one, the omission of which would make him guilty of a criminal neglect of duty, the law presumes the affirmative, & throws the burthen of proving the negative on the party who insists on it. Therefore, where pltf. declared that defts., who had chartered his ship, put on board a dangerous commodity (by which a loss happened) without due notice to the captain, or any other person employed in the navigation, it lay upon him to prove such negative averment. The commodity was delivered by defts.' officer, & received by the first mate of pltf.'s ship (which first mate was dead, & no other person was present to depose to the conversation which passed between them) :—*Held :* the best evidence of the fact could only be given by defts.' officer who delivered the commodity on board to such first mate ; & the action could not be sustained by secondary evidence.—WILLIAMS *v.* EAST INDIA CO. (1802), 3 East, 192 ; 102 E. R. 571.

Annotations :—**Expld.** R. *v.* Haslingfield (1814), 2 M. & S. 558. **Distd.** Newman *v.* Hardwicke, (1838), 2 J. P. 328. **Consd.** Brass *v.* Maitland (1856), 6 E. & B. 470 ; Farrant *v.* Barnes (1862), 11 C. B. N. S. 553 ; Bamfield *v.* Goole & Sheffield Transport Co., [1910] 2 K. B. 94. **Refd.** R. *v.* Hawkins (1808), 10 East, 211 ; Thornton *v.* Lance (1815), 4 Camp. 231 ; R. *v.* Twyning (1819), 2 B. & Ald. 386 ; Calder *v.* Rutherford (1822), 3 Brod. & Bing. 302 ; R. *v.* Whiston (1836), 1 Har. & W. 696 ; Stikeman *v.* Dawson (1847), 1 De G. & Sm. 90 ; Keates *v.* Cadogan (1851), 15 Jur. 428 ; R. *v.* Lister (1857), 26 L. J. M. C. 196 ; Aflalo *v.* Lawrence & Bullen, [1903] 1 Ch. 318. **Mentd.** Pearce *v.* Whale (1826), 7 Dow. & Ry. K. B. 512 ; Langridge *v.* Levy (1837), 2 M. & W. 519.

900. —— Innocent sender.]—(1) Great Western Railway Act, 1835 (c. cvii.), s. 168, enacts that every person who shall send or cause to be sent by the railway any vitriol, etc., or other goods of a dangerous quality, shall distinctly mark or state the nature of such goods on the outside of the package, or give notice in writing to the servant of the co. with whom they are left, at the time of sending, on pain of forfeiting £10 for every default, or being imprisoned :—*Held :* the Act made the sending of dangerous goods, without notice, a criminal offence ; & a guilty knowledge on the part of the sender was necessary to render him liable under the Act.

Resps. received from N. some cases containing vitriol, & sent them by the railway. The nature of the goods was not marked on the packages or known to resps. when they received the packages. N., in answer to an inquiry by resps., informed them that the cases contained gun stocks & other goods of a harmless nature : & resps. so described them in the receiving note sent by them with the goods to the railway, in which note they described themselves as the consignors :—*Held :* as resps. had been misled by N. as to the nature of the goods, & had no guilty knowledge of their dangerous character, they were not liable as senders of the goods, within the Act.

(2) *Semble :* they would have been civilly liable to the co. for any damage arising from the sending.

(3) *Semble :* N. would have been liable, under the Act, as the person causing the goods to be sent.—HEARNE *v.* GARTON (1859), 2 E. & E. 66 ; 28 L. J. M. C. 216 ; 33 L. T. O. S. 256 ; 23 J. P. 693 ; 5 Jur. N. S. 648 ; 7 W. R. 566 ; 121 E. R. 26.

Annotations :—*As to* (1) **Apld.** R. *v.* Sleep (1861), 8 Cox, C. C. 472. **Consd.** R. *v.* Prince (1875), L. R. 2 C. C. R. 154. **Refd.** Legg *v.* Pardoe (1860), 9 C. B. N. S. 289 ; R. *v.* Stephens (1866), 12 Jur. N. S. 961 ; R. *v.* Paget (1881), 8 Q. B. D. 151 ; R. *v.* Tolson (1889), 23 Q. B. D. 168 ; Toronto Ry. *v.* Toronto Corpn., [1920] A. C. 446. *As to* (2) **Refd.** Blower *v.* G. W. Ry. (1872), L. R. 7 C. P. 655.

Part IX.—Measure of Damages.

SECT. 1.—LOSS OF GOODS.

901. Value of goods.]—BUTLER *v.* BASING, No. 168, *ante*.

902. ——.]—Pltf. by an agent at B., received small parcels, & had them put into a hamper, addressed to himself, at L., & sent by the London & North Western Ry. These small parcels, which were addressed to different persons, it was the business of pltf. to deliver as addressed. In its transit on the railway, a small parcel, addressed to K. was abstracted from the hamper. In an action by pltf. against the co. for loss of the parcel :—*Held :* (1) it was sufficient to prove that it was not in the hamper when delivered to pltf. by the co. ; (2) it was not necessary to go into evidence to show that the co. had not delivered it to K. ; (3) the amount of damages in such action is the value of the lost parcel, as pltf. would be liable to that amount to the owner of it.

(4) A railway co. have no right to open a parcel to ascertain whether it contains other parcels addressed to different persons.

(5) By their private Act (3 Will. 4), s. 181, defts. are to take rates & tolls from all persons alike, in the same or similar circumstances. Their ordinary price for carrying a parcel from L. to B. was ½*d.* per lb. They refused to carry a parcel for pltf. from L. to B. unless he paid 1*d.* per lb.,

PART IX. SECT. 1.

901 i. *Value of goods—Or nominal damages.*]—In an action for not carrying goods safely, whereby they were lost, the only question for the ct. was, whether pltf. should be limited to nominal damages, or recover the actual value of his goods.—ROBSON *v.* BUFFALO & LAKE HURON RY. CO. (1860), 10 C. P. 279.—CAN.

901 ii. ——.]—BRILL *v.* GRAND TRUNK RY. CO. (1870), 20 C. P. 440.—CAN.

901 iii. ——.]—In an action against a common carrier for the loss of goods, a jury is not justified in giving a verdict for greater damages than the value of goods actually proved to have been contained in the case.—SMITH *v.* LUNT (1873), 2 Pug. 64.—CAN.

901 iv. ——.]—CLAMAN'S, LTD. *v.* CANADIAN PACIFIC RY. CO., LTD. (1920), 2 W. W. R. 117 ; 51 D. L. R. 668.—CAN.

Sect. 1.—*Loss of goods. Sects.* 2 & 3.]

which he did:—*Held:* he might recover back the excess.—CROUCH *v.* LONDON & NORTH WESTERN RY. CO. (1849), 2 Car. & Kir. 789, N. P.

Annotations:—*As to* (5) **Refd.** Sutton *v.* G. W. Ry., Sutton *v.* S. E. Ry. (1865), 13 L. T. 221. *Generally*, **Refd.** Walker *v.* York & North Midland Ry. (1853), 23 L. J. Q. B. 73.

903. —— At place to which consigned.]—Where goods are sent by a carrier, the consignee is entitled to recover their value at the place to which they are consigned, as distinguished from the place at which they were delivered to the carrier.—RICE *v.* BAXENDALE (1861), 7 H. & N. 96; 30 L. J. Ex. 371; 158 E. R. 407.

Annotations:—**Consd.** O'Hanlan *v.* G. W. Ry. (1865), 6 B. & S. 484. **Refd.** Ströms Bruks Aktie Bolag *v.* Hutchison, [1905] A. C. 515.

904. —— —— Ascertainment of damages.]—In an action against a railway co. for the non-delivery of drapery goods, the measure of damages is the price at which the goods can be obtained in the market, if there be one at the place & time at which they ought to have been delivered; if not, the damages must be ascertained by taking into consideration, in addition to the cost price & the expense of transit, the reasonable profit of the importer.—O'HANLAN *v.* GREAT WESTERN RY. CO. (1865), 6 B. & S. 484; 6 New Rep. 147; 34 L. J. Q. B. 154; 12 L. T. 490; 30 J. P. 710; 11 Jur. N. S. 797; 13 W. R. 741; 122 E. R. 1274.

Annotations:—**Consd.** The Notting Hill (1884), 9 P. D. 105. **Refd.** Ströms Bruks Aktie Bolag *v.* Hutchison, [1905] A. C. 515.

—— Declared value.]—*See* Nos. 126–132, 134, *ante*, & cases in Part IV., Sect. 1, sub-sect. 7, Sect. 2, sub-sect. 1, C., *ante*.

905. Cost of replacement—At place to which consigned—With interest.]—Pltfs. delivered to deft. certain machinery to be carried from G. to V.; a box containing part of the machinery without which the rest could not be worked was lost. Deft. knew that the box contained a portion of the machinery, but did not know that it was essential to the working thereof. Owing to the loss the machinery could not be worked for eleven months:—*Held:* pltfs. could recover only the cost of replacing the box & its contents in V., with interest, until payment at 5 per cent., & could not recover damages for the losses they sustained through their inability to work the machinery during the eleven months.—BRITISH COLUMBIA, ETC., SAW MILL CO. *v.* NETTLESHIP (1868), L. R. 3 C. P. 499; 37 L. J. C. P. 235; 18 L. T. 604; 16 W. R. 1046.

Annotations:—**Consd.** The Northumbria (1869), L. R. 3 A. & E. 6. **Refd.** Horne *v.* Mid. Ry. (1873), L. R. 8 C. P. 131; Wagstaff *v.* Anderson (1879), 4 C. P. D. 283; Scaramanga, Manoussin *v.* English (1895), 1 Com. Cas. 99; The Crathie, [1897] P. 178; Bostock *v.* Nicholson, [1904] 1 K. B. 725; Slater *v.* Hoyle & Smith, [1920] 2 K. B. 11; Monte Video Gas & Dry Dock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 544.

See, further, BAILMENT, Vol. III., p. 82.

SECT. 2.—MISDELIVERY.

906. Amount received on sale—Ratification by consignor.]—SANQUER *v.* LONDON & SOUTH WESTERN RY. CO., No. 183, *ante*.

907. Loss of profit—Special purpose known.]—Defts. contracted with pltfs. that they would carry a part cargo of gas coal to M. & there deliver it to pltfs. They knew at the time of entering into the contract that the coal was required by pltfs. for manufacturing gas at M., & accordingly carried the coal there, but by mistake delivered a smaller quantity of steam coal to pltfs., who, there being no market for the supply of gas coal, used the steam coal in order to keep their works going, with the result that the steam coal was of considerably less value to them than the gas coal contracted for:—*Held:* pltfs. acted reasonably in making use of the steam coal & were entitled to recover the loss of the value of the gas coal to them for the purpose of manufacturing gas & by-products, such as coke, tar, etc.—MONTE VIDEO GAS & DRY DOCK CO., LTD. *v.* CLAN LINE STEAMERS, LTD. (1921), 37 T. L. R. 866, C. A.

SECT. 3.—DELAY IN DELIVERY.

908. Loss of profit—Despatch at certain time—Delivery beyond carriers' limit—Responsibility limited by notice.]—WILSON *v.* YORK, NEWCASTLE, & BERWICK RY. CO., No. 291, *ante*.

909. —— Chance of prize in competition—Material & labour.]—WATSON *v.* AMBERGATE, NOTTINGHAM, ETC., RY. CO., No. 158, *ante*.

910. —— Special purpose unknown—Stoppage of works.]—Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly & reasonably be considered either arising naturally, that is, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in

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903 i. —— *At place to which consigned—Or at place of shipping—With interest.*]—In an action for conversion of oats sold by a ry. co. at the place to which they were consigned:—*Held:* pltf. was entitled to recover as damages the value of the oats at that place at the time of conversion, or the price paid at the place of shipping with interest added.—WORDEN *v.* CANADIAN PACIFIC RY. CO. (1887), 13 O. R. 652.—CAN.

904 i. —— —— *Ascertainment of damages.*]—Goods (artists' models) were entrusted to defts. for carriage without any inspection or valuation or agreement as to value & without any fraud or deception on the part of the shipper. The goods having been lost in transit; in an action for their value, the evidence as to this being somewhat uncertain, pltf.'s estimate was accepted subject to a reduction based on consideration of the time when he purchased & the use made of the goods.—PAGLIAI *v.* CANADIAN PACIFIC RY. CO. (1913), 24 O. W. R. 518.—CAN.

p. —— [*Share certificates.*]—The measure of damages for the loss of share certificates is the amount the owner would have to expend in obtaining the issue of duplicate certificates.—SOUTH AFRICAN RYS. *v.* SIMONOWITZ (1911), T. P. D. 92.—S. AF.

q. *Loss of profits — Chance of prize in competition—Material & labour —Special purpose known.*]—S., an architect, prepared plans & specifications which he entrusted to defts., carriers, for transmission to a hospital committee which had promised a premium for accepted plans: the carriers were informed of S.'s object. The plans were marked "to be returned," & S. had made no copies. The plans & specifications were lost by the carriers:—*Held:* the measure of damages was the value of the time, labour & skill expended by S. upon the preparation of the plans & specifications, & not the chance of securing the premium, which was not a matter of such an ascertainable value at the time of entering into the contract of carriage as to have been capable of contemplation by both parties.—STENT *v.* GIBSON BROTHERS (1888), 5 H. C. 148.—S. AF.

PART IX. SECT. 2.

r. *Value of goods — With interest.*]—Pltfs., nurserymen, sent by a ry. co. trees which were wrongly delivered. On the facts:—*Held:* there was no ground for giving more than the value of the trees wrongfully delivered, & interest.—LESLIE *v.* CANADA CENTRAL RY. CO. (1878), 44 U. C. R. 21.—CAN.

s. —— *Sold as perishable by carrier—At date of sale.*]—LEMON *v.* GRAND TRUNK RY. CO. (1914), 32 O. L. R. 37; 5 O. W. N. 813; 7 O. W. N. 76.—CAN.

t. *Goods delivered to third party without payment or indemnity.*]—FRIEDMAN *v.* CANADIAN PACIFIC RY. CO. (1920), 18 O. W. N. 128.—CAN.

PART IX. SECT. 3.

u. *Loss of profit — Chance of prize in competition—Special purpose known.*]—Where dogs were delivered to an

the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.

Pltfs., owners of a flour mill, sent a broken iron shaft to an office of defts., who were common carriers, to be conveyed by them ; & defts.' clerk, who attended at the office, was told that the mill was stopped, that the shaft must be delivered immediately, & that a special entry, if necessary, must be made to hasten its delivery ; the delivery of the broken shaft to the consignee, to whom it had been sent by pltfs. as a pattern, by which to make a new shaft, was delayed for an unreasonable time, in consequence of which, pltfs. did not receive the new shaft for some days after the time they ought to have received it, & they were consequently unable to work their mill from want of the new shaft, & thereby incurred a loss of profits : —*Held :* in the circumstances, such loss could not be recovered in an action against defts. as common carriers.—HADLEY *v.* BAXENDALE (1854), 9 Exch. 341 ; 23 L. J. Ex. 179 ; 23 L. T. O. S. 69 ; 18 Jur. 358 ; 2 W. R. 302 ; 2 C. L. R. 517 ; 156 E. R. 145.

Annotations :—**Consd.** Mann *v.* General Steam Navigation Co. (1856), 26 L. T. O. S. 247 ; Simons *v.* Patchett (1857), 26 L. J. Q. B. 195 ; Randall *v.* Raper (1858), E. B. & E. 84. **Apld.** Portman *v.* Middleton (1858), 4 C. B. N. S. 322 ; Smeed *v.* Foord (1859), 1 E. & E. 602. **Consd.** Allsop *v.* Allsop (1860), 5 H. & N. 534 ; De Mattos *v.* Gibson (1860), 1 John. & H. 79 ; Gee *v.* L. & Y. Ry. (1860), 6 H. & N. 211. **Apld.** Le Feintur *v.* S. E. Ry. (1860), 2 L. T. 170 ; Richardson *v.* Dunn (1860), 8 C. B. N. S. 655. **Consd.** Anderson *v.* N. E. Ry. (1861), 4 L. T. 216. **Distd.** Collard *v.* S. E. Ry. (1861), 7 H. & N. 79. **Apld.** Henderson *v.* N. E. Ry. (1861), 9 W. R. 519. **Consd.** Wilson *v.* L. & Y. Ry. (1861), 9 C. B. N. S. 632. **Apld.** Borries *v.* Hutchinson (1865), 18 C. B. N. S. 445. **Consd.** Williams *v.* Reynolds (1865), 6 B. & S. 495 ; Wilson *v.* Newport Dock Co. (1866), L. R. 1 Exch. 177 ; **Apld.** Knowles *v.* Nunns (1866), 14 L. T. 592. **Consd.** Corp *v.* Thames Ironworks Co. (1868), L. R. 3 Q. B. 181 ; Engel *v.* Fitch (1868), L. R. 3 Q. B. 314 ; Engell *v.* Fitch (1869), L. R. 4 Q. B. 659 ; Prehn *v.* Royal Bank of Liverpool (1870), L. R. 5 Exch. 92 ; Horne *v.* Mid. Ry. (1873), L. R. 8 C. P. 131. **Distd.** Larios *v.* Bonany y Gurety (1873), L. R. 5 P. C. 346. **Consd.** Baxendale *v.* L., C. & D. Ry. (1874), L. R. 10 Exch. 35 ; Elbinger Act. *v.* Armstrong (1874), L. R. 9 Q. B. 473. **Distd.** Sawdon *v.* Andrew (1874), 30 L. T. 23. **Apld.** Bradshaw *v.* L. & Y. Ry. (1875), L. R. 10 C. P. 189 ; Smith *v.* Green (1875), 1 C. P. D. 92 ; Sanders *v.* Stuart (1876), 1 C. P. D. 326. **Consd.** Barratt *v.* L. B. & S. C. Ry. (1877), De Colyar's County Ct. Cases 195. **Apld.** Wilson *v.* General Iron Screw Colliery Co. (1877), 47 L. J. Q. B. 239. **Distd.** Phillips *v.* L. & S. W. Ry. (1879), 5 C. P. D. 280 ; Lilley *v.* Doubleday (1881), 7 Q. B. D. 510. **Apld.** Baldwin *v.* L. C. & D. Ry. (1882), De Colyar's County Ct. Cases 224. **Consd.** De Mattos *v.* Great Eastern S.S. Co. (1883), Cab. & El. 489. **Expld.** Grébert-Borgnis *v.* Nugent (1885), 15 Q. B. D. 85. **Apld.** Rodocanachi *v.* Milburn (1886), 17 Q. B. D. 316 ; Cooper *v.* Richard (1887), 3 T. L. R. 739. **Consd.** Hammond *v.* Bussey (1887), 20 Q. B. D. 79 ; The Argentino (1888), 13 P. D. 191 ; Welch, Perrin *v.* Anderson (1891), 61 L. J. Q. B. 167 ; Lepla *v.* Rogers, [1893] 1 Q. B. 31. **Apld.** Ebbetts *v.* Conquest, [1895] 2 Ch. 377. **Consd.** Marsh *v.* Joseph, [1897] 1 Ch. 213. **Apld.** Agius *v.* Great Western Colliery Co., [1899] 1 Q. B. 413 ; Bostock *v.* Nicholson, [1904] 1 K. B. 725. **Consd.** The Cairnbahn (1913), 29 T. L. R. 559. **Apld.** Cointat *v.* Myham, [1913] 2 K. B. 220. **Refd.** Fletcher *v.* Tayleur (1855), 17 C. B. 21 ; Broom *v.* Hall (1859), 7 C. B. N. S. 503 ; Cale. Ry. *v.* Colt (1860), 3 L. T. 252 ; Prior *v.* Wilson (1860), 1 L. T. 549 ; Boyd *v.* Fitt (1864), 11 L. T. 280 ; O'Hanlan *v.* G. W. Ry. (1865), 6 B. & S. 484 ; Phelps *v.* L. & N. W. Ry. (1865), 13 W. R. 782 ; Woodger *v.* G. W. Ry. (1867), L. R. 2 C. P. 318 ; British Columbia, etc., Saw-Mill Co. *v.* Nettleship (1868), L. R. 3 C. P. 499 ; Godwin *v.* Francis (1870), 39 L. J. C. P. 121 ; Bain *v.* Fothergill (1874), L. R. 7 H. L. 158 ; Hobbs *v.* L. & S. W. Ry. (1875), L. R. 10 Q. B. 111 ; The Parana (1877), 2 P. D. 118 ; McMahon *v.* Field (1881), 7 Q. B. D. 591 ; Thol *v.* Henderson (1881), 8 Q. B. D. 457 ; Smith *v.* Day (1882), 21 Ch. D. 421 ; The Notting Hill (1884), 9 P. D. 105 ; Skinner *v.* City of London Marine Insce. Corpn. (1885), 14 Q. B. D. 882 ; Williams *v.* Peel River Land & Mineral Co. (1886), 55 L. T. 689 ; Finlay *v.* Chirney (1888), 20 Q. B. D. 494 ; White *v.* Peto (1888), 58 L. T. 710 ; Armstrong *v.* Allan (1892), 67 L. T. 738 ; Marcus *v.* Myers & Davis (1895), 11 T. L. R. 327 ; South African Territories *v.* Wallington, [1897] 1 Q. B. 692 ; Prince of Wales Dry Dock Co. *v.* Fownes Forge & Engineering Co. (1904), 90 L. T. 527 ; Furness, Withy *v.* Hall (1909), 25 T. L. R. 233 ; Jackson *v.* Watson, [1909] 2 K. B. 193 ; Sapwell *v.* Bass, [1910] 2 K. B. 486 ; Clare *v.* Dobson, [1911] 1 K. B. 35 ; Hoole U. D. C. *v.* Fidelity & Deposit Co. of Maryland (1916), 115 L. T. 24 ; Mitsin *v.* Watts, Watts, [1916] 2 K. B. 826 ; Quirk *v.* Thomas, [1916] 1 K. B. 516 ; Watts, Watts *v.* Mitsui, [1917] A. C. 227 ; Turpin *v.* Victoria Palace, [1918] 2 K. B. 539; British Stamp & Ticket Automatic Delivery Co. *v.* Haynes, [1921] 1 K. B. 377; Monte Video Gas & Dry Dock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 866. **Mentd.** Mullett *v.* Mason (1866), Har. & Ruth. 779.

911. —— —— **Loss of hire of goods—Personal expenses.**]—HALES *v.* LONDON & NORTH WESTERN RY. Co., No. 59, *ante*.

912. —— ——.]—Pltf. sent goods from M. by defts.' railway to his traveller at C. ; the delivery of the goods was, through the negligence of defts., delayed until after the traveller had left C., & pltf., in consequence, lost the profits which he would have derived from a sale at C. :—*Held :* in the absence of notice to defts. of the object for which the goods were sent, pltf. could not recover from them such profits as damages for the delay.—GREAT WESTERN RY. Co. *v.* REDMAYNE (1866), L. R. 1 C. P. 329 ; 12 Jur. N. S. 692.

Annotations :—**Consd.** Woodger *v.* G. W. Ry. (1867), L. R. 2 C. P. 318. **Refd.** Simpson *v.* L. & N. W. Ry. (1876), 24 W. R. 294 ; Williams *v.* Agius, [1914] A. C. 510 ; Slater *v.* Hoyle & Smith, [1920] 2 K. B. 11.

913. ——.]—Where goods are delayed in the carriage, the carriers are not responsible for (1) loss of wages of workmen kept unemployed by reason of the delay in the arrival of the goods, or (2) the loss of profit by reason of such goods not being worked up & sold in the course of trade.—LE PEINTUR *v.* SOUTH EASTERN RY. Co. (1860), 2 L. T. 170.

Annotation :—*As to* (2) **Refd.** Wilson *v.* L. & Y. Ry. (1861), 9 C. B. N. S. 632.

914. *S. P.* GEE *v.* LANCASHIRE & YORKSHIRE RY. Co. (1860), 6 H. & N. 211 ; 30 L. J. Ex. 11 ; 3 L. T. 328 ; 6 Jur. N. S. 1118 ; 9 W. R. 103 ; 158 E. R. 87.

Annotations :—**Consd.** O'Hanlan *v.* G. W. Ry. (1865), 6 B. & S. 484. **Apld.** Hobbs *v.* L. & S. W. Ry. (1875), L. R. 10 Q. B. 111. **Refd.** Boyd *v.* Fitt (1864), 11 L. T. 280 ; Wilson *v.* Newport Dock Co. (1866), L. R. 1 Exch. 177. **Mentd.** Collard *v.* S. E. Ry. (1861), 7 H. & N. 79 ; Schroder *v.* Ward (1863), 1 New Rep. 325.

915. —— **Loss of customers.**]—Pltf., a carrier, sent a parcel containing several smaller parcels by deft.'s ship, & in consequence of delay in the delivery he lost the custom of two of his customers who were in the habit of sending parcels through him :—*Held :* such loss was not the direct, legitimate or probable result of the delay, as reasonably to be anticipated by the parties, & he was not entitled to recover damages in respect of it.—MANN *v.* GENERAL STEAM NAVIGATION CO. (1856), 26 L. T. O. S. 247 ; 4 W. R. 254.

See, also, No. 978, *post*.

916. —— **On particular transaction.**]—(1) Pltf. sent a quantity of hops of more than £10 value by a railway co. ; the consignee, having refused to receive them on account of their not being delivered in time, afterwards sent to pltf. a signed memorandum of the original contract :—*Held :* in assessing the damages for negligence the jury were not at liberty to take into account the loss of the bargain between pltf. & the consignee.

express co. to be carried to a city for the purpose, made known to the co., of being exhibited at a dog show, & were not delivered at the address given until 10 hours after their arrival in the city, & were thus too late to compete, their owner was held entitled to damages against the co., including anticipated profits.—KENNEDY *v.* AMERICAN EXPRESS CO. (1895), 22 A. R. 278.—**CAN.**

v. —— *Special purpose unknown.*]—Damages by reason of loss of profits are rarely awarded against carriers, as they do not necessarily estimate in their minds the consequential damages to the consignee.—CANADA FOUNDRY CO. *v.* EDMONTON PORTLAND CEMENT CO., [1917] 1 W. W. R. 382 ; 10 Alta. L. R. 232 ; *affd.*, [1918] 3 W. W. R. 866.—**CAN.**

Sect. 3.—Delay in delivery.]

(2) If goods are delivered too late by a carrier, the owner ought instantly to sell at market price, & realise his loss; the difference between the price he obtains by the sale at that time & that which he would have obtained is the only measure of damages (BRAMWELL, B.).—SIMMONS *v.* SOUTH EASTERN RY. Co. (1861), 7 Jur. N. S. 849.

917. ——.]—In an action by a cap-manufacturer against a carrier for damages for the loss sustained by delay in the delivery of cloth, by which pltf. had lost the season for making it into caps, & so disposing of it:—*Held:* (1) although in accordance with the principle laid down in *Hadley* v. *Baxendale* (No. 910, *supra*), the jury, in estimating the damages, could not give pltf. the loss of profits he might have made by the manufacture of the cloth into caps, yet (2) they were justified in taking into their consideration the deterioration in the marketable value of the cloth by reason of the season having passed for making caps which pltf. might then have sold; (3) pltf. was not entitled to recover the expenses of travellers dispatched on journeys rendered fruitless by reason of the inability to execute their orders.—WILSON *v.* LANCASHIRE & YORKSHIRE RY. Co. (1861), 9 C. B. N. S. 632; 30 L. J. C. P. 232; 3 L. T. 859; 7 Jur. N. S. 862; 9 W. R. 635; 142 E. R. 248.

Annotations:—As to (1) **Reid.** British Columbia & Vancouver's Island Spar Lumber & Saw Mill Co. *v.* Nettleship (1868), 37 L. J. C. P. 235. *As to* (2) **Folld.** Borries *v.* Hutchinson (1865), 18 C. B. N. S. 445. **Distd.** G. W. Ry. *v.* Redmayne (1866), 12 Jur. N. S. 692. **Consd.** Lord *v.* Mid. Ry. (1867), L. R. 2 C. P. 339. **Apld.** Schulze *v.* G. E. Ry. (1887), 19 Q. B. D. 30. **Consd.** Wertheim *v.* Chicoutimi Pulp Co., [1911] A. C. 301. **Refd.** Horne *v.* Mid. Ry. (1873), 28 L. T. 312. Simpson *v.* L. & N. W. Ry. (1876), 45 L. J. Q. B. 182.

918. —— **Notice of special purpose.**]—Pltfs. being shoe manufacturers at K., were under a contract to supply a quantity of military shoes to a firm in L. for the use of the F. army at 4*s.* per pair, an unusually high price. The shoes were to be delivered by Feb. 3, 1871, & pltfs. accordingly sent them to defts.' station at K. for carriage to L., in time to be delivered there in the usual course in the evening of that day, when they would have been accepted & paid for by the consignees. Notice was given to the station master (which for the purposes of the case was assumed to be notice to the co.) at the time, that pltfs. were under a contract to deliver the shoes by the 3rd, & that unless they were so delivered they would be thrown on their hands; but he was not informed that there was anything exceptional in the character of the contract. The shoes were not delivered in L. till Feb. 4, & were consequently not accepted by the consignees, & pltfs. were obliged to sell them at 2*s.* 9*d.* a pair, which, in consequence of the cessation of war, was, apart from the previously mentioned contract, the best price that could have been obtained for them, even if they had been delivered on the evening of Feb. 3, instead of the morning of the 4th. In an action against defts. for the delay in delivering the shoes, they paid into ct. a sufficient sum to cover any ordinary loss occasioned thereby, but pltfs. further claimed the difference between the price at which they had contracted to sell the shoes & the price which they ultimately fetched:—*Held:* (1) pltfs. were not entitled to recover the latter sum, the damage not being such as might reasonably be considered as arising naturally from defts.' breach of contract, or such as might be reasonably supposed to have been in the contemplation of both parties at the time when they made the contract; (2) the notice given to defts. was not such that they could reasonably be supposed to have had in their contemplation, at the time of entering into the contract for the carriage of the shoes, damages of such an exceptional nature as those claimed; (3) a mere notice as such could not have the effect of rendering defts. liable to more than ordinary damages; but it must in order to do so be given in such circumstances as to make it a term of the contract that defts. will be liable for such damages if the contract be broken (MARTIN, B. &, *semble*, BLACKBURN & LUSH, JJ.).—HORNE *v.* MIDLAND RY. Co. (1873), L. R. 8 C. P. 131; 42 L. J. C. P. 59; 28 L. T. 312; 21 W. R. 481, Ex. Ch.

Annotations:—As to (1) **Distd.** Larios *v.* Bonany y Gurety (1873), L. R. 5 P. C. 346. **Consd.** The Parana (1876), 1 P. D. 452. **Refd.** The Parana (1877), 2 P. D. 118; Couper *v.* Richards (1887), 3 T. L. R. 739; Duckham *v.* G. W. Ry. (1899), 80 L. T. 774; Slater *v.* Hoyle & Smith, [1920] 2 K. B. 11; Monte Video Gas & Dry Dock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 544. *As to* (2) **Distd.** *Re* Bourgeois & Wilson Holgate (1920), 25 Com. Cas. 260. **Refd.** Barratt *v.* L. B. & S. C. Ry. (1877), De Colyar's County Ct. Cases 195. *As to* (3) **Refd.** Elbinger Act. *v.* Armstrong (1874), L. R. 9 Q. B. 473.

919. —— —— **What notice sufficient.**]—Pltf. delivered a parcel at the receiving office of deft. co. in L. addressed to "M. & Co., Stand 23, Show Ground, L.; van train." Nothing was said by the person who delivered the parcel at the receiving office as to the purpose for which it was being sent to L., or to draw attention to the label:—*Held:* the label was sufficient notice to defts. that the goods were being sent to a show; & pltfs. were entitled to recover damages for loss of profits & expenses incurred by the goods being delayed & not delivered at L. in time for the show.—JAMESON *v.* MIDLAND RY. Co. (1884), 50 L. T. 426, D. C.

920. —— —— ——.]—Pltf., through his agents in L., handed to defts. certain samples of goods, which they undertook to carry for him to T. by their passenger route for goods. They undertook to deliver the samples there within a reasonable time, but failed to do so, owing to the negligence of the officials of a foreign post-office. Pltf.'s case was that he had, through his agents in L., given notice to defts. that he required the samples to be delivered with the utmost dispatch to him at T. for a special purpose. In an action brought by him to recover damages for delay he also made a claim for special damage in the loss of business suffered by him through the failure of defts. to carry the goods with proper dispatch:—*Held:* pltf. was entitled to damages for the failure of defts. to deliver the samples within a reasonable time, but his claim for special damage could not be sustained, inasmuch as he had failed to show that he had given defts. proper notice of the special object with which the goods had been sent by him to T.—LEVI BROTHERS *v.* SOUTH EASTERN RY. Co. (1886), 2 T. L. R. 817.

See, also, No. 928, *post.*

921. —— —— ——.]—Pltf., an exhibitor of samples at the B. show, booked four boxes, etc., at a temporary office of defts. on the show-yard, for the purpose of being forwarded to N. for exhibition there. A consignment note was furnished by defts.' agent, & the goods were addressed "Show yard, N.;" across the note was written, "must be delivered by Monday certain," the agent at the same time being warned that their punctual delivery was of great importance. The goods were not delivered at N. on the Monday, nor until after the exhibition was over, & pltf., who had preceded them there, incurred considerable loss of time & profits:—*Held:* as both parties were well aware of the purpose for which the goods were sent & made it the basis of their contract, pltf. was entitled to recover as damages the amount of profits which he might have acquired at N., in the

ordinary conduct of his business & which were fairly capable of being ascertained.—SIMPSON *v.* LONDON & NORTH WESTERN RY. CO. (1876), 1 Q. B. D. 274; 45 L. J. Q. B. 182; 33 L. T. 805; 24 W. R. 294.

Annotations :—**Consd.** Barratt *v.* L. B. & S. C. Ry. (1877), De Colyar's County Ct. Cases 195. **Distd.** Candy *v.* Mid. Ry. (1878), 38 L. T. 226. **Folld.** Brown *v.* Hand-in-Hand Fire Insce. Soc. (1895), 11 T. L. R. 538. **Consd.** Chaplin *v.* Hicks (1911), 27 T. L. R. 244. **Refd.** The Parana (1877), 2 P. D. 118; Levi *v.* S. E. Ry. (1886), 2 T. L. R. 817; Sapwell *v.* Bass, [1910] 2 K. B. 486; Monte Video Gas & Dry Dock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 866.

922. —— ——.]—Pltf. informed the receiving agent for deft. co. that a consignment of fruit was required for sale at B. races :—*Held :* the damages for a failure to deliver should include the loss of profit which would probably have been obtained on such a sale.—BARRATT *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1877), De Colyar's County Ct. Cases, 195.

923. —— **Proof.**]—In order to recover damages for non-sale owing to delay in carrying, there must have been an actual contract to buy for a price.—HART *v.* BAXENDALE (1867), 16 L. T. 390.

Annotation :—**Mentd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

924. Loss of market—Difference in value.]—Where, on account of defects in the ship, the voyage had been protracted, and in the meantime the market price of the goods shipped had fallen :—*Held :* the consignee could not recover damages for the loss of market.—THE PARANA (1877), 2 P. D. 118; 36 L. T. 388; 25 W. R. 596; 3 Asp. M. L. C. 399, C. A.

Annotations :—**Consd.** The Thyatira (1883), 8 P. D. 155; The Notting Hill (1884), 9 P. D. 105; Rodoconachi *v.* Milburn (1886), 17 Q. B. D. 316. **Distd.** Smith, Edwards *v.* Tregarthen (1887), 56 L. J. Q. B. 437; The Argentino (1888), 13 P. D. 191. **Consd.** Dunn *v.* Bucknall, Dunn *v.* Currie, [1902] 2 K. B. 614. **Distd.** Sargant *v.* East Asiatic Co. (1915), 85 L. J. K. B. 277. **Refd.** Rodocanachi *v.* Milburn (1886), 18 Q. B. D. 67; Duckham *v.* G. W. Ry. (1899), 80 L. T. 774; Monte Video Gas & Dry Dock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 866. **Mentd.** The Star of India (1876), 1 P. D. 466.

925. ——.]—HAWES & SON *v.* SOUTH EASTERN RY. CO., No. 268, *ante*.

926. —— **Particular market—Notice to carrier.**]—DUCKHAM BROTHERS *v.* GREAT WESTERN RY. CO., No. 372, *ante*.

See, also, No. 149, *ante*.

927. Loss of season—Difference in value.]—WILSON *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 917, *ante*.

928. —— —— **Samples—Notice.**]—A parcel of samples was delivered to defts., a railway co., to be forwarded to pltfs. By the negligence of defts., who had notice that the parcel contained samples, it was delayed on the way until the season at which the samples could be used for procuring orders had elapsed, & they had in consequence become valueless. Pltfs. could not have procured similar samples in the market. In an action for the non-delivery in a reasonable time :—*Held :* pltfs. were entitled to recover as damages the value to them of the samples at the time when they should have been delivered.—SCHULZE *v.* GREAT EASTERN RY. CO. (1887), 19 Q. B. D. 30; 56 L. J. Q. B. 442; 57 L. T. 438; 35 W. R. 683; 3 T. L. R. 635, C. A.

Annotations :—**Consd.** Wertheim *v.* Chicoutimi Pulp Co., [1911] A. C. 301; Monte Video Gas & Dry Dock Co. *v.* Clan Line Steamers (1921), 37 T. L. R. 866.

See, also, No. 920, *ante*.

929. Depreciation in value—Damage to part.]—Pltf., a hop-grower in K., sent to L. by defts.' railway some pockets of hops consigned to a purchaser. Defts. kept the hops for some days on their premises in an open van whereby a small portion was stained by wet, & the purchaser rejected the whole as he was entitled to do by the custom of the market. Pltf. dried the stained hops & they were rendered as good as ever for actual use, but the staining had depreciated the market value of the bulk. Pltf. sent the hops to a factor for sale, but at that time the market price of hops had considerably fallen from what it was at the time the hops ought to have been delivered. Defts. had no notice that the hops were sent to L. for sale :—*Held :* (1) pltf. was entitled to recover, as damages, the amount of the depreciation in the market value of the hops, & was not confined to the value of the portion actually damaged; (2) he was entitled to recover, as damages, the difference between the market price on the day when the hops were sold, & the day when they ought to have been delivered.—COLLARD *v.* SOUTH EASTERN RY. CO. (1861), 7 H. & N. 79; 30 L. J. Ex. 393; 4 L. T. 410; 7 Jur. N. S. 950; 9 W. R. 697; 158 E. R. 400.

Annotation :—*As to* (1) **Consd.** The Parana (1877), 2 P. D. 118.

930. —— **Fall of price—Delay of part of goods.**]—Deft., the master of the steamer C., lying at W., signed bills of lading for 400 bales of cotton "shipped on board the C." for L. In consequence of insufficient room only 165 bales could be shipped, & deft. directed the remaining 235 bales to be shipped on board the steamer W., then lying in the same port, bound for L. The C. arrived at L. on Oct. 26, & the W. on Oct. 29, & both cargoes were delivered to pltfs., who were indorsees of the bills of lading. Between Oct. 26 & 29 a fall in the price of cotton took place, & pltfs. sued the deft. for the loss thereby occasioned :—*Held :* on

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924 i. *Loss of market—Difference in value.*]—ARMSTRONG *v.* CANADIAN NORTHERN RY. CO. (1914), 29 W. L. R. 265; 6 W. W. R. 246; 20 D. L. R. 695.—**CAN.**

924 ii. —— ——.]—A ry. co. had undertaken to carry pigs to D., where they were too late in arriving to catch a steamer so as to be sent on to a market in England :—*Held :* not liable for damage done to their owners through their having to sell the pigs at a worse price.—MIDLAND GREAT WESTERN RY. CO. *v.* M'GARRY (1867), 1 I. L. T. 159.—**IR.**

927 i. *Loss of season—Difference in value—Expenses.*]—Pltf., a dealer in grains, Canada, consigned to his correspondent in L., England, clover seed, & delivered the same to defts.' agent for carriage. Pltf. desiring to change the consignee applied to another agent of defts.', who on payment of additional freight granted a fresh bill of lading agreeing to carry the seed to London. The change of destination was duly intimated to the proper agent of defts., but he having omitted to make the necessary arrangements, the seed was carried to L. & ultimately delivered in London, too late for the sowing trade, so that the seed had to be sold at a heavy loss :—*Held :* defts. were bound to indemnify pltf. against the loss he had sustained through the fall in the market value of the seed together with the additional sum paid for freight from L. to London.—MONTEITH *v.* MERCHANTS' DESPATCH & TRANSPORTATION CO. (1884), 9 A. R. 282.—**CAN.**

928 i. —— —— *Samples.*]—CHAPMAN *v.* CANADIAN NORTHERN RY. CO. (1908), 12 O. W. R. 1035.—**CAN.**

a. —— *Invoice price of goods.*]—BATES (G. W.) & CO. *v.* CAMERON (J. & P.) & CO. (1855), 18 Dunl. (Ct. of Sess.) 186.—**SCOT.**

b. —— ——.]—Where a sale of goods goes off in consequence of undue delay on the part of a carrier employed by the vendor to deliver the goods, & the season is lost to the vendor, he may recover from the carrier the difference between the price at which the goods have been sold & their actual market value.—CAMPBELL *v.* FOX, Mac. 664.—**N.Z.**

930 i. *Depreciation in value—Fall of price.*]—The damages claimable in a suit against a carrier on account of delay in delivering goods are the excess which is found by comparing the price of the goods on the day they ought to have been delivered with the price on the day when they were delivered.—BULDEO DASS *v.* NATHOO MULL (1867), 2 Agra, 132.—**IND.**

930 ii. —— ——.]—When an action was brought for damages for non-delivery of grapes in D. which had been brought to G. by one steamer, & were to have been sent on to D. by another, & the consignee refused to take them as the transhipment would deteriorate them, damages were given at the value of the grapes at the time they would

Sect. 3.—Delay in delivery. Sects. 4, 5, 6 & 7.]

Oct. 26 pltfs. had a right of action against deft. for non-delivery, that the measure of damages was the market price of cotton on that day, & the subsequent delivery of the cotton *ex* W. could only be taken into account in reduction of damages.—SMITH, EDWARDS & CO. *v.* TREGARTHEN (1887), 56 L. J. Q. B. 437; 57 L. T. 58; 35 W. R. 665; 3 T. L. R. 688; 6 Asp. M. L. C. 137, D. C.

931. —— No fall of price—Subsequent loss.]—Goods were sent by a carrier to an agent for sale, but were delivered at their destination four days later than they ought to have been. In the interval there was no change in the market. Subsequently the goods were sold at a loss:—*Held:* the carrier was liable for nominal damages only.—BLACKWELL *v.* SUTTON & CO. (1887), 3 T. L. R. 630, D. C.

932. Expenses—Waiting for goods—Hotel expenses—Notice.]—Pltf. sent goods to the L. warehouse of defts., who were carriers, to be forwarded to B. The goods, which ought to have reached B. in time for Saturday's market, did not arrive there until Monday. Pltf.'s clerk, who had been sent to B. on the Saturday to receive & sell the goods, waited there until the Monday, when he removed them to N., in order to sell them:—*Held:* it was a question for the jury, whether the expenses of the clerk's stay at B. were a reasonable consequence of defts.' breach of contract, & the Judge was not bound as a matter of law to direct the jury that defts. were not liable for such expenses, unless they had notice that it would be the consequence of a delay in the delivery of the goods.—BLACK *v.* BAXENDALE (1847), 1 Exch. 410; 17 L. J. Ex. 50; 154 E. R. 174.

Annotations:—**Consd.** Hadley *v.* Baxendale (1854), 23 L. J. Ex. 179; Woodger *v.* G. W. Ry. (1867), L. R. 2 C. P. 318.

933. —— —— —— ——.]—A commercial traveller delivered a parcel of samples to a common carrier to be carried to A., but did not state the contents of the parcel, or the purpose for which it was required. By the negligence of the carrier the parcel was delayed, & the traveller spent three days at A. unemployed, waiting for it. In an action against the carrier for negligence, in which the hotel expenses of the traveller during the time he was waiting for the parcel were claimed as damages:—*Held:* such damages were too remote.—WOODGER *v.* GREAT WESTERN RY. CO. (1867), L. R. 2 C. P. 318; 36 L. J. C. P. 177; 15 L. T. 579; 15 W. R. 383.

Annotations:—**Refd.** Hobbs *v.* L. S. W. Ry. (1875), 32 L. T. 252; Simpson *v.* L. & N. W. Ry. (1876), 24 W. R. 294.

934. —— —— —— ——.]—Pltfs., who were merchants, & in the habit of employing travellers, to each of whom they allowed a guinea a day for expenses, delivered on June 6, at an ordinary booking office of defts. in L., a parcel addressed to one of their travellers at C. On the parcel was a printed label—"Travellers' goods; deliver immediately; 77 (address of consignee)—carriage paid." No directions were given to send the parcel by any particular train, & the ordinary rate only for the conveyance of goods was paid. The parcel might reasonably have been delivered on June 7, but it was not delivered till the 8th. Pltf. thereupon sought to recover from defts. one guinea, being the expenses incurred by the traveller for one day while awaiting the arrival of the parcel:—*Held:* pltfs. were rightly non-suited, no notice having been given by them to defts. that the parcel should be delivered on any particular day.—CANDY *v.* MIDLAND RY. CO. (1878), 38 L. T. 226; 42 J. P. 32, D. C.

See, also, No. 917, *ante.*

935. —— Wages of unemployed workmen.]—LE PEINTUR *v.* SOUTH EASTERN RY. CO., No. 913, *ante.*

936. —— ——.]—GEE *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 914, *ante.*

937. —— Traveller's expenses.]—WILSON *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 917, *ante.*

See, also, Nos. 933, 934, *ante.*

938. —— Making inquiries.]—HALES *v.* LONDON & NORTH WESTERN RY. CO., No. 59, *ante.*

939. Duty of consignee.]—SIMMONS *v.* SOUTH EASTERN RY. CO., No. 916, *ante.*

See, generally, Part III., Sect. 4, *ante.*

SECT. 4.—DELAY IN RECEIVING GOODS.

940. Expenses incurred by sender—Delivered out of ordinary course.]—By the terms of a contract defts. agreed with pltfs. to have a certain ship ready on a certain date, in the S. Docks, to receive a cargo of tiles for shipment to A. The ship was not ready on the agreed day, & the tiles being kept waiting in the trucks in which pltfs. had had them brought into the docks, pltfs. were obliged to pay the railway co., the owners of the trucks, a certain sum for the detention, which sum they now sought to recover from defts. as damages for their breach of contract. If pltfs. had followed the ordinary course of business at the docks they would have employed the dock co. to bring the tiles into the docks up to the ship's side, & the dock co.'s scale of charges, which were slightly higher than the railway co.'s, would have included storage of the tiles at the docks for three weeks, without further charge. The time during which the trucks were actually detained was less than three weeks:—*Held:* (1) defts. had no right to assume that pltfs. would follow the ordinary course of business in the mode of bringing their goods into the docks; (2) pltfs. were entitled to deliver the tiles in any manner they pleased; (3) the detention of the trucks was the natural & ordinary consequence of defts.' breach of contract.—WELCH, PERRIN & CO. *v.* ANDERSON & CO. (1891), 61 L. J. Q. B. 167; 66 L. T. 442; 8 T. L. R. 119; 36 Sol. Jo. 107; 7 Asp. M. L. C. 177, C. A.

SECT. 5.—DAMAGE DURING TRANSIT.

941. Bad packing.]—HIGGINBOTHAM *v.* GREAT NORTHERN RY. CO., No. 87, *ante.*

942. —— Notice of special care.]—BALDWIN *v.*

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have been sold by the consignee, & not at the time they should have been received by him.—CONNOLLY *v.* WOTHERSPOON (1869), 3 I. L. T. 240.—**IR.**

930 iii. —— —— *Credit on resale.]*—In the case of late delivery of goods the measure of damages is the difference between the market price at the respective dates of due & actual delivery of the goods purchased, irrespective of the profit the purchaser might have made if the goods had been delivered duly. If the purchaser has resold the goods he must in estimating his damages give credit therefor.—TWEESPRUIT DAIRIES, LTD. *v.* MICHELSEN, [1914] C. P. D. 995.—**S. AF.**

930 iv. —— —— *Loss of profit.]*—Where a carrier fails to deliver a wholesale consignment of goods entrusted to him for carriage, the measure of damages is the difference between the price paid for the goods & their current or market value on the date on which delivery should have taken place. The owner is not entitled to claim the profit he might have made by selling them by retail.—SOUTH AFRICAN RYS. *v.* THERON, [1917] T. P. D. 67.—**S. AF.**

c. *Injury to business reputation.]*—MCGILL *v.* GRAND TRUNK RY. CO. (1892), 19 A. R. 245.—**CAN.**

PART IX. SECT. 5.

d. *Whether full value—Extent of injury.]*—Pltf. delivered to defts. a roll of oil cloth to be conveyed by them as

LONDON, CHATHAM & DOVER RY. CO., No. 121, *ante*.

See, generally, Part III., Sect. 3, sub-sect. 2, D., *ante*.

943. Liability to third party—Carrier employing another carrier—Costs of action by consignor.]—H. having contracted with the pltfs., who were carriers, for the carriage of two pictures from L. to P., pltfs. contracted with defts. for the carriage by defts. of the pictures over a part of the distance. The pictures were damaged on the journey by defts.' negligence. H. thereupon brought an action against pltfs., who gave notice of it to defts., & requested them to defend it. Defts. refused, & told pltfs. to take their own course. Pltfs. defended the action brought against them by H. without success, & then brought an action against defts. to recover not only the damages found by the jury to have been sustained by H., but also the costs of the unsuccessful defence. Defts. paid the damages into ct., & disputed their liability as to the costs:—*Held:* the costs were not recoverable, inasmuch as they could not be considered as the natural consequence of defts.' default, the contracts between H. & pltfs., & between pltfs. & defts. having been separate & independent.—BAXENDALE *v.* LONDON, CHATHAM & DOVER RY. CO. (1874), L. R. 10 Exch. 35; 44 L. J. Ex. 20; 32 L. T. 330; 23 W. R. 167, Ex. Ch.

Annotations:—**Follo.** Fisher *v.* Val De Travers Asphalte Co. (1878), 1 C. P. D. 511. **Consd.** Hammond *v.* Bussey (1887), 20 Q. B. D. 79; Aguis *v.* Great Western Colliery Co., [1899] 1 Q. B. 413. **Refd.** Evans *v.* Bullock (1877), 38 L. T. 34; Hornby *v.* Cardwell (1881), 8 Q. B. D. 329; Hooper *v.* Bromet (1904), 90 L. T. 234; The Millwall, [1905] P. 155.

See, generally, Part III., Sect. 3, Part IV., Sect. 1, sub-sect. 4, A., Sect. 2, sub-sects. 1, C., & 2, C. (c) iii., Part VI., Sects. 3 & 8, &, as to animals, Part VII., *ante*.

SECT. 6.—AFFECTED BY CONDUCT OF OWNER.

944. Fraud as to contents of box.]—KENRIG *v.* EGGLESTON, No. 126, *ante*.

945. Refusal to pay overcharge—Detention of goods—Loss of profit.]—Pltf., who obtained gains & profits by the exhibition of certain articles to the public, sent those articles by defts.' railway from one place to another, & prepaid the carriage. On their arrival at their destination defts. by mistake demanded a further charge, which was not paid, & the articles were detained, whereby pltf. sustained loss & damage. He refused to pay the overcharge under protest & sue to recover it, but allowed defts. to retain his goods until they discovered their mistake, & then sued for the loss of profits he might have made in the meantime, besides the various expenses he had paid. An order was made that the goods be delivered up, subject to pltf.'s rights, &, in an action for damages, defts. paid £15 into ct.:—*Held:* (1) the ct. being placed in the position of a jury, £15 was a sufficient sum for damage; (2) a jury are entitled to look at the conduct of the parties, & to see where the real blame lies, & to whom in reality the mischief is to be attributed.—DAVIS *v.* LONDON & NORTH WESTERN RY. CO. (1858), 32 L. T. O. S. 148; 4 Jur. N. S. 1303; 7 W. R. 105.

946. False declaration of value.]—M'CANCE *v.* LONDON & NORTH WESTERN RY. CO., No. 134, *ante*.

Duty of consignor to declare value.]—*See* Part III., Sect. 3, sub-sect. 2, F., *ante*.

SECT. 7.—AS REGARDS CARRIAGE OF PERSONS.

See Part V., Sect. 5, *ante*.

common carriers. On arrival it was found to be damaged, & pltf., refusing to receive it, brought action for its full value. The amount of damage was variously estimated by different witnesses, the highest estimate being only one-third the alleged value of the roll:—*Held:* pltf. could only recover damages to the extent of the injury he had suffered & not the full value of the oil cloth.—DODGE *v.* WINDSOR & ANNAPOLIS RY. CO. (1872), 8 N. S. R. 537.—**CAN.**

e. ——— ———.]—NORMANDIN *v.* NATIONAL EXPRESS CO. (1908), 4 E. L. R. 558.—**CAN.**

f. ——— ———.]—A machine of the value of £100 was injured while in the custody of a carrier. The consignee refused to take delivery, & sued the carrier for the value of the machine. The injured parts of the machine could be repaired at a cost according to defenders' witnesses, of £16, & according to pursuers' witnesses of £30, in addition to the expense of an expert to adjust them, but pursuers' witnesses would not say that in the result the machine would work satisfactorily:—*Held:* the machine was so much injured that the carrier was bound to pay the full value of the machine.—DICK *v.* EAST COAST RYS. (1901), 4 F. (Ct. of Sess.) 178; 39 Sc. L. R. 134.—**SCOT.**

g. *Loss of profit—Special purpose unknown.*]—A motion picture apparatus shipped by pltf. for delivery by deft. co. was damaged by careless handling by the co.'s servants, resulting in pltf. being deprived of the use of the apparatus for a period of about six months. There was no evidence that deft. co. knew the purpose for which the apparatus was being used, or that pltf. would suffer special loss or damage by reason of delay in delivery:—*Held:* the amount which pltf. might have earned if not deprived of the use of the apparatus was not the proper basis for assessment of damages.—DAVIS *v.* CANADIAN EXPRESS CO. (1919), 52 N. S. R. 392; 44 D. L. R. 454; 23 Can. Ry. Cas. 340.—**CAN.**

h. *Loss of market—Direct result of damage.*]—A manufacturer forwarded cloth by rail, consigned to a shipping agent at G., who was to ship it for Germany. On arrival at G. the package was found to be frayed, & some slight damage done to the cloth. The shipping agent refused to take delivery, being of opinion that the goods could not be safely forwarded in their damaged package. The ry. co. thereupon returned them to the manufacturers, who repacked them, & forwarded them to Germany. On arrival there, they were rejected as being too late. The manufacturer having sued the ry. co. for damages for loss of market:—*Held:* the loss of market was the direct result of the damage done to the package by the ry. co., who were therefore liable for it.—KEDDIE, GORDON & CO. *v.* NORTH BRITISH RY. CO. (1886), 14 R. (Ct. of Sess.) 233; 24 Sc. L. R. 173.—**SCOT.**

i. *Actual damage—Expenses of carriage—& storage.*]—Deft. on pltf.'s behalf received cement in good order from the railway for consignment by road to pltf. Owing to pltf.'s anxiety to obtain a cheap rate of carriage, the cement remained in deft.'s care some seven weeks, & finally arrived damaged owing to inadequate protection from the weather while in deft.'s custody. Deft. made no charge for the storage, which was merely incidental to the business of forwarding:—*Held:* deft. was liable for the loss by damage to the cement, the lost railage & cartage, & the loss caused by storing the damaged cement on arrival.—LARTER *v.* DALY (1914), E. D. L. 23.—**S. AF.**

k. *Nominal damages—Pleading.*]—HANOCK *v.* BETHUNE (1846), 3 U. C. R. 47.—**CAN.**

Part X.—Statutory Control of Carriers' Business.

NOTE.—*Throughout this Part, Railways Clauses Consolidation Act*, 1845 (*c.* 20), *Railway & Canal Traffic Act*, 1854 (*c.* 31), *Regulation of Railways Act*, 1873 (*c.* 48), *Railway & Canal Traffic Acts*, 1888 (*c.* 25), 1894 (*c.* 54), *& 1913* (2 *& 3 Geo.* 5, *c.* 29), *& Railways Act*, 1921 (*c.* 55), *are referred to as* 1845 *Act*, 1854 *Act*, 1873 *Act*, 1888 *Act*, 1894 *Act*, 1913 *Act*, *& 1921 Act*, *respectively.*

SECT. 1.—REASONABLE FACILITIES.

See 1854 Act, s. 2, 1921 Act, s. 16.

SUB-SECT. 1.—THE STATUTES AND THEIR APPLICATION.

947. 1854 Act, s. 2—Application to—Working signals on block system.]—Where one railway co. gives to another co. power to use its railway & the works belonging to it, it undertakes to perform all those services which must be performed if the privilege given is to be exercised at all.

Appcts. had running powers over defts.' railway, & under statutory powers had altered & reconstructed the signals thereon in such a way as was necessary to enable defts.' railway to be worked on the block system. Upon complaint that defts. did not, according to their powers, afford all due & reasonable facilities for the receiving, forwarding, & delivering of passenger traffic upon their railway in that they refused to work the signals which appcts. had reconstructed in such a manner as to enable defts.' railway to be worked on the block system:—*Held:* the working of such signals on defts.' railway was, under 1854 Act, s. 2, a due & reasonable facility which defts. should afford for the receiving, forwarding, & delivering of passenger traffic, & defts. by refusing or omitting to work the signals offered obstructions to the public desirous of using appcts.' & defts.' railway as a continuous line of communication.—GREAT WESTERN RY. CO. & MIDLAND RY. CO. *v.* BRISTOL PORT RY. & PIER CO. (1885), 5 Ry. & Can. Tr. Cas. 94.

948. —— —— Construction & user of siding.]—1854 Act, s. 2, is as much applicable to a siding, both as to construction & user, as to any other means of affording facilities or conveniences to traffic.—GIRARDOT, FLINN & CO. *v.* MIDLAND RY. CO. (No. 2), BEESTON BREWERY CO. *v.* MIDLAND RY. CO. (No. 2), No. 1200, *post.*

See, further, cases in Sub-sect. 3, *post.*

949. —— —— Facilities involving large structural alterations—Doubling line.]—A single line railway was used only for mineral & goods traffic & had never been open for passenger traffic, although the special Act under which the railway was made authorised its being used & contemplated its being at some time or other used for passenger traffic; as to a portion of such railway, that there was a passenger station in existence at each end of such portion of the line, & there was a considerable population in the district requiring passenger accommodation on the railway. The Board of Trade would not sanction the railway being opened for passenger traffic without the extra work of doubling the line being carried out:—*Held:* an application under 1854 Act, s. 2, for an order enjoining the co. to afford all reasonable & proper facilities for passenger traffic must be dismissed; the structural alterations involved as a necessary incident of opening the line for passenger traffic were so large as to be beyond the jurisdiction of the Comrs. to order.—GLAMORGANSHIRE COUNTY COUNCIL *v.* GREAT WESTERN RY. CO. (1894), 8 Ry. & Can. Tr. Cas. 196.

—— —— —— Enlargement & erection of stations.]—*See* Sub-sect. 2, *post.*

950. —— Effect of private Act.]—A railway was transferred to a railway co. under a special Act, s. 15, of which provided that the railway co. when requested so to do by any persons occupying works or manufactories adjacent to & having sidings connected with the railway transferred, were at all reasonable times & with all due diligence to provide waggons proper & sufficient for the conveyance of all traffic passing exclusively on the lines of railway transferred:—*Held:* although the duty cast upon the railway co. by the special Act was limited to cases where there was a request for waggons by members of a particular class, & where also only particular lines of railway were required to be used, yet where the duty did arise it determined what was a reasonable facility within 1854 Act, s. 2, as effectively as if it were a duty of a more general kind or one which applied in any circumstances; & the railway co. must afford all reasonable facilities for the receiving, forwarding & delivery of the appcts.' ore passing exclusively over the lines transferred having regard to the above sect.—THARSIS SULPHUR & COPPER CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO. (1881), 3 Ry. & Can. Tr. Cas. 455.

951. —— Control of railway taken by Government—Emergency.]—Where the possession & control of the railroad & plant of a railway co. have been taken by the Govt. under a warrant issued by a Secretary of State under Regulation of the Forces Act, 1871 (*c.* 86), s. 16, which empowers the taking of possession of all the railroads in Great Britain, in the event of an emergency arising, for His Majesty's services, an Order in Council having declared that an emergency had arisen, an application may still be made by a trader to the Railway & Canal Commission Ct., under 1854 Act, s. 2, complaining that reasonable facilities have not been afforded to him, inasmuch as it does not necessarily follow that the complete control of the railway has

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PART X. SECT. 1, SUB-SECT. 1.

l. 1854 *Act, s.* 2—*Application to—Facilities not likely to be approved by Board of Trade—Nor reasonably worked when constructed.*]—Where it is doubtful whether a junction which is sought by appcts. as a reasonable facility would be allowed by the Board of Trade to be used, if ordered by the comrs. & constructed by the co., & where the mode of working such junction would be unsatisfactory & obstructive to other traffic on the main line, such junction is not a due facility within 1854 Act, s. 2.—DUBLIN WHISKEY DISTILLERY CO., LTD. *v.* MIDLAND GREAT WESTERN RY. OF IRELAND CO. (1881), 4 Ry. & Can. Tr. Cas. 32.—IR.

m. —— —— *Works not within the railway company's own powers.*]—Upon a complaint by the Town Council of A. of want of facilities for passenger traffic at A. station it was admitted that the rebuilding of a bridge on which the booking offices were erected & which carried one of the town streets over the railway line, was essential to any alteration & improvement of the station. The bridge was originally constructed by the ry. co. under its special Act, but the street passing over the bridge was vested in the municipal authorities of A.:—*Held:* (1) as the accommodation works which appcts. asked for could not be carried out except with the consent or authority of some one other than the ry. co. themselves, the works applied for were not within the ry. co.'s own powers; (2) the ry. co. had not violated its statutory duty under 1854 Act, s. 2.—ARBROATH CORPN. *v.* CALEDONIAN RY. CO. & NORTH BRITISH RY. CO. (1898), 10 Ry. & Can. Tr. Cas. 252.—SCOT.

been taken by the Govt. from the railway co., as the Govt. may delegate to the railway co. the right to exercise the actual control over the working of the railway in so far as it does not interfere with the paramount right vested in the Govt. to use the railway for His Majesty's service. On such application the burden lies upon the railway co. of showing that it is not within their power to give such facilities, inasmuch as *primâ facie* the railway co. are still under obligation of giving reasonable facilities.—DENABY & CADEBY MAIN COLLIERIES, LTD. *v.* GREAT CENTRAL RY. (1915), 16 Ry. & Can. Tr. Cas. 1; 84 L. J. K. B. 2201; 113 L. T. 191; 31 T. L. R. 386.

952. 1873 Act, s. 10—Revision of working agreement—By court.]—A special Act enabled the G. N. Ry. Co. & the M. Ry. Co. to enter into working agreements, & in pursuance of that Act an agreement was entered into, the 14th clause of which was as follows: "Neither co. shall make any bargain, treaty, agreement, or arrangement with any other co., or do any other act, directly or indirectly, to affect injuriously the traffic of the co., or to prejudice this agreement, without the consent of such other co." Upon an application by the Corpn. & Chamber of Commerce of H. to the Railway Comrs., under 1873 Act, s. 10, to revise the above agreement in the interests of the public, by declaring the 14th clause to be invalid & ordering it to be modified:—*Held:* the clause acted prejudicially to the interests of the public, because it did not leave the railway cos. at liberty to accommodate the use of their line to what was advantageous for traffic, & the agreement must be modified either by the omission of the article or by the addition thereto of a proviso to the following effect: "Provided that nothing in this agreement shall be used or operate to prevent either of the cos. parties hereto from agreeing to any through rate, or entering into any agreement with any other co. or cos. with reference to the conveyance of traffic by any route hereafter to be opened, or which has been opened for the first time at any time since Oct. 1, 1860, or to the interchange of running powers in respect of any such route or any part of it."—HUDDERSFIELD CORPN. *v.* GREAT NORTHERN RY. CO. & MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1881), 4 Ry. & Can. Tr. Cas. 41.

1888 Act, ss. 25, 26.]—*See* Sect. 2, sub-sect. 1, *post.*

SUB-SECT. 2.—AS TO STATIONS.

953. Covered station.]—CATERHAM RY. CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & SOUTH EASTERN RY. CO., No. 988, *post.*

954. Covered way to.]—INNES *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & LONDON & SOUTH WESTERN RY. CO., No. 989, *post.*

955. Arrangement of—Obstacles to use of level crossing.]—Passengers going from one of the platforms at a station to the main buildings & station yard or *vice versâ* had to cross the railway either by a level crossing situate about 130 yards from the entrance to the station, & over which shunting operations from time to time took place, or by means of a public bridge carrying a main road across the railway, the carriage way on such bridge being 25 ft. wide & without a footpath on the station side. Upon an application for an order directing the railway co. to afford reasonable facilities for receiving, forwarding, & delivering traffic at such station:—*Held:* appcts. had failed to show that the shunting operations caused any substantial obstacle to the free use by passengers of the level crossing or that there was any appreciable danger to passengers crossing by either way, &, although the station was not a convenient one & could be made more convenient at some considerable expense, nothing less than reasonable proof, which was not forthcoming, that the obligation cast upon the railway co. had not been fulfilled, could authorise the Railway Comrs. to interfere with the discretion of the railway co. as to the arrangement of its stations.—LEEK URBAN DISTRICT COUNCIL *v.* NORTH STAFFORDSHIRE RY. CO. (1915), 15 Ry. & Can. Tr. Cas. 105.

956. Enlargement of.]—LONDON & SOUTH WESTERN RY. CO. *v.* STAINES, WOKINGHAM, & WOKING RY. CO., No. 969, *post.*

957. ——.]—(1) Although the Railway Comrs. have no jurisdiction to order a co. to make a new railway station or to order any particular works, or otherwise to interfere with the discretion of the co. in the mode of performing its obligation to afford facilities, according to its powers, for the receiving, forwarding & delivering of the traffic, yet they have jurisdiction to order such facilities, even if their doing so would necessitate the making by the co. of some structural alteration of such station.

(2) An application was made for an order requiring a railway co. to enlarge the station at H., to provide a better booking-office, waiting-room, refreshment room, & general accommodation therein; to alter the existing platforms, & to provide new ones; to improve the warehouse & cattle accommodation; & at L. to enlarge the platform & to provde a new road of approach. The Comrs. ordered the co. to extend the platform accommodation at H. according to a specified plan, to cover over the platforms & part of the carriage yard, to add four waiting-rooms of a specified size, to reserve a portion of the station for refreshments, to increase the accommodation for the delivery of tickets, & to increase & improve the accommodation for cattle; & as to L. to increase & improve the platform & waiting-room accommodation, to cover over the bridge, to make fresh openings into & to widen the road of approach to that station:—*Held:* the subject-matter of the application was not beyond the scope of the jurisdiction of the

n. 16 *Vict. c.* 37—*Application to —Passenger tolls—Third-class fares.*]—GRAND TRUNK RY. CO. *v.* ROBERTSON, [1909] A. C. 325; 39 S. C. R. 506; 9 Can. Ry. Cas. 149.—**CAN.**

o. *R. S. O.* 1906, *s.* 171—*Application to—Fares.*]—The O. Railway & Municipal Board made an order compelling deft. ry. co. to accept 5 c. cash as full fare for conveying passengers on their cars to & from certain points:—*Held:* the co. came within sub-sect. 5 of the above sect. which did not apply to a co. whose tariff for passenger fares was subject to the approval of comrs. in whom were vested any park or lands owned by the Crown for the use of the public.—*Re* NIAGARA FALLS BOARD OF TRADE & INTERNATIONAL RY. CO. (1909), 20 O. L. R. 197; 15 O. W. R. 119.—**CAN.**

p. 7 & 8 *Edw.* 7, *c.* 61, *s.* 9—*Application to—Excursion rates.*]—CANADIAN FRATERNAL ASSOCN. *v.* CANADIAN PASSENGER ASSOCN. (1912), 22 O. W. R. 300; 13 Can. Ry. Cas. 178; 5 D. L. R. 171.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.

q. *Alteration of works not dedicated to railway purposes—Street vested in municipal authority—Passing over railway bridge.*]—Upon a complaint by the Town Council of A. of want of facilities for passenger traffic at A. station it was admitted that rebuilding a bridge was essential to any improvement of the station. This bridge was originally constructed by the ry. co. under its special Act, but the street passing over the bridge was vested in the municipal authorities of A.:—*Held:* under 1845 (Scotland) Act, s. 16, ry. cos. have power to alter works of their own, but have no power to alter works which have been dedicated to a purpose other than railway purposes.—ARBROATH CORPN. *v.* CALEDONIAN RY. CO. & NORTH BRITISH RY. CO. (1898), 10 Ry. & Can. Tr. Cas. 252.—**SCOT.**

Sect. 1.—Reasonable facilities: Sub-sects. 2 & 3.]

Comrs., but the Comrs. had no power peremptorily to order particular works to be executed according to a specified plan; (3) the orders with respect to the platforms & goods yard at H., & the approach road at L., were in excess of jurisdiction; the orders as to refreshment accommodation & the covering over of platforms, carriage yard, & bridge, were not "facilities" within the Act; but the orders as to booking-office, waiting-room, & cattle accommodation were such facilities.

(4) If the Railway Comrs. act beyond their power, prohibition will lie, notwithstanding the power of the Ct. of Common Pleas over railways under 1854 Act, was transferred to such Comrs. by 1873 Act.—SOUTH EASTERN RY. CO. *v.* RY. COMRS. (1881), 6 Q. B. D. 586; 3 Ry. & Can. Tr. Cas. 464; 50 L. J. Q. B. 201; 44 L. T. 203; 45 J. P. 388, C. A.

Annotations:—As to (1) **Consd.** G. W. Ry. *v.* Ry. Comrs. (1881), 7 Q. B. D. 182; Winsford L. B. *v.* Cheshire Lines Committee (1890), 24 Q. B. D. 456. **Folld.** Glamorganshire County Council *v.* G. W. Ry. (1894), 8 Ry. & Can. Tr. Cas. 196. **Refd.** Beeston Brewery Co. *v.* Mid. Ry. (1885), 5 Ry. & Can. Tr. Cas. 53; Girardot Flinn *v.* Mid. Ry., Beeston Brewery Co. *v.* Mid. Ry. (1885), 5 Ry. & Can. Tr. Cas. 60; R. *v.* G. W. Ry. (1893), 62 L. J. Q. B. 572; Leek U. D. C. *v.* North Staffordshire Ry. (1913), 15 Ry. & Can. Tr. Cas. 105. *As to* (2) **Apld.** Darlaston L. B. *v.* L. & N. W. Ry., [1894] 2 Q. B. 694. *As to* (3) **Consd.** West Ham Corpn. *v.* G. E. Ry. (1895), 64 L. J. Q. B. 340. **Refd.** Milner *v.* G. N. Ry., [1900] 1 Q. B. 795; Metropolitan Water Board *v.* L. B. & S. C. Ry., [1910] 2 K. B. 890; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. *As to* (4) **Refd.** Huddersfield Corpn. *v.* G. N. Ry. & M. S. & L. Ry. (1881), 50 L. J. Q. B. 587. *Generally,* **Refd.** R. *v.* Ry. Comrs. & Distington Iron Co. (1889), 22 Q. B. D. 642. **Mentd.** N. E. Ry. *v.* Ferens (1911), 15 Ry. & Can. Tr. Cas. 17.

958. Erection of new station.]—(1) The obligation imposed upon railway cos. by 1854 Act, s. 2, to afford to the public facilities for using a railway as regards the receipt & delivery of traffic is not confined to the granting of such facilities at existing stations only.

(2) A railway co. infringe that sect., if not having the excuse of inability, they refuse to receive & deliver traffic of a particular district except at places on their railway which are unreasonably remote, & if also the convenience that the opening of a station within easy reach would be to traffic that would use it, measured by quantity & other considerations, has a clear preponderance over the inconvenience from expense & trouble which it would cause the railway co. to give that accommodation.

(3) The district of N. was intersected by a line of railway; there was no station nearer than at A. on the one side, & the terminal station of H. on the other, the distance from A. to H. being about four & a half miles; the railway co. possessed surplus & unoccupied lands in the district, upon part of which they had placed a siding for the delivery of coal; there was no physical or engineering difficulty in using part of such land for the establishment of a station at which traffic of every description could be dealt with:—*Held:* the co. had not contravened 1854 Act, s. 2, by omitting to provide a passenger station in the district; the number of passengers that would use such a station would be so limited that the saving to them of the inconvenience of going to H. was not a public gain sufficient to justify the Comrs. in requiring the co. to open a passenger station in the district of N.; the co. ought to provide siding accommodation reasonably sufficient for the receipt & delivery in N. of the station to station traffic of the district, & to give such a service as was given in corresponding circumstances to other places.—NEWINGTON LOCAL BOARD *v.* NORTH EASTERN RY. CO. (1878), 3 Ry. & Can. Tr. Cas. 306.

959. —— Jurisdiction of commissioners—Acquirement of additional land.]—(1) The Comrs. have jurisdiction to entertain an application under 1854 Act, s. 2, for an order compelling a railway co. to provide a station, on the ground that there are no stations in use where the traffic of a particular district traversed by the railway can come or go without public inconvenience.

(2) The Comrs. cannot order accommodation to be provided which entails the acquirement by the co. of additional land which they have no immediate power to take.—HARRIS *v.* LONDON & SOUTH WESTERN RY. CO. (1879), 3 Ry. & Can. Tr. Cas. 331.

960. —— ——.]—A railway co. ceased to use one of their branch lines for passenger traffic, & pulled down a station which had formerly been in use by passengers on the line. No obligation to maintain the station in use was imposed on the co. by any of their private Acts of Parliament. The Comrs. having ordered the co., under 1854 Act, s. 2, to afford reasonable facilities for the receiving & forwarding & delivering of passenger traffic on the line in question:—*Held:* the order was, in effect, an order to build & open a new station; the jurisdiction of the Comrs. to order a railway co. to afford all reasonable facilities under 1854 Act, s. 2, has reference only to a railway or a station in actual use; & the Comrs. had no jurisdiction to order a new station to be built.—DARLASTON LOCAL BOARD *v.* LONDON & NORTH WESTERN RY. CO., [1894] 2 Q. B. 694; 8 Ry. & Can. Tr. Cas. 216; 63 L. J. Q. B. 826; 71 L. T. 461; 43 W. R. 29; 10 T. L. R. 578; 9 R. 712, C. A.

Annotation:—**Refd.** Rothschild *v.* Grand Junction Canal Co. (1904), 91 L. T. 386.

961. Footbridge.]—(1) 1854 Act, s. 2, does not compel a railway co. to find reasonable accommodation for the public further than as it is in the interests of railway traffic that it should be found.

(2) *Held:* the construction of a footbridge over a railway in a station at H. for the more convenient ingress & egress of foot-passengers from & to the town, the daily average of passengers not exceeding 200, a due & reasonable facility in the circumstances.—HOLYHEAD LOCAL BOARD *v.* LONDON & NORTH WESTERN RY. CO. (1881), 4 Ry. & Can. Tr. Cas. 37.

962. Cloak-room.]—SINGER MANUFACTURING CO. *v.* LONDON & SOUTH WESTERN RY. CO., No. 1398, *post.*

963. Waiting-room.]—SOUTH EASTERN RY. CO. *v.* RY. COMRS., No. 957, *ante.*

964. ——.]—LONDON & SOUTH WESTERN RY. CO. *v.* STAINES, WOKINGHAM & WOKING RY. CO., No. 969, *post.*

965. Lavatory accommodation—Charge for.]—(1) The mere fact that railway cos. make a charge to their passengers for the use of water-closets at their stations is not, in the absence of undue preference, a breach of their obligations under 1854 Act, s. 2, to afford all reasonable facilities for the receiving & forwarding & delivering of (passenger) traffic; (2) the Railway Comrs. have no jurisdiction to enjoin railway cos. to provide free water-closets & desist from making a charge for the use of them.—WEST HAM CORPN. *v.* GREAT EASTERN RY. CO. (1895), 9 Ry. & Can. Tr. Cas. 7; 64 L. J. Q. B. 340; 72 L. T. 395; 11 T. L. R. 264.

Annotation:—As to (1) **Consd.** Metropolitan Water Board *v.* L. B. & S. C. Ry., [1910] 2 K. B. 890.

966. — —.]—Water-closet accommodation in a railway station for the use of passengers or the railway staff is a reasonable facility for the receiving & forwarding & delivering of traffic within

1854 Act, s. 2.—METROPOLITAN WATER BOARD *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO., [1910] 2 K. B. 890; 79 L. J. K. B. 1179; 103 L. T. 304; 74 J. P. 409; 26 T. L. R. 676; 8 L. G. R. 930, C. A.

Annotations:—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. **Mentd.** Colley's Patents *v.* Metropolitan Water Board, [1912] A. C. 24; Metropolitan Water Board *v.* Avery, [1914] A. C. 118.

967. Exclusion of persons not using railway.]—(1) Apart from any facilities granted by the Railway Comrs., a railway co. have the right of excluding from their stations all persons except those using or desirous of using the railway; & may impose upon the rest of the public any terms they think proper as the condition of admittance.

(2) A railway co. who have an hotel of their own within the limits of the station may qualify their permission to other hotel proprietors & their servants to have free access to the platform with the condition that on those occasions no hotel servant shall wear a distinctive badge or livery.

(3) The jurisdiction to determine whether there is a statutory right to demand from a railway co. a facility or privilege belongs exclusively to the Railway Comrs.—PERTH GENERAL STATION COMMITTEE *v.* ROSS, [1897] A. C. 479; 66 L. J. P. C. 81; 77 L. T. 226; 13 T. L. R. 546, H. L.

Annotation:—*As to* (3) **Refd.** Spillers & Bakers *v.* G. W. Ry., [1911] 1 K. B. 386.

Exclusion of cabs & omnibuses.]—*See* Sect. 3, sub-sect. 5, *post*.

SUB-SECT. 3.—AS TO GOODS TRAFFIC.

See 1845 Act, s. 76; Railways (Private Sidings) Act, 1904 (c. 19).

968. Siding accommodation—Under special agreement—Approaches.]—A railway co. agreed with a landowner, through whose estate the railway would pass, to construct & maintain a siding connected with their railway at B., together with all necessary approaches thereto for public use, for the reception & delivery of goods:—*Held*: (1) specific performance could be decreed of the agreement to construct the siding & approaches without decreeing the co. to maintain them when made; (2) the agreement did not bind the co. to erect sheds, or to keep one of their servants in attendance at the siding; (3) it obliged them to construct a proper siding, with approaches & a wharf or raised platform for the loading & unloading of goods; (4) "necessary approaches" meant also "proper approaches."—LYTTON *v.* GREAT NORTHERN RY. CO. (1856), 2 K. & J. 394; 27 L. T. O. S. 42; 2 Jur. N. S. 436; 4 W. R. 441; 69 E. R. 836.

969. —— Ordered.]—*Semble*: 1854 Act, s. 2, entitled the public, at stations where there are many passengers, to have the convenience of a sufficient waiting-room, & to have platforms which are not long enough for the traffic extended, & to have also such siding accommodation that goods can be received & delivered without delay.—LONDON & SOUTH WESTERN RY. CO. *v.* STAINES, WOKINGHAM & WOKING RY. CO. (1877), 3 Ry. & Can. Tr. Cas. 48.

970. —— —— Although no station in existence.]—NEWINGTON LOCAL BOARD *v.* NORTH EASTERN RY. CO., No. 958, *ante*.

971. —— Connecting adjoining works.]—(1) A connection between an adjoining owner's works & a railway by means of a siding is a reasonable facility within 1854 Act, s. 2, which the Railway Comrs. have jurisdiction to order.

(2) The fact that such connections are granted to other traders at other places on the railway co.'s line & refused to appct. will, if the circumstances are shown to be the same, constitute an undue & unreasonable prejudice within the meaning of that sect.

(3) The "continuance" of a siding which has been constructed for the use of a particular individual may be a reasonable facility, to which that individual is entitled under that sect., so that the taking up of such a siding by the railway co., while competitors in trade of the individual in question were not deprived of a similar facility, would constitute an undue prejudice within the meaning of that sect.

(4) The siding having been constructed under an agreement between the railway co. & complainant, the Railway Comrs. had no jurisdiction in the matter.—BEESTON BREWERY CO. *v.* MIDLAND RY. CO. (No. 1) (1885), 5 Ry. & Can. Tr. Cas. 53.

Annotation:—*As to* (4) **Refd.** Girardot Flinn *v.* Mid. Ry., Beeston Brewery Co. *v.* Mid. Ry. (1885), 5 Ry. & Can. Tr. Cas. 60.

972. —— Connecting with private sidings—Company's sidings appropriated for another purpose.]—Appct.'s sidings had communicated with sidings on resps.' railway for many years under a terminable agreement, which resps. terminated. An alteration recently made in an adjoining tunnel, which had fallen in, necessitated the exclusive appropriation of the sidings over which appct.'s traffic had formerly been worked to the purpose of providing refuge sidings for trains which met at the tunnel:—*Held*: resps. had shown to the satisfaction of the Ct. that their sidings had been *bonâ fide* appropriated for the specific purpose of use as refuge sidings, & that the use of them for appct.'s traffic would interfere with such use, & an application under 1845 Act, s. 76, for an order enjoining resps. to make, or permit to be made, such lines of rails as might be necessary for effecting a communication between the sidings of appct. & of resps. must be refused.—RICHARD *v.* GREAT WESTERN RY. CO. (1900), 11 Ry. & Can. Tr. Cas. 133.

Annotation:—**Refd.** Lancashire Brick & Terra Cotta Co. *v.* L. & Y. Ry., [1902] 1 K. B. 381.

973. —— —— Whether absolute right to.]—(1) 1845 Act, s. 76, is applicable only to communications required by the owners of the branch railways for the purpose of using the railway with their own engines and carriages, & does not entitle an adjoining owner, who makes a siding, to demand communication with the railway for the purpose of establishing a claim to facilities for his traffic.

(2) The limitation of the right of communication, between a railway & a private branch railway, to places where the communication can be made with safety to the public, & without injury to the railway & without inconvenience to the traffic thereon, does not relate solely to the structural difficulties of making an opening, but has reference also to difficulties arising from working the traffic on the railway.

(3) A siding having a gradient of 1 in 96 or 98 is not upon an "inclined plane" within 1845 Act, s. 76, which means a plane so inclined as to be incompatible with the reasonable insertion of a junction.—LANCASHIRE BRICK & TERRA COTTA CO. *v.* LANCASHIRE & YORKSHIRE RY. CO., [1902] 1 K. B. 651; 11 Ry. & Can. Tr. Cas. 138; 71

PART X. SECT. 1, SUB-SECT. 3.

r. *Provision of cars—Suitable for carriage of meat.*]—VANCOUVER & PRINCE RUPERT MEAT CO. *v.* GREAT NORTHERN RY. CO. (1911), 20 W. L. R. 625.—**CAN.**

s. —— *Suitable for shipments of ore—For international traffic.*]—*Re* SALMO MINE-OWNERS & GREAT NORTHERN RY. CO. (1913), 24 W. L. R. 204.—**CAN.**

Sect. 1.—*Reasonable facilities: Sub-sect.* 3.]

L. J. K. B. 431; 86 L. T. 176; 18 T. L. R. 330, C. A.

See, also, No. 1200, *post*.

974. Trucks—To trader refusing to pay demurrage.]—(1) A railway co. is justified in carrying goods for one person at a less rate than that at which they carry the same description of goods for another, if there be circumstances which render the cost to the co. of carrying for the former less than the cost of carrying for the latter.

(2) The North-Eastern Ry. Co. from a desire to introduce the northern coke into Staffordshire were induced to make special agreements with different merchants for the carriage of coal & coke at a rate lower than their ordinary charge:—*Held:* this was not a legitimate ground for making such agreements, & lowering their rates for that purpose, there being nothing to show that the pecuniary interests of the co. were affected, was giving an undue preference to the traffic.

(3) *Held:* a railway co. should not be required to provide trucks for the carriage of coal & coke for a merchant who refused to pay demurrage therefor at the same rate as was charged to all other merchants in similar circumstances.

(4) *Held:* the co. were not common carriers of coal.—*Re* OXLADE *v.* NORTH EASTERN RY. CO. (1857), 1 C. B. N. S. 454; 1 Ry. & Can. Tr. Cas. 72; 26 L. J. C. P. 129; 28 L. T. O. S. 340; 3 Jur. N. S. 637; 140 E. R. 186.

Annotations:—*As to* (1) **Refd.** *Re* Baxendale & G. W. Ry. (1858), 5 C. B. N. S. 309; *Re* Harris & Cockermouth Ry. (1858), 3 C. B. N. S. 693; Garton *v.* Bristol & Exeter Ry. (1859), 6 C. B. N. S. 639. *As to* (2) **Consd.** Denaby Main Colliery Co. *v.* M. S. & L. Ry. (1885), 11 App. Cas. 97. **Refd.** Nicholson *v.* G. W. Ry. (1858), 5 C. B. N. S. 366; Broughton & Plas Power Coal Co. *v.* G. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 191. *As to* (4) **Folld.** *Re* Oxlade *v.* N. E. Ry. (1864), 15 C. B. N. S. 680. **Refd.** Dickson *v.* G. N. Ry. (1886), 18 Q. B. D. 176. *Generally*, **Refd.** West *v.* L. & N. W. Ry. (1870), L. R. 5 C. P. 622.

975. —— By working company—On private sidings.]—The A. Ry. Co. exclusively worked & managed the B. railway as lessees of the line, under a special Act, which provided that the A. Co. "shall provide & employ all such locomotive powers, engines, carriages, waggons, & other rolling stock, plant, stores, materials & labour, as shall be proper & sufficient for the working & user of the demised undertaking, & the reception, accommodation, conveyance & delivery by the A. Co. of the traffic thereof, & the B. Co. shall not be bound to provide any such thing":—*Held:* (1) the special Act imposed an obligation on the A. Co. to provide waggons proper, & sufficient for the working & user of the B. railway; (2) any one interested in procuring that accommodation had a ground of complaint under 1854 Act, s. 2, against the A. Co. if they refused to provide it.

(3) *Semble:* the A. Co. were not bound under the special act to provide waggons on private sidings connected with the B. railway.—WATKINSON *v.* WREXHAM, MOLD & CONNAH'S QUAY RY. CO. (No. 2) (1879), 3 Ry. & Can. Tr. Cas. 164.

Annotation:—*As to* (1) **Refd.** Tharsis Sulphur & Copper Co. *v.* L. & N. W. Ry. (1881), 3 Ry. & Can. Tr. Cas. 455.

976. —— Must not be conditional—As to place of loading.]—WATKINSON *v.* WREXHAM, MOLD & CONNAH'S QUAY RY. CO. (No. 3), No. 979, *post*.

977. Means of storage—At station to which goods sent.]—A railway co., having land adjoining one of their stations, let the whole of it to P., a coal merchant, for the purpose of storing coal brought by their line. P. did not require or actually use the whole of the land for this purpose. W., another coal merchant, applied to the co. to provide him on similar terms with land for storing coal, or to let to him the part of the land not actually used by P. The co. refused to do so W. then applied to the ct. under 1854 Act, s. 3, for an order compelling the co. to desist from allowing P. to store coals on the land, or to give similar facilities to him:—*Held:* (1) (BOVILL, C.J., & KEATING, J.) a means of storing coal at the station to which it is sent being a necessary facility for the proper carrying on of the coal trade, the co. had no right to grant greater facilities to P. than to W., & they ought to be restrained from doing so; (2) (MONTAGUE SMITH & BRETT, JJ.) 1854 Act only relates to facilities in the receiving, forwarding & delivering traffic, & the ct. has no jurisdiction to interfere with matters not relating to these, & facilities for storing coal after it has been delivered to the consignee do not relate to the receiving, forwarding, or delivering of traffic, & are not under the control of the ct.—WEST *v.* LONDON & NORTH WESTERN RY. CO. (1870), L. R. 5 C. P. 622; 1 Ry. & Can. Tr. Cas. 166; 39 L. J. C. P. 282; 23 L. T. 371; 18 W. R. 1028.

Annotation:—**Consd.** East & West India Dock Co. *v.* Shaw, Savill & Albion Co. (1888), 39 Ch. D. 524.

978. Locomotive power—For adequate & sufficient load—Special act.]—(1) A Railway Act (clause 66) gave the directors power to charge a sum for the conveyance of coal along the line, "including the tolls for the use of the railways & waggons, or trucks & locomotive power, & every expense incidental to such conveyance," which sum was to be a maximum sum, except in certain cases, the exception being thus expressed: "Except a reasonable sum for loading, covering, & unloading of goods, & delivery & collection, & any other services incidental to the business of a carrier, whether such services, or any of them, are or is to be performed by the co." The services in respect of which the excepted charges were claimed to be made were those of taking the waggons of a colliery owner from his own sidings & attaching them to the trains, or returning them from the line of the railway to the sidings of the colliery owner. Whatever particular difficulty arose in this work was occasioned by the position of the points effecting the junction of the line with the sidings:—*Held:* these were not services which came within the exception.

(2) At some of the stations the colliery owner had been allowed to leave his coals on the ground adjoining the lines:—*Held:* this might have been made the subject of an agreement for payment for any advantage thus obtained by him, but did not come within the description of a "service" contained in the exception.

(3) Another clause in the Act (clause 73) required that the co. should at all times "provide sufficient locomotive power, when & as the same shall be required, & as soon as an adequate & sufficient load shall be in readiness, to convey all merchandise," etc. The directors required the colliery owner to furnish a declaration of his having ready fifteen waggons with a minimum load of four tons in each waggon, & gave orders not to forward his coals in a smaller number of waggons containing coals. While this restriction existed the coals of other owners were carried in smaller quantities. It was found in the case that the "regulation requiring fifteen waggons was an unreasonable requirement.":—*Held:* this restriction was not warranted by the words of the clause, & the colliery owner having suffered in his business from such restriction, was entitled to damages on that account.

(4) The colliery owner had paid several of these

sums, which in his action he sought to recover as overcharges, but he had paid them under protest, & for the purpose of obtaining possession of his goods:—*Held:* his payment of them in such circumstances was not a fact which would disqualify him from recovering them in an action for money had & received.

(5) The arbitrator had found upon this matter that pltf. was entitled to damages occasioned to pltf. by reason of loss of customers:—*Held:* his finding was right.—LANCASHIRE & YORKSHIRE RY. Co. *v.* GIDLOW (1875), L. R. 7 H. L. 517; 45 L. J. Q. B. 625; 32 L. T. 573; 24 W. R. 144, H. L.

Annotations:—As to (1) **Folld.** Dunkirk Colliery Co. *v.* M. S. & L. Ry. (1876), 2 Ry. & Can. Tr. Cas. 402; Chatterley Iron Co. *v.* North Staffordshire Ry. (1878), 3 Ry. & Can. Tr. Cas. 238; Isle of Wight (Newport Junction) Ry. *v.* Isle of Wight Ry. (1882), 4 Ry. & Can. Tr. Cas. 128. **Consd.** Foster *v.* G. E. Ry. (1920), 37 T. L. R. 268. **Refd.** Hall *v.* L. B. & S. C. Ry. (1885), 15 Q. B. D. 505. *As to* (2) **Refd.** Berry *v.* L. C. & D. Ry. (1884), 4 Ry. & Can. Tr. Cas. 310. *As to* (4) **Folld.** L. & N. W. Ry. *v.* Evershed (1878), 3 App. Cas. 1029. **Refd.** Crossfield *v.* Manchester Ship Canal Co. (1903), 19 T. L. R. 398. *Generally*, **Mentd.** Maskell *v.* Horner, [1915] 3 K. B. 106.

979. —— Must be sufficient to work without undue delay—To haul with despatch.]—(1) Upon complaint by traders whose collieries & brickworks were connected by sidings with resps.' railway that resps. did not duly & properly work & manage their railway, & did not provide sufficient locomotive power for that purpose, & that they improperly & unnecessarily detained empty waggons destined for the collieries & works of appcts., & failed to haul away with regularity & despatch from the sidings connecting the works & collieries with the railway, loaded waggons placed ready for removal, the Comrs. held that the resps. did not according to their powers, afford all reasonable facilities for the receiving & forwarding & delivering of traffic upon & from their railway, & for the return of carriages & trucks; & the Comrs. ordered the resps. to work & manage their railway duly & properly, & to provide sufficient locomotive power & labour for that purpose, & to desist from unduly detaining empty or unloaded waggons destined for the collieries & works of the appcts., & to haul away with regularity & despatch from the sidings communicating with their railway loaded waggons properly placed ready for removal.

(2) It is the duty of a railway co. to inform any person interested, & applying to them for information, how much of each local or through rate in its entirety is for conveyance, & how much is for other expenses, specifying the nature & detail of such other expenses; if the information is withheld it will be ordered by the Railway Comrs. to be given, & to be made public by proper entries in the rate-book.

(3) A railway co. are not required under 1873 Act, s. 14, to show how the through rates quoted by them are divided between the railway cos. receiving them.

(4) *Qu.:* whether, if a railway co. is bound by its special Act, to weigh coal at the point of discharge, such weighing is a facility for delivery under 1854 Act, s. 2.

(5) A railway co. having been ordered to provide waggons for the working & uses of their railway, on being applied to for waggons for certain traffic, offered to supply them on condition that the waggons were loaded on the land of a railway worked by them:—*Held:* not a compliance with the order.—WATKINSON *v.* WREXHAM, MOLD & CONNAH'S QUAY RY. Co. (No. 3) (1880), 3 Ry. & Can. Tr. Cas. 446.

980. —— To haul trader's own trucks—Failure of company to provide sufficient trucks.]—(1) A railway co. are under no legal obligation to convey on their railway in all circumstances trucks belonging to a trader & loaded with the trader's goods on payment of tolls based on rates of carriage applicable to such goods alone. But if a railway co. fail to provide sufficient trucks for the conveyance of the goods of a particular trader the latter may provide his own trucks, & in that case the provision of motive power for the haulage of the trader's trucks is a reasonable facility for the forwarding & delivering of traffic within 1854 Act, s. 2. The question whether in a given case such provision is a reasonable facility is a question of fact for the Railway & Canal Commission, whose decision is final.

(2) The provision in Great Western Ry. Company (Rates and Charges) Order Confirmation Act, 1891, s. 2 (b), for the reduction of the authorised rate for conveyance where the co. do not provide trucks in which merchandise is carried on the railway does not apply where, although the co. are ready & willing to provide sufficient trucks, the trader prefers to use his own trucks, but only applies to cases where the trader uses his own trucks in order to supplement a deficiency in the supply of trucks by the co.—SPILLERS & BAKERS, LTD. *v.* GREAT WESTERN RY. Co., [1911] 1 K. B. 386; 14 Ry. & Can. Tr. Cas. 52; 80 L. J. K. B. 401; 103 L. T. 685; 27 T. L. R. 97; 55 Sol. Jo. 75, C. A.

Annotation:—Generally, **Mentd.** N. E. Ry. *v.* Reckitt (1913), 109 L. T. 327.

981. Delivery of goods — Determination of reasonable requirements.]—(1) A railway co. are under the same obligations as a common carrier undertaking to carry in accordance with 1854 Act; questions as to how far a sender of goods may require delivery at any station he may appoint, or as to how far a railway co. are liable to carry goods of every kind, or for all persons alike, are to be determined in each case, not with reference to what a railway co. may choose to do, or may ordinarily do, but with reference to what may be within their powers, & at the same time a reasonable requirement.

(2) A railway co. delivered minerals at T. station, but refused to deliver there damageable traffic consigned to appct., & delivered such traffic at L., one mile & a half from T., which was their general goods station for T. The accommodation at T. station was insufficient to receive all the T. goods traffic, & the co. had no power to enlarge it:—*Held:* appct. was not entitled to have damageable goods delivered at T.

(3) *Semble:* if the accommodation at T. had been sufficient to receive all traffic similarly sent,

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t. *Delivery of goods—At private siding.*]—A ry. co., which had for 28 years received & delivered coal & goods at a private siding belonging to traders, informed them that, while they were willing to receive & deliver other goods as before, they would no longer deliver coal at the private siding.

In an application by the traders:—*Held:* the ct. of the Railway & Canal Commission had no jurisdiction to order a ry. co. to deliver traffic at a private siding, such sidings not being part of the "railway" within 1854 Act, s. 2, & the right of the ry. co. to refuse to deliver traffic at such sidings was not affected by the fact that they had in the past voluntarily received & delivered traffic at the siding, or that they were still voluntarily receiving & delivering traffic there in the case of goods other than the particular kind which they had refused to deliver.—COWAN & SONS *v.* NORTH BRITISH RY. Co. (No. 2), (1901) 11 Ry. & Can. Tr. Cas. 96.—**SCOT.**

u. —— *At particular siding—Siding unsafe.*]—*Re* ENTWISTLE (1913), 23 W. L. R. 605.—**CAN.**

v. *Receipt & dispatch of goods—At non-existing junction.*]—An injunction to a co. to work traffic will only

Sect. 1.—*Reasonable facilities: Sub-sects.* 3 & 4.]

the co. would have been ordered to deliver damageable goods to appct. at T.—THOMAS *v.* NORTH STAFFORDSHIRE RY. CO. (1876), 3 Ry. & Can. Tr. Cas. 1.

982. Collection of goods over foreign line—Convenient access.]—(1) A railway co. worked a line for the carriage of minerals which was connected with collieries by junctions to private sidings; they had no power to make a terminal charge for services at the junctions of their line with the sidings. The co. charged for drawing out from the sidings any trucks ready to start & attaching them to the train, & shunting & marshalling, a fixed sum of 3*d.* per ton, in addition to the mileage rate for conveyance on the co.'s own line:—*Held:* the co. were not entitled to make such charge, &, as the plan of each siding as well as its junction had received the approval of the engineer of the co., the owners of the sidings were entitled to have their traffic taken by the co. at the mileage rate, & free of any charge for terminal services, if they placed their trucks as near to the junctions as they could be brought with safety to the main line, arranged in proper order, & clear of any obstacles to their being moved away.

(2) A railway co. give only a reasonable facility in running over a portion of foreign line to collect traffic, properly placed for that purpose, where such line has been conveniently planned for their having access to it, & where they have no reserve line of their own.

(3) What determines whether a charge is a rate or a toll is not who provide the carriage or who provide the engine, but who are the carriers.

(4) The question whether a co. are bound to run over a foreign line & collect traffic therefrom without receiving any remuneration for so doing other than the mileage rate chargeable on their own railway, is a question of reasonableness, which is a question of fact.

(5) The question whether a co. were entitled to charge the tolls mentioned in their Act for the above-mentioned traffic, involved the question whether the co. were carriers or merely toll-takers, which was a question of fact.—WATKINSON *v.* WREXHAM, MOLD & CONNAH'S QUAY RY. CO. (No. 1) (1877), 3 Ry. & Can. Tr. Cas. 5.

Annotations:—As to (1) **Distd.** Neston Colliery Co. *v.* L. & N. W. Ry. & G. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 257. **Consd.** Foster *v.* G. E. Ry. (1920), 37 T. L. R. 268.

983. Weighing coal at point of discharge—Whether reasonable facility.]—WATKINSON *v.* WREXHAM, MOLD & CONNAH'S QUAY RY. CO. (No. 3), No. 979, *ante*.

984. Narrowing broad gauged line.]—Launceston & S. Devon Ry. Act, 1862, s. 34, provides for the co. laying down an additional rail or rails for the passage of engines & carriages adapted to the narrow gauge, requisite for the public service:—*Held:* "public service" did not mean Govt. service merely, but included any service which would supply wants felt by the public, or which the public might reasonably be desirous of having on its own behalf.—*Re* LAUNCESTON (INHABITANTS) APPLICATION, *Re* LAUNCESTON & SOUTH DEVON RY. ACTS, 1862–69 (1877), 3 Ry. & Can. Tr. Cas. 137.

985. Receipt & dispatch of goods—Not sent in reasonable time—Train also late.]—Certain hampers arrived at a station about the time the train was due to start. The train was eight minutes late, but the hampers were not sent by it:—*Held:* the goods having arrived late, pltf. could not recover for the delay as the circumstances did not show a want of "reasonable facilities."—NICHOLLS *v.* NORTH EASTERN RY. CO. (1888), 59 L. T. 137; 4 T. L. R. 464, D. C.

——**Through traffic.**]—*See* Sub-sect. 5, *post*.

986. "Feeder" made navigable under permissive Act—Failure to keep open—Advantages outbalanced by expense.]—A canal co. were authorised by their special Act, passed in 1793, to construct a canal for navigable purposes, & to construct feeders for supplying the canal with water. A special Act passed in 1794 authorised & empowered the co. to make navigable a cut some seven miles long which was at first intended to act only as a feeder in supplying the main canal with water, & to make applicable to it provisions of the Act of 1793, authorising the co. to levy tonnage & wharfage rates, & owners & proprietors of adjacent lands to use it for the carriage of their goods. In 1898, in consequence of a long continued drought, the water in it, except as to the part nearest the main canal, one mile & a half in length, was drawn off by the co. & used to replenish their main canal reservoirs. After the difficulty from want of water had ceased to exist, the co. refused to re-open the closed part of the branch for traffic.

Having regard to the dwindling traffic on the branch, the very large cost necessary to reinstate it, & the extra cost of maintaining it, if opened, owing to the porous nature of the chalk soil through which it was constructed, the traffic would not have been sufficient to compensate the co. for the outlay:—*Held:* (1) as the provision in the Act of 1794 to make the cut navigable was permissive only & not obligatory, & as the power under the Act of 1793 to make the branch as a feeder was not taken away by the power in

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be issued when there is a well-founded ground of complaint in respect of past working & the question of proper facilities for the receipt, etc., of traffic at a junction does not arise until the junction exists.—DUBLIN WHISKEY DISTILLERY CO., LTD. *v.* MIDLAND GREAT WESTERN RY. OF IRELAND CO. (1881), 4 Ry. & Can. Tr. Cas. 32.—**IR.**

w. —— *At passenger station—No goods station.*]—Upon a complaint that the ry. co. did not afford due facilities for receiving & forwarding merchandise traffic at N. because they had not connected their railway with A. at the port of N. near their D. bridge station, it appeared that that station was used only for passenger traffic, & that goods & cattle arriving by railway & going on by sea, or arriving by sea & going on by railway, had to be taken by road between the port & the co.'s goods station at E. Street; the land upon which the passenger station was, not being large enough to afford a site for a goods station as well, & there being nothing to show from an agreement between the co. & a packet co. that the latter were bound to berth their vessels where they were then berthed, or that they were not at liberty to load or unload wherever they pleased, or even to discontinue running any vessels at all:—*Held:* 1854 Act, s. 2, was not contravened.—NEWRY NAVIGATION CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND (1889), 7 Ry. & Can. Tr. Cas. 176.—**IR.**

x. —— *Through named carrier—Refusal of company to recognise traders' general orders.*]—A ry. co. employed W., a carrier, under a contract, to deliver all goods, carried by the ry. co. to D., at cartage rates, & not invoiced to be delivered by particular carriers. Traders in D. sent to the ry. co. general orders to hand over to B., other carriers in D., for cartage, all inwards traffic consigned to them. The ry. co. refused to recognise or act upon such general orders:—*Held:* the refusal to obey such general orders was not a denial of reasonable facilities for the delivery of traffic.—WALLIS & SONS *v.* GREAT NORTHERN RY. CO. OF IRELAND (1903), 12 Ry. & Can. Tr. Cas. 38.—**IR.**

a. —— *In traders' trucks.*]—The question whether it is a reasonable facility that goods should be conveyed in traders' trucks is one of fact, & necessarily depends on the circumstances of the case. In considering that question, the Railway Comrs. are not confined to the convenience of the traders in a particular case, but may take into consideration the interests of the ry. co. as well as those of the traders, the comparative cost & convenience, & the effect of the facility sought on other traders & the public using the line.—CALEDONIAN RY. CO., GLASGOW & SOUTH WESTERN

the Act of 1794 to make it navigable, the co. were entitled to keep the cut, or any part of it open as a feeder only without thereby incurring any obligation to maintain & keep it open for traffic; (2) the fact that the co. kept a part open for traffic did not impose upon them the obligation of keeping the whole branch open for traffic; (3) the ct. could not, under colour of ordinary reasonable facilities under the Traffic Acts, order the co. to work what they were not otherwise compellable to work & were not in fact working; (4) as the cost of restoring & maintaining the branch for traffic would be far in excess of any advantage which could accrue either to appcts. & other landowners & traders using the branch, or to the co. themselves, the facility claimed was not reasonable.

(4) There may be many cases in which a railway or canal co. could properly be ordered to give facilities, the cost of which may greatly exceed the benefit of them to them or to appcts.—ROTHSCHILD (LORD) *v.* GRAND JUNCTION CANAL CO. (1904), 12 Ry. & Can. Tr. Cas. 141; 91 L. T. 386; 20 T. L. R. 503.

987. Imposition of reasonable condition—That goods should be properly packed.]—SUTCLIFFE *v.* GREAT WESTERN RY. CO., No. 416, *ante*.

SUB-SECT. 4.—AS TO PASSENGER TRAINS.

988. Trains—Stopping of—Times & places of stopping.]—(1) The ct. refused to grant a writ of injunction under 1854 Act, on the complaint of a co. having a branch on a trunk-line, to restrain the parent co. from charging higher rates for the conveyance of passengers to the complainants' terminus, than they charged for the conveyance of passengers to the terminus of another branch line, in which they themselves were interested, extending over the same number of miles. To constitute an "undue or unreasonable preference" within the Act, by reason of an inequality of charge, it must be an inequality in the charge for travelling over the same line or the same portion of the line.

(2) To induce the ct. to interfere on a complaint by the proprietors of a branch line, that a sufficient number of trains of the main line do not stop at the junction, or stop at inconvenient times, it must be distinctly shown that sufficient accommodation is not afforded to meet the fair requirements of the public.

(3) It is no ground of complaint that the co. working the main line refuse to grant third-class return tickets to the branch line, if it appears that no such tickets are issued to other branches similarly situated.

(4) *Semble:* it is a good ground of complaint that there is no place of shelter provided at the junction for passengers on the branch line waiting the arrival of trains; the public being entitled in this respect to reasonable accommodation.—CATERHAM RY. CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & SOUTH EASTERN RY. CO. (1857), 1 C. B. N. S. 410; 1 Ry. & Can. Tr. Cas. 32; 26 L. J. C. P. 161; 140 E. R. 168.

Annotations:—As to (1) **Consd.** S. E. Ry. *v.* Ry. Comrs. (1880), 5 Q. B. D. 217; Distington Iron Co. *v.* L. & N. W. Ry., Furness Ry. & Cleator & Workington Junction Ry. (1889), 6 Ry. & Can. Tr. Cas. 108. **Refd.** *Re* Nicholson *v.* G. W. Ry. (1860), 7 C. B. N. S. 755; Innes *v.* L. B. & S. C. Ry. & L. & S. W. Ry. (1875), 2 Ry. & Can. Tr. Cas. 155; Brown *v.* G. W. Ry. (1881), 3 Ry. & Can. Tr. Cas. 523; R. *v.* Ry. Comrs., *Re* L. & N. W. Ry. (1889), 5 T. L. R. 333. *As to* (2) & (4) **Consd.** Hastings Town Council *v.* S. E. Ry. (1878), 3 Ry. & Can. Tr. Cas. 179.

989. —— Number of.]—Two railway cos. owned a line jointly; one co. placed the control of the fares in the hands of the other, & agreed that the fares charged by the co. having the management of the joint line between W., the station where the joint line joined their system, and their termini in L. should be 20 per cent. lower than the fares charged by the other co. between W. and that other co.'s termini in L. This agreement was to continue in force until the latter co. carried passengers to a new terminus. The agreement was made before the two cos. were authorised by Act of Parliament to enter into working & traffic arrangements with respect to the joint line & railways communicating with it:—*Held:* (1) such an agreement had no validity, so far at least as the Ct. of the Railway Comrs. was concerned; (2) the Ct. will not interfere unless an undue preference or prejudice arises from the distinction.

(3) On a complaint that the trains were too few & that the trains to V. terminus had been taken off:—*Held:* the Comrs. had jurisdiction to order the cos. to conform to every part of 1854 Act, s. 2, & to conduct their business so as to give the public all reasonable facilities; & (4) it having been shown that the trains were sufficient in number, except as to V., the Comrs. pointed out that proper accommodation might be provided by a transfer station.

(5) A station on the joint line was 130 yards from a carriage road & was approached by an unsheltered footpath:—*Held:* the station did not provide sufficient accommodation.

(6) Through booking was not allowed between the joint line & London:—*Held:* it should be allowed by both cos. where they formed a continuous communication with London. It is not necessary to establish a claim to through booking

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RY. CO., & NORTH BRITISH RY. CO. *v.* LANARKSHIRE COALMASTERS' ASSOCN. (1911), 27 T. L. R. 221.—**SCOT.**

b. *No duty to convey goods—From places off railway—To nearest station.*]—A ry. co. is not bound to arrange for the conveyance of goods between places off their railway to the nearest station on their railway.—DUBLIN & MEATH RY. CO. *v.* MIDLAND GREAT WESTERN OF IRELAND RY. CO. (1879), 3 Ry. & Can. Tr. Cas. 379.—**IR.**

c. *Opening line for traffic—Necessity for application by company—Dominion Railway Act, s.* 261.]—*Re* GRAND TRUNK PACIFIC RY. CO. (1912), 21 W. L. R. 360.—**CAN.**

d. *Construction of spur line to industry—At cost of owner of industry—Rebate in proportion to tolls charged by railway company—Dominion Railway Act, s.* 228.]—GRAND TRUNK RY. CO. *v.* HEPWORTH SILICA PRESSED BRICK CO. (1915), 51 S. C. R. 81.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

989 i. *Trains—Number of—& times of.*]—Upon complaint by an owning co. that the working co. did not use & work the railway & all traffic arising from extensions of it efficiently, & so as fairly to develop, protect, & maintain the traffic properly belonging thereto as provided by the working agreement; the comrs. ordered the working co. to run an additional third passenger train each way daily on week days at certain times; such trains to be worked in good connection for through traffic, & the time for stoppages at stations on the owning co.'s railway not to exceed an allowance at the rate of 4 minutes for each station stopped at; & further ordered the working co. to run not less than 2 passenger trains each way daily on week days on the branch line of the owning co., timed for convenient connection & correspondence at the junction with the main line with trains arriving at & departing from such junction.—DUBLIN & MEATH RY. CO. *v.* MIDLAND GREAT WESTERN OF IRELAND RY. CO. (1879), 3 Ry. & Can. Tr. Cas. 379.—**IR.**

989 ii. —— —— *Extra trains—Intervals of time diminished.*]—The comrs. will not order as part of "proper facilities" extra trains to be run where it is unlikely that they will be remunerative, but they may order the intervals between various connections to be diminished.—GREAT NORTH OF SCOTLAND RY. CO. *v.* HIGHLAND RY. CO., HIGHLAND RY. CO. *v.* GREAT NORTH OF SCOTLAND RY. CO. (1885), 5 Ry. & Can. Tr. Cas. 103.—**SCOT.**

Sect. 1.—*Reasonable facilities: Sub-sects.* 4 & 5.]

that the service should be continuous by the same trains or by a connection between trains.

(7) The fare from W. to terminus A. was 1*s.* 4*d.*, & the distance 7½ miles: the fare from W. to termini B., C., & D. was 1*s.* 7*d.* & the distance 9½ to 11½ miles:—*Held:* there was no undue preference.—INNES *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & LONDON & SOUTH WESTERN RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 155; 33 L. T. 534.

Annotation:—*As to* (6) **Refd.** Didcot, Newbury & Southampton Ry. *v.* L. & S. W. Ry. (1897), 10 Ry. & Can. Tr. Cas. 9.

—— **Through trains.**]—*See* Sub-sect. 5, *post.*

990. —— **Suspension of—While special race trains running.**]—The S. W. Ry. Co. during the A. Race meeting suspended the running of its ordinary trains before 2 p.m. from W. to A., in order to run special through trains; the fares by these trains were double the ordinary fares, & in excess of the maximum statutory rate. It was found necessary for the safety & despatch of the trains that trains should run at intervals of 10 minutes, & that the running of the ordinary trains up to 2 p.m. should be suspended. The co. did not suspend the running of the daily Parliamentary train:—*Held:* (1) the co. had not failed to afford "all reasonable facility" for the ordinary traffic within 1854 Act, s. 2; (2) they were entitled to charge the special rate.—LAWRIE *v.* LONDON & SOUTH WESTERN RY. CO. (1885), 2 T. L. R. 175, D. C.

991. —— —— **Effect of absence of profit.**]—(1) The Comrs. have jurisdiction under 1854 Act, ss. 1–3, to require a railway co. to resume passenger traffic on a part of its line on which passenger traffic has been discontinued.

(2) A railway co. discontinued the carriage of passenger traffic over a branch line, a part of their system, alleging that they were unable to work such traffic otherwise than at a loss. There was a substantial passenger traffic to be carried:—*Held:* the co. were bound to afford facilities which should be reasonable in all the circumstances for the conveyance of that traffic.

(3) If a railway co. undertake to carry passengers at all upon its line, it comes under the obligation to provide "reasonable facilities" for dealing with passenger traffic over its whole line. In no circumstances can a state of things which has been voluntarily created by a railway co., & has thrown a difficulty in the way of their complying with an Act of Parliament, be treated as an excuse for not complying with the statutory obligation.—WINSFORD LOCAL BOARD *v.* CHESHIRE LINES COMMITTEE (1890), 24 Q. B. D. 456; 7 Ry. & Can. Tr. Cas. 72; 59 L. J. Q. B. 372; 62 L. T. 268; 38 W. R. 511.

Annotations:—*As to* (1) **Dbtd.** Darlaston L. B. *v.* L. & N. W. Ry., [1894] 2 Q. B. 694. *As to* (2) **Consd.** Glamorganshire County Council *v.* G. W. Ry. (1894), 8 Ry. & Can. Tr. Cas. 196.

992. Tickets—Return tickets issued to certain distance only—Application for issue of tickets beyond such distance refused.]—CATERHAM RY. CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & SOUTH EASTERN RY. CO., No. 988, *ante.*

—— **Through booking.**]—*See* Sect. 2, sub-sect. 3, *post.*

SUB-SECT. 5.—AS TO THROUGH TRAFFIC.

See 1854 Act, s. 2, 1888 Act, s. 25; 1921 Act, ss. 75, 86, Sched. IX., Part II.

993. Who may apply—Mayor of aggrieved town.]—TOOMER *v.* LONDON, CHATHAM & DOVER RY. CO. & SOUTH EASTERN RY. CO., No. 999, *post.*

994. —— **Local authority—Though nominal applicants only.**]—UCKFIELD LOCAL BOARD *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & SOUTH EASTERN RY. CO., No. 1005, *post.*

995. —— **Company without actual physical connection.**]—GREAT CENTRAL RY. CO. *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 1004, *post.*

See, further, cases in Sect. 2, sub-sect. 1, *post.*

See, now, 1921 Act, s. 78.

996. When order made—Public convenience.]—To justify the interference of the ct. to enforce the running of through trains on a continuous line of railways, under the second branch of 1854 Act, s. 2, it must be shown that public convenience requires it, & that it can reasonably be done. They will not interfere, at the instance of an individual, where there is a continuous line by which through tickets may be obtained, though by a somewhat longer route, no additional cost or serious loss of time being thereby incurred, & no substantial inconvenience being thereby occasioned to the public, & if it appears that no complaints had been made of the inadequacy of the existing accommodation.—*Re* BARRET *v.* GREAT NORTHERN RY. CO. & MIDLAND RY. CO. (1857), 1 C. B. N. S. 423; 1 Ry. & Can. Tr. Cas. 38; 26 L. J. C. P. 83; 28 L. T. O. S. 254; 140 E. R. 174.

Annotation:—**Refd.** *Re* Beadell *v.* Eastern Counties Ry. (1857), 2 C. B. N. S. 509.

997. —— ——.]—The B. Ry. Co., under an agreement, worked the line of the E. L. Ry. Co., which extended from L. to N. & O., where it joined their lines. The agreement provided that the B. Co. should so work the E. L. Ry. as fairly & efficiently to develop the traffic. The times of the B. Co.'s trains at the junctions fitted so badly to the times of the trains on the E. L. line, that through journeys could not be accomplished in any reasonable time; trains running on the E. L. line were not allowed to use the up & down junctions with the B. Co.'s line at N., but were run on a short branch line into a separate low level station there; through fares to Bridge, a terminus of the B. Co., were considerably lower than those to L.:—*Held:* (1) what can be required of railway cos.

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e. —— *Daily—Effect of absence of profit*—36 *Vict. c.* 37, *s.* 13.]—The fact that there is no profit derived from running a daily train between certain stations is not one of the "unavoidable causes" that would justify a ry. co. in not running a daily train as required by above sect.—*Re* NEW BRUNSWICK & CANADA RY. CO., *Ex p.* A.-G. OF NEW BRUNSWICK (1878), 1 P. & B. 667.—**CAN.**

f. —— —— *Reduction of.*]—*Re* CANADIAN NORTHERN RY. CO. (1914), 27 W. L. R. 386.—**CAN.**

g. *Interchange of passenger traffic—Matters affecting place of.*]—Where, having regard to clauses in special Acts, an exchange of passenger traffic between two cos., free to exchange at any junction between their lines, ought to be made at the junction which is most convenient for the public, the fact that one route is shorter than another, or one by reason of curves or gradients better adapted for fast traffic, or that at one junction there is a joint station, while at another there are two separate stations, are all matters affecting the public convenience as to the place of interchange.—GREAT NORTH OF SCOTLAND RY. CO. *v.* HIGHLAND RY. CO., HIGHLAND RY. CO. *v.* GREAT NORTH OF SCOTLAND RY. CO. (1885), 5 Ry. & Can. Tr. Cas. 103.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 5.

996 i. *When order made—Public convenience—Passenger connection—Detention of trains until passengers transferred.*]—NORTH BRITISH RY. CO. *v.* CALEDONIAN RY. CO. (1903), 12 Ry. & Can. Tr. Cas. 27.—**SCOT.**

h. —— *Pullman car—Refusal to order—Insufficient business.*]—*Re* LE PAS (1912), 23 W. L. R. 600.—**CAN.**

i. —— —— ——.]—C. Co. were bound to afford to Scottish east coast traffic of N. B. Co. using their railway all usual facilities, including through carriages, & any greater facilities which they might grant to

to work a line efficiently must vary according to their respective powers, & a mode of working which would be efficient in one case would not be so in another; (2) in the absence of any provisions in the agreement as to the running of through trains, the expression "the traffic" in the circumstances must be taken to apply both to through & to local traffic; (3) the B. Co. might withhold through trains, if through traffic could be sufficiently encouraged by having a good correspondence between trains; (4) the fares *viâ* B. & the fares *viâ* L. ought to be at the same mileage rate, as competitive traffic could not under the burden of higher fares be fairly developed in the terms of the agreement; (5) a closer coincidence of trains could be effected by altering the times either of the suburban line trains or of the E. L. trains.

(6) *Semble:* if the agreement would be rendered inoperative, unless through trains were run, there would be the same obligation to run them as if they had been expressly mentioned.—EAST LONDON RY. CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1876), 2 Ry. & Can. Tr. Cas. 413; *subsequent proceedings, sub nom.* LONDON, BRIGHTON & SOUTH COAST RY. CO. *v.* EAST LONDON RY. CO., EAST LONDON RY. CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1877), 3 Ry. & Can. Tr. Cas. 103.

998. —— —— Necessities of existing traffic.]—Two railway cos. ran trains to M. & each had a station there. The stations were half a mile apart, & were connected by a line of railway belonging to one of the cos., & which was used for the transit of goods only. Upon an application for the provision of through passenger trains & through booking of passengers over the continuous lines of railway & for an arrangement of the time-tables to allow passengers to avail themselves of the trains of both cos. without delay:—*Held:* (1) an order for reasonable facilities, without specifying what they were, must issue; (2) no case had been made out of public necessity which would at all justify an order for a through service of trains, or even carriages going through from the one system to the other; (3) a good covered footpath between the two stations, with the necessary porterage for luggage, for passengers passing from the one to the other, with through booking, would amply meet the necessities of the traffic then existing; (4) an existing important up & down main line traffic would not be sacrificed to provide through communication for an insignificant local traffic.

(5) With regard to reasonable facilities, this is a jurisdiction to be exercised essentially with reference to practical considerations, in a reasonable & moderate spirit, of protection to the public on the one hand, & of reasonable consideration for the great interests represented by railway cos. on the other hand. It cannot be right to put cos. to an excessive & exorbitant expenditure for the sake of accommodating a very small & insignificant traffic.—SUSSEX COUNTY COUNCIL *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & LONDON & SOUTH WESTERN RY. CO. (1892), 8 Ry. & Can. Tr. Cas. 17.

Annotation:—As to (3) **Refd.** Didcot, Newbury & Southampton Ry. *v.* G. W. Ry., [1897] 1 Q. B. 33.

General interests of public, *see, further,* Sect. 2, sub-sect. 2, A., *post.*

999. —— On two or more companies.]—(1) The Railway Comrs., under 1873 Act, made an order requiring the C. & the S. E. Ry. Cos. to make arrangements & to afford facilities for the transference of traffic from the line of one co. to the other; to arrange the arrivals of their trains at a junction in a particular manner, & directing the C. Co. to run trains over a disused branch line; & upon non-compliance with the order, made a further order imposing penalties upon both cos. for their disobedience:—*Held:* the first order was invalid, & a prohibition must be granted to restrain the comrs. from enforcing it; for, assuming that they had jurisdiction to require each co. separately to give facilities according to its powers, they were not entitled to order two cos. to act jointly in doing what neither could do separately.

(2) *Qu.:* whether, if the first order had been valid, the comrs. had, under s. 6, jurisdiction to impose penalties for non-compliance with it.

(3) The application was made by the mayor of the town aggrieved:—*Held:* appct. had sufficient connection by residence, business & otherwise with the matter of which he complained to entitle him to make an application.—*Re* TOOMER *v.* LONDON, CHATHAM & DOVER RY. CO. & SOUTH EASTERN RY. CO. (1877), 2 Ex. D. 450; 3 Ry. & Can. Tr. Cas. 79; 47 L. J. Q. B. 276; 37 L. T. 161; 26 W. R. 31.

Annotation:—As to (1) **Consd.** *Re* Warwick & Birmingham Canal Navigation *v.* Birmingham Canal Navigations (1879), 5 Ex. D. 1.

See, now, 1888 Act, s. 14.

1000. —— Outstanding disputes between companies.]—HAMMANS, FOSTER *v.* GREAT WESTERN RY. CO., No. 1009, *post.*

1001. —— ——.]—The special Act of the B. Ry. Co. gave the T. Ry. Co. certain running powers over a certain section of the B. Ry. Co. & provided for the settlement of differences arising in connection with the exercise of the running powers by arbn.:—*Held:* it was not a condition precedent to the exercise by the T. Ry. Co. of the running powers & facilities conferred upon them by the special Act that certain differences should be settled by arbn.—TAFF VALE RY. CO. *v.* BARRY DOCK & RYS. CO. (No. 2) (1890), 7 Ry. & Can. Tr. Cas. 52, C. A.

1002. —— Special act.]—The special Act of the

any other co. in respect of such traffic or of any traffic competitive with it. C. Co. ran for the convenience of traffic competitive with the Scottish east coast traffic of N. B. Co. a saloon sleeping carriage, weighing 3 tons, & fitted to carry 12 persons; & a composite carriage, of which one compartment had sleeping berths for 3 persons:—*Held:* a Pullman car, weighing 21 tons, & to hold 22 persons, was so dissimilar in character both to the saloon & composite carriages, that N. B. Co. were not entitled to insist on the forwarding of it by C. Co. as a similar facility, nor as a reasonable requirement, unless N. B. Co. guaranteed to C. Co. a mileage proportion on 8 fares.—CALEDONIAN RY. CO. *v.* NORTH BRITISH RY. CO. (1877), 3 Ry. & Can. Tr. Cas. 56.—**SCOT.**

k. —— *Refusal to forward by route selected by consignor.*]—N. B. Co. refused to take forward traffic from E. consigned *viâ* C. & W. Junction, & stopped & returned to C. Co. loaded waggons that had come that way:—*Held:* under 1854 Act, s. 2, which applied to through traffic, ry. cos. were compelled to forward a consignor's traffic by the route which he selected.—CALEDONIAN RY. CO. *v.* NORTH BRITISH RY. CO. (No. 4) (1880), 3 Ry. & Can. Tr. Cas. 403.—**SCOT.**

l. —— *Interference with particular traffic.*]—D. Ry. Co. applied to the ct. for an order enjoining M. Ry. Co. to afford appcts. reasonable facilities for receiving, forwarding, & delivering all traffic upon & from their railway & the railway of G. S. Ry. Co. D. Ry. Co., by means of a loop line & junction with M. Ry. Co., formed a continuous line of railway communication connecting towns & places on D. railway with towns & places in the south of I., situated on the railway of G. S. Ry. Co. Forwarding the traffic sought to be forwarded by the loop line would not be an unreasonable interference with the traffic of M. Ry. Co. at that particular place:—*Held:* D. Ry. Co. were entitled to a general order for facilities.—DUBLIN, WICKLOW, & WEXFORD RY. CO. *v.* MIDLAND GREAT WESTERN RY. OF IRELAND CO. & GREAT SOUTHERN & WESTERN RY. CO. (1892), 8 Ry. & Can. Tr. Cas. 39.—**IR.**

m. —— *Working agreement—Application by owning company.*]—

Sect. 1.—*Reasonable facilities: Sub-sect.* 5.]

C. W. Ry. Co. provided that seven other cos. should afford all proper & sufficient facilities, including through rates, to traffic passing to, from, or over the railway of the C. W. Co. from or to any railway of the seven cos., or any railway connected with them, & that the terms & conditions, pecuniary or otherwise, on which the traffic facilities should be afforded, & the amount and apportionment of the through rates should, failing agreement, be determined by arbn. under 1873 Act:—*Held:* (1) the Act requires facilities to be afforded to all traffic passing over the line of the C. W. Co. which either comes from or is destined to some point upon & which during its whole course passes uninterruptedly over railways belonging to one or more of the seven companies, or connected for purposes of management or working with one or more of them; (2) the Act does not grant through rates absolutely, & the sufficiency of through rates existing at any time & the propriety of granting others are among the matters which, failing agreement, are to be referred to arbn.; (3) "connected with," means connected for the purposes of management or working, & not merely physically connected; (4) the traffic facilities, including through rates, are, in the absence of agreement, to be determined by the Railway Comrs., who have full power to say whether it is proper that there should be a through rate.—GREAT WESTERN RY. CO. *v.* CENTRAL WALES & CARMARTHEN JUNCTION RY. CO. (1885), 5 Ry. & Can. Tr. Cas. 1.

1003. —— Working agreement—Whether route reasonable.] — (1) An agreement between the G. N. Ry. Co. & the M. S. & L. Ry. Co., confirmed by M. S. & L. Ry. (Extension to London, etc.) Act, 1893, provided for a complete system of through booking & through rates & fares by all reasonable & convenient routes & that each co. should conduct the through traffic of the other in good faith & by through trains, & should afford all such reasonable facilities & accommodation as regards traffic of all kinds as was usual between friendly railway cos. for the convenient conduct & exchange of traffic passing or destined to pass between the respective systems of the cos. Resps. having completed their line to London, certain fish traffic was handed to them at Grimsby for conveyance to London "*viâ* G. N. Ry." This had hitherto been so forwarded, but resps. conveyed it by their own route to London & delivered it themselves:—*Held:* the route being *primâ facie* a reasonable one, the G. N. Ry. Co. would have *primâ facie* the right of requiring traffic to be carried by it on reasonable terms; there being also *primâ facie* a contract to that effect, & as an *interim* injunction would not harm resps., provided accounts were kept, & the absence of it might seriously damage appcts. an *interim* injunction should be granted.

G. N. Ry. (Communication with the M. S. & L. Ry.) Act, 1851, ss. 14, 15, gave the G. N. Ry. Co. reasonable right of access to the tidal basin in Grimsby for fish traffic, & access to & accommodation at the docks for the goods traffic, including the right to rent a piece of land for warehouses, the sites, terms, & conditions, to be agreed upon by their engineers, & in the event of a difference to be settled by arbn. under Companies Clauses Act, 1845 (c. 16). West Riding & Grimsby Ry. (Transfer) Act, 1866, s. 31, gave the G. N. Ry. Co. running powers over certain railways situate between B. & Grimsby, including the docks at Grimsby & the railways leading thereto. The docks had been completely changed & the "tidal basin" no longer existed:—*Held:* (2) the Comrs. had jurisdiction under 1888 Act, s. 9 (a), to enforce the performance of the obligations imposed by the sects., & also to determine the warehouse site, under s. 9 (c), where the term "individual" means "any legal person not the general public"; (3) before the ct. would make an effective order, or grant an injunction under Act of 1851, appcts. must put forward a definite scheme to be considered by resps.; (4) the G. N. Ry. Co. could not then (1899) be considered in the same position as if they had asserted their rights immediately after the passing of the Act of 1851; they must show that their scheme was reasonably possible; (5) s. 31 of Act of 1866 gave appcts. the right to run over & use the whole of the railways in the docks & all the appurtenances thereto, as the term "docks" in the sect. could not reasonably be considered merely a definition of the *terminus ad quem;* but appcts. must first show that the exercise of those powers of user could be so regulated as not to interfere with the convenient conduct of the business of the docks; (6) the G. N. Ry. Co. were entitled under the Traffic Acts to have the trucks for their fish traffic placed in as favourable a position for loading as the trucks of the G. C. Ry. Co.

Semble: as regards s. 14 of Act of 1851, it was a condition precedent to the Comrs. having jurisdiction that the engineers of the two cos. should have considered the matter & disagreed.—GREAT NORTHERN RY. CO. *v.* GREAT CENTRAL RY. CO. (1899), 10 Ry. & Can. Tr. Cas. 266.

Reasonableness of route generally, *see* Sect. 2, sub-sect. 2, B., *post.*

1004. —— Competition—Junction facilities.]—Traffic consigned from D. over the G. Co.'s line to places on or beyond the L. Ry. had, before 1908, been received by the L. Ry. at four junctions, at three of which there was a direct physical connection between the lines of the two cos. but at the fourth, A., the G. Co. brought the traffic to the L. Ry. line over a short length of the M. Co.'s line. In 1908, the L. Co. with other cos., including the G. Co., obtained a direct route of their own to D. & refused to receive & forward at the junctions traffic consigned by the G. Co. to places on or beyond the L. Ry., claiming that by a

Where an agreement between two ry. cos. does not provide for carrying through passenger & coaching traffic, the comrs. have jurisdiction to entertain an application under 1854 Act, s. 2, for an order to afford reasonable facilities for such traffic. The fact that appcts. for such order are the owning ry. co. & defts. the working ry. co., does not of itself prevent such application being entertained.—SOLWAY JUNCTION RY. CO. *v.* CALEDONIAN RY. CO. (1894), 8 Ry. & Can. Tr. Cas. 177.—SCOT.

n. —— —— *Running powers.*]—By an agreement between N. E. & N. B. Ry. Cos., it was provided that to maintain & work in full efficiency in every respect the East Coast route by way of B. for all traffic between L. & other places in E., & L. & other places in S., N. B. Co. should at all times thereafter permit N. E. Co. to run over & use N. B. Co.'s railway . . . between B. & E. N. E. Co. applied to the comrs., under 1873 Act, s. 8, for an order allowing them, in the exercise of their running powers, to run between E. & B. the full number of passenger trains required for the conveyance of passenger traffic between E. & S. by the East Coast route:—*Held:* the fact that N. B. Co. were owners of the line between B. & E., did not of itself entitle them as of right, to run some of the through trains in dispute & did not preclude the Railway Comrs. from granting the application of N. E. Co.—NORTH EASTERN RY. Co. *v.* NORTH BRITISH RY. Co. (1897), 10 Ry. & Can. Tr. Cas. 82.—SCOT.

o. —— *Obstruction.*]—Through rates for traffic passing *viâ* S. between the railway of G. N. Co. & the railway of D. Co. west of S., were in operation under a notice duly served on D. Co. in accordance with 1888 Act, s. 25. Each of the ry. cos. owned a railway

custom recognised among railway cos. traffic from D. to places on their railway had since the opening of their own route become their local traffic & ought not to be the subject of competition by the G. Co. :—*Held :* (1) the practice as to local traffic being non-competitive had no force or validity in law ; & the L. Ry. must accept the traffic at the three junctions, but they were not bound to receive & forward it at A., as there were no sidings or other facilities for exchange at the point of junction ; (2) the fact that the G. Co. had to run over part of the M. Co.'s line to reach the L. Ry. at A., did not preclude them from applying for the facilities.—GREAT CENTRAL RY. CO. *v.* LANCASHIRE & YORKSHIRE RY. CO. (1908), 13 Ry. & Can. Tr. Cas. 266 ; *affd.* (1910), 14 Ry. & Can. Tr. Cas. 131, C. A.

1005. —— Where continuous line exists.]—(1) Two railway cos. ran trains to T., & each had a station there. The stations were a mile apart from each other, but were connected by a line of railway, which was used for the transit of goods only. The two railway systems were intended by the Legislature to join at T. Upon complaint by the inhabitants of the district that no passengers were conveyed on the railway between the two stations, although there was a continuous line of railway :—*Held :* the case came within 1854 Act, s. 2, & the cos. should afford a continuous communication for passengers as well as for goods by means of their continuous lines.

(2) A railway co. received goods for conveyance to places on the railway of another co. with which their line was continuous, but only invoiced the goods to the end of their own railway where the goods were rebooked :—*Held :* through booking was a reasonable facility which the sending co. might be required to afford.

(3) Appcts. had resolved not to apply the public funds or rates under their control to the payment of the costs & expenses of the application but lent their name for the purposes of the appiication to persons against whom deft. cos. could have no remedy :—*Held :* they had nevertheless power to proceed.

(4) If such high rates are charged as to be prohibitive or obstructive they would come within 1854 Act, as obstructing or hindering the forwarding & delivering of traffic.—UCKFIELD LOCAL BOARD *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & SOUTH EASTERN RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 214.

Annotations :—As to (1) **Refd.** Didcot, Newbury & Southampton Ry. *v.* G. W. Ry. & L. & S. W. Ry. (1896), 9 Ry. & Can. Tr. Cas. 210 ; Didcot, Newbury & Southampton Ry. *v.* L. & S. W. Ry. (1897), 10 Ry. & Can. Tr. Cas. 9.

1006. —— ——.]—Two railway cos. ran trains to C., & each had a station there. The stations were 55 chains apart, but were connected by a line of railway belonging to one of the cos. :—*Held :* both cos. should afford a continuous communication for passengers by means of their continuous lines, & afford due & reasonable facilities for forwarding through passenger traffic arriving by one of the lines at C. by the other.—JAMES *v.* TAFF VALE RY. CO. & GREAT WESTERN RY. CO. (1881), 3 Ry. & Can. Tr. Cas. 540.

1007. —— —— Necessities of existing traffic.]—SUSSEX COUNTY COUNCIL *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & LONDON & SOUTH WESTERN RY. CO., No. 998, *ante*.

1008. —— —— How far obligation limited.]—(1) The obligation imposed upon every railway co. to afford all due & reasonable facilities for receiving & forwarding by its railway traffic coming by another, which forms with it a continuous line of communication, is not limited to the cases in which a railway co. has accommodation to take over such traffic at the point of junction.

(2) Appcts., lessees of a colliery, situated on the N. Ry., at a short distance from its junction with the M. Ry. to S., were prevented sending the traffic of their colliery to S. by the railways of the two cos., which formed a direct route, & in consequence had to send it by a circuitous route. The two railways formed a continuous line of communication, & physically, there was no difficulty in the traffic of the colliery being carried to S. by the direct route :—*Held :* appcts. were entitled, under 1854 Act, s. 2, to have their traffic conveyed by any route they pleased, & to use the two railways as if they were one continuous line.—VICTORIA COAL & IRON CO. *v.* NEATH & BRECON & MIDLAND RY. COS. (1877), 3 Ry. & Can. Tr. Cas. 37.

Annotation :—As to (1) **Distd.** G. C. Ry. *v.* L. & Y. Ry (1908), 13 Ry. & Can. Tr. Cas. 266.

1009. —— —— What is continuous line.]—The S. Co. were the owners of a railway in two sections connected by lines belonging to two other cos. which were worked by the G. W. Ry. Co. The S. Co. did not book or work traffic between their two sections, & the G. W. Ry. Co. did not book from stations on the lines worked by them to stations on either section of the S. Co.'s line. To permit of the exchange of traffic required by appcts., sidings & other accommodation at one of the junctions was necessary :—*Held :* (1) the failure to provide these during the time the cos. were considering the alterations which were necessary to enable the S. Co. to exercise their running powers over those connecting lines, was not a failure to provide facilities for the receiving, forwarding & delivery of traffic ; (2) the route, until so completed & sanctioned by the Board of Trade, was not a continuous line of railway communication.

(3) It is no answer to the public, desirous of using railways as a continuous line, that there are disputes as to the rights of the companies *inter se*.

between S. & L., & were competing for the traffic. Upon complaint by G. N. Co. (1) of unreasonable delay caused by D. Co. to traffic forwarded from L. *vid* S., partly on the line of G. N. Co. & partly on the line of D. Co., & *vice versâ* ; (2) of improper diversion of traffic & obstruction offered at stations on D. Co.'s line to the use by the public of the route to D. by the line of G. N. Co., (3) of improper refusal of D. Co. to recognise through bookings of passengers by G. N. Co. from L. *vid* S., to stations on D. Co.'s line ; (4) of detention of G. N. Co.'s waggons at S. owing to delays in transhipment of traffic by D. Co. :—*Held :* G. N. Co. were entitled to an order enjoining D. Co. to afford all due & reasonable facilities for carrying out the through system of booking & rates over G. N. Co.'s & D. Co.'s railways for passengers & goods as required by the above notice, & in particular for transferring to & from G. N. Co.'s railway all goods & traffic carried at through rates partly over the railway of D. Co. & partly over that of G. N. Co.—GREAT NORTHERN RY. CO. OF IRELAND *v.* DONEGAL RY. CO., DONEGAL RY. CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND (1901), 11 Ry. & Can. Tr. Cas. 47.—IR.

1009 i. —— *Where continuous line exists—What is continuous line.*]—D. Steampacket Co. had their wharf connected by a horse tramway with a branch of M. Ry. Co.'s railway. S. Ry. Co. had running powers over M. Co.'s railway to a junction with such branch. An arrangement was made for carrying the traffic inwards & outwards between S. Co.'s railway & D. Steampacket Co.'s wharf by S. Co. bringing the waggons to the junction with M. Co.'s branch railway, where the waggons were detached & delivered to M. Co., who hauled them by horse-power along their line & the tramway, & delivered them at D. Steampacket Co.'s wharf :—*Held :* this was a continuous line of communication.—CITY OF DUBLIN STEAM PACKET CO. *v.* MIDLAND GREAT WESTERN OF IRELAND RY. CO. & GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND (1901), 8 Ry. & Can. Tr. Cas. 1.—IR.

Sect. 1.—*Reasonable facilities: Sub-sects.* 5 & 6.]

(4) The Comrs. will not make an order on a complaint of diversion of traffic where the number of instances of diversion is so small, in proportion to the amount of traffic not diverted, as to show that the traffic was miscarried merely by inadvertence or mistake.—HAMMANS, FOSTER *v.* GREAT WESTERN RY. Co. (1883), 4 Ry. & Can. Tr. Cas. 181.

1010. —— —— Order as to scheme.]—Two railway cos. ran trains to A., & each had a station there. The stations were less than a mile apart, & were connected by a line belonging to one of the cos.:—*Held:* (1) both the cos. should be ordered to afford at A. all due & reasonable facilities for receiving & forwarding by the railway of the one co. all the passenger traffic arriving by the other without any unreasonable delay, & so that no obstruction might be offered to the public desirous of using the railways as a continuous line of communication between towns & places situated on the railways of the two cos. respectively; (2) the two cos. should be ordered, under 1888 Act, s. 14, to make mutual arrangements for carrying the order into effect, & further to submit to the ct. for approval a scheme for carrying the order into effect.—MAIDSTONE TOWN COUNCIL *v.* SOUTH EASTERN RY. CO. & LONDON, CHATHAM & DOVER RY. Co. (1891), 7 Ry. & Can. Tr. Cas. 99.

Through booking.]—*See* Sect. 2, sub-sect. 3, *post.*

Through rates.]—*See* Sect. 2, *post.*

SUB-SECT. 6.—CHEAP TRAINS.

See Cheap Trains Act, 1883 (c. 34); 1921 Act, s. 34.

1011. What are—Exemption of fares from duty—Weekly workmen's tickets—Dispensing power of Board of Trade.]—(1) Every train, running between the terminal stations from one end to the other of a line of railway, & conveying passengers to & from such terminal, & every intermediate ordinary passenger station, at fares not exceeding the Parliamentary rate, & complying with the several other conditions mentioned in Railway Regulation Act, 1844 (c. 85), s. 6, so far as they have not been dispensed with by the Board of Trade under s. 8 of the Act, is a cheap train within the Act, notwithstanding that there may be no third class carriage in such train.

(2) The fares of passengers by such cheap train are entitled to exemption from duty, under s. 9 if they do not exceed the Parliamentary rate, whether the tickets issued to such passengers are first, second, or third class tickets, or whether such passengers travel in first, second, or third class carriages.

(3) Such exemption is not lost by such passengers being required, for the convenience of traffic, to move, at any particular station, from one such cheap train to another, provided that there is no unreasonable detention at such station, so as to reduce the speed at which such passengers travel below the minimum speed required by the Act.

(4) No train is a cheap train within the Act, whether approved of by the Board of Trade as a "cheap train" or not, which does not stop at every intermediate ordinary passenger station between the terminal stations, & which does not convey some class of passengers to & from every station at fares not exceeding the Parliamentary rate; the fares of the passengers by any such train, notwithstanding that they may not exceed such rate, are not exempt from duty.

(5) The fares received for return tickets are not exempt from duty, unless the fares that would be charged to the same class of passengers for the single journey, over the same distance, would not exceed the Parliamentary rate.

(6) The fares received for weekly workmen's tickets, issued at fares which, if such tickets were fully used, would not exceed the Parliamentary rate, but which tickets are only used for trains running over a portion only of the entire line, & which are subject to a condition limiting the nature & also the amount of luggage to be carried without extra charge, contrary to the provisions of s. 6 of the Act, & without the dispensation of the Board of Trade, are not exempt from duty.

(7) *Semble:* The fares on such workmen's tickets would be within the exemption in s. 9, if the tickets were issued to passengers travelling by cheap trains, as above defined, & if the conditions as to luggage were dispensed with by the Board of Trade.

(8) The dispensing power of the Board of Trade, under s. 8 is confined to the conditions expressly so called, at the end of s. 6, relating to stations other than the ordinary passenger stations, & does not extend to the requirements in the previous part of the sect.; the Board, therefore, have no power to dispense with the condition requiring a cheap train to stop at every ordinary passenger station between the terminal stations, & to carry passengers to & from all such stations at the Parliamentary rate of fare.—NORTH LONDON RY. Co. & MANSEL *v.* A.-G. (1876), 1 App. Cas. 148; 45 L. J. Q. B. 315; 34 L. T. 297; 24 W. R. 852, H. L.

See, now, Cheap Trains Act, 1883 (c. 34), s. 3.

1012. —— Trains with first & second class carriages may be.]—*Re* METROPOLITAN RY. Co., No. 1018, *post.*

1013. Duties of railway company as to—Confined to company's own lines.]—*Re* NORTH LONDON RY. Co. & LONDON & NORTH WESTERN RY. Co., No. 1015, *post.*

1014. —— As to providing for every kind of workman.]—*Re* FAWCETT ASSOCN. & LONDON, BRIGHTON & SOUTH COAST RY. Co., No. 1019, *post.*

1015. Issue of workmen's tickets—Restricted by company to terminal stations—Ordered for intermediate stations—Danger of overcrowding.]—(1) Cheap return tickets by workmen's trains from W. were only available for the terminus at B.; workmen could book by these trains for the intermediate stations, but were charged the full ordinary fares; the railway co. contended that the trains would be overcrowded so as to be inconsistent with safe working if they had to convey workmen, not only to & from B., but to & from other stations as well:—*Held:* there was no sufficient reason why cheap workmen's tickets should not be available for workmen alighting at the intermediate stations.

(2) A railway co.'s duties under the Cheap Trains Act, 1883 (c. 34), are confined to the railways which it owns or works.—*Re* NORTH LONDON RY.

p. *Issue of "workmen's tickets"—Tramways—Contract with municipality.*] HAMILTON STREET RY. Co. *v.* HAMILTON CITY (1906), 39 S. C. R. 673.—CAN.

CO. & LONDON & NORTH WESTERN RY. CO. (1888), 6 Ry. & Can. Tr. Cas. 19; 4 T. L. R. 332.

1016. Who may travel in—Police officer—Acting in another capacity.]—A police officer, appointed by a County Council an inspector of weights and measures, is not entitled, when travelling as such inspector, to conveyance at the reduced rate provided by Cheap Trains Act, 1883, s. 6, for the conveyance of the police on public service.—SPENCER *v.* LANCASHIRE & YORKSHIRE RY. CO., [1898] 1 Q. B. 643; 67 L. J. Q. B. 465; 78 L. T. 323; 62 J. P. 296; 46 W. R. 443; 14 T. L. R. 292; 42 Sol. Jo. 397, D. C.

1017. —— "Workmen" — Whether letter-sorters & postmen included.]—*Re* FAWCETT ASSOCN. & LONDON, BRIGHTON & SOUTH COAST RY. CO., No. 1019, *post.*

1018. When additional trains ordered—Reduction of fares ordered—Timing of trains improved.]—Upon complaint that proper & sufficient workmen's trains were not provided between N. & B. Junction:—*Held:* the railway co. should (1) provide two additional workmen's trains from N. to B. inclusive, between the hours of 6.15 a.m. & 7.15 a.m.; (2) reduce the fare for a return ticket by a workmen's train for the journey from N. to B. & back again from 5*d.* to 4*d.*; (3) arrange the arrival at B. of certain trains from N. so that workmen travelling by them & desirous of continuing their journey on the railway of the co. to the east or west of B., might do so without delay at B.

(4) A train is not the less a workmen's train within the Act because a railway co. run first & second class carriages with the third class carriages.—*Re* METROPOLITAN RY. CO. (1892), 8 Ry. & Can. Tr. Cas. 32.

1019. —— What court must consider.]—(1) The Ct. will only exercise their powers under Cheap Trains Act, 1883, where the demand for accommodation is sufficiently large to bear some relation to the difficulty of giving that accommodation, & where there is some comparison between the benefit which will be afforded by an order of the Ct. for the accommodation asked for & the cost to the railway co. of giving it.

(2) *Semble:* persons employed in the postal service as letter-sorters & postmen are workmen within the Act.

(3) A special service of trains is not to be provided for every section of every kind of employment.—*Re* FAWCETT ASSOCN. & LONDON, BRIGHTON & SOUTH COAST RY. CO. (1899), 10 Ry. & Can. Tr. Cas. 299.

1020. —— —— Number of first class coaches—Compartments for females.]—The Great Eastern Ry. Co. are required, by a private Act, to run one stopping train daily each way, not later than 7 a.m. inwards, between L. & E. & L. & W. respectively, for artisans, mechanics & daily labourers, both male & female, & having business daily in London, at fares not exceeding 1*d.* for the journey each way.

The Co. voluntarily extended the E. service to N., & ran a frequent service of trains between the hours of 5 a.m. & 8 a.m. at cheap rates for the benefit of workmen and other persons residing on the N., W. & S. branches & having employment in London. These trains were of two kinds, cheap trains run between the hours of 5 a.m. & 6.47 a.m., at a fare of 2*d.* for a return ticket, the last of these trains being timed to arrive at L. not later than 6.47 a.m., & cheap trains, by which workmen are allowed to travel at half the ordinary return fares (with a minimum of 4*d.*) timed to reach L. after 6.47 a.m. & before 8 a.m. The existing 2*d.* trains could not accommodate all the workpeople requiring to come to London for their work, & numbers of them had no alternative but to travel by the half-fare trains. Hours of labour had become later, in many cases not beginning until 8 a.m. or 9 a.m., so that workpeople in order to have the benefit of the cheapest trains had to travel by trains which brought them to London an hour, or even two hours, too soon. The Co. offered to add three new 2*d.* trains to arrive in London between 6.47 a.m. & 7 a.m.:—*Held:* (1) in addition, the co. must run as an experiment at least two trains from E., two trains from W., & one train from S., starting after 7 a.m., & arriving in London as near 8 a.m. as possible, at fares less than the half-fares then charged; a reasonable fare would be 3*d.* return, except between S. & L., which should be 2*d.* return; (2) every train which comprised three first-class coaches should contain only one first class coach; (3) compartments for females ought to be provided in all the trains, & a sufficient proportion of tickets assigned for them if any system of reserved trains or places was adopted. (4) The question of whether there is a remunerative profit from the fares by workmen's trains is not a matter which the Court will consider.—*Re* LONDON REFORM UNION & GREAT EASTERN RY. CO. (1899), 10 Ry. & Can. Tr. Cas. 280.

1021. —— —— Through service.]—(1) The Railway Comrs. will not order workmen's trains to be run under the Cheap Trains Act, 1883, unless there is proved to be in existence a class of workmen residing on the railway & requiring such a service. The fact that an improved workmen's train service might relieve a congested district in London by inducing workmen to reside outside the metropolis, does not justify the Comrs. in ordering such an improved service.

(2) Proof by a railway co. of no profit, or even a loss, on running workmen's trains, is not sufficient answer to a complaint of the non-provision of proper & sufficient workmen's trains.

(3) *Semble:* where two railway cos. maintain a through passenger service between their systems by agreement with each other, but have no statutory running powers over each other's lines, the Comrs. have jurisdiction to order a proper service of workmen's trains to be provided for that through service.—*Re* LONDON REFORM UNION & NATIONAL ASSOCN. FOR THE EXTENSION OF WORKMEN'S TRAINS & GREAT NORTHERN RY. CO. & NORTH LONDON RY. CO. (1899), 10 Ry. & Can. Tr. Cas. 293.

1022. —— —— Fixing reasonable fares.]—(1) In order to found their jurisdiction to make an order pursuant to the Cheap Trains Act, 1883, for the running of workmen's trains, the Comrs. must be satisfied that there is a reasonable existing demand for workmen's trains in the localities, & next, if this point is established, they must settle what are the reasonable fares to be charged.

(2) In fixing such fares they have to consider not only what the workmen can afford to pay, but also the circumstances of the railway co., such as the cost of running, & that of the construction and maintenance of the line & stations. It would not be reasonable to compel the railway co. to run at a permanent loss.

(3) It is no part of the duty of the Comrs. to aid a local authority to open out a new working class district; they can only deal with an existing demand.—LONDON COUNTY COUNCIL *v.* GREAT EASTERN RY. CO. (1911), 4 Ry. & Can. Tr. Cas. 224; 75 J. P. 301; 27 T. L. R. 317; 9 L. G. R. 1071.

Sect 1.—*Reasonable facilities*: *Sub-sects.* 7 & 8. *Sect.* 2: *Sub-sect.* 1.]

SUB-SECT. 7.—EXCESSIVE CHARGES.

See 1888 Act, s. 31; 1921 Act, ss. 30–35, 86, Sched. IX., Part II.

1023. Whether failure to afford all reasonable facilities.]—UCKFIELD LOCAL BOARD *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & SOUTH EASTERN RY. CO., No. 1005, *ante*.

1024. ——.]—CHATTERLEY IRON CO. *v.* NORTH STAFFORDSHIRE RY. CO., No. 1261, *post*.

1025. —— **Jurisdiction of Railway Commissioners.**]—The mere fact that railway cos. make charges for the conveyance of passengers in excess of those authorised by their special Acts, but without any undue preference, is not a breach of the obligation, under 1854 Act, s. 2, to afford according to their respective powers all reasonable facilities for the receiving & forwarding & delivering of traffic upon & from the several railways & canals belonging to or worked by the cos. respectively; and the Railway Comrs. have no jurisdiction to grant an injunction to restrain the making of such excessive charges.

Semble: if the overcharges were of such an amount & of such a nature that they had the effect, or it could be presumed that they were made with the intention, of preventing the use by passengers of particular trains & stations, the Comrs. might have jurisdiction to entertain a complaint in respect of them as being a refusal of facilities within the sect. (BRETT & COTTON, L.JJ.).—GREAT WESTERN RY. CO. *v.* RY. COMRS. (1881), 7 Q. B. D. 182; 50 L. J. Q. B. 483; 29 W. R. 901; *sub nom.* BROWN *v.* GREAT WESTERN RY. CO., 3 Ry. & Can. Tr. Cas. 523; 45 L. T. 206, C. A.; *subsequent proceedings*, *sub nom.* BROWN *v.* GREAT WESTERN RY. CO. (1882), 9 Q. B. D. 744, C.A.

Annotations:—**Folld.** R. *v.* Ry. Comrs. & Distington Iron Co. (1889), 22 Q. B. D. 642. **Consd.** Davis *v.* Taff Vale Ry., [1895] A. C. 542. **Apld.** West Ham. Corpn. *v.* G. E. Ry. (1895), 64 L. J. Q. B. 340. **Refd.** Central Wales & Carmarthen Junction Ry. & Mid Wales Ry. *v.* G. W. Ry., L. & N. W. Ry., Mid. Ry. & Pembroke & Tenby Ry. (1882), 4 Ry. & Can. Tr. Cas. 110.

1026. —— ——.]—The mere refusal by a railway co. to receive & forward the traffic of persons in general except upon prepayment of charges somewhat in excess of the maximum authorised rates is not a denial of reasonable facilities, nor subjecting the senders of such traffic to undue or unreasonable prejudice or disadvantage within 1854 Act, s. 2, or 1873 Act, & the Railway Comrs. have no jurisdiction under those Acts to restrain a railway co. from making such charges, & cannot give themselves jurisdiction by finding as a fact that the demand of prepayment of such charges is a denial of reasonable facilities or subjecting persons or their traffic to undue or unreasonable prejudice or disadvantage within 1854 Act, s. 2.—R. *v.* RY. COMRS. & DISTINGTON IRON CO. (1889), 22 Q. B. D. 642; 58 L. J. Q. B. 233; 60 L. T. 606; 53 J. P. 533; 37 W. R. 446; 5 T. L. R. 333; *sub nom.* DISTINGTON IRON CO. LTD. *v.* LONDON & NORTH WESTERN RY. CO., FURNESS RY. CO. & CLEATOR & WORKINGTON JUNCTION RY. CO., 6 Ry. & Can. Tr. Cas. 108, D. C.

Annotation:—**Refd.** West Ham Corpn. *v.* G. E. Ry. (1895), 64 L. J. Q. B. 340.

See, now, 1921 Act, s. 30.

Jurisdiction of Railway Commissioners & Railway Rates Tribunal generally. *See* RAILWAYS & CANALS.

SUB-SECT. 8.—CARRIAGE OF MAILS.

See POST OFFICE.

SECT. 2.—**THROUGH RATES.**

See 1888 Act, ss. 25, 26; 1921 Act, ss. 47, 75, 86, Sched. IX., Part II.

SUB-SECT. 1.—WHO MAY APPLY.

1027. Who may apply—Railway company—Interested in through traffic.]—(1) Appcts., a railway co., owning a line which communicated at either end with two other railway systems, applied as against both cos. to the Railway Comrs. for an order for a through route & rate to be allowed for goods *via* their line from a station on the one co.'s line to a station on the other co.'s line. Appcts. had no rolling stock, & their line was wholly worked by another co. under an agreement by which the receipts for through traffic were apportioned according to mileage. They did, however, manage their own line & collect & forward their own traffic, the whole of the staff at the stations on their line being employed & paid by them:—*Held:* appcts. were entitled to the order, as (*a*) they were a railway co. within 1873 Act, s. 11, entitled to require through traffic to be forwarded, & (*b*) the traffic in question was "through traffic to or from their railway" as defined in the sect.

A proposed through route was fifty-six miles shorter than the route over which the traffic was being carried, & was worked not less conveniently as regards the railway cos. by whom the traffic was handled before it got to its destination; the proposed rate was of less amount, & presumably, therefore, more beneficial to the public, while, being more in proportion to distance than the rate by the other route, it yielded a larger sum per mile to the cos. carrying, and was, therefore, not obviously unreasonable as against them:—*Held:* (2) the route was reasonable, & the public were interested in the rate being granted; (3) where a good *primâ facie* case of public interest existed on general considerations, it was not necessary to bring evidence to prove a special case as well.

(4) The rate for flour by the existing route was 15*s.* a ton, & the through rate proposed was 13*s.* a ton in lots of two tons or more, station to station, at owner's risk:—*Held:* any traffic carried by this route at co.'s risk should go at the existing local rates, unless & until the cos. chose to make some other arrangement. The Comrs. had no power to alter the gross amount of a proposed through rate, & must therefore either refuse the rate, or alter the apportionment of the rate so as to neutralise as far as possible the effect of the proposed reduction upon the cos. then carrying the traffic.—GREAT WESTERN RY. CO. *v.* CENTRAL WALES RY. CO. (1882), 10 Q. B. D. 231; 48 L. T. 315; *sub nom.* CENTRAL WALES & CARMARTHEN JUNCTION RY. CO. & MID WALES RY. CO. *v.* GREAT WESTERN RY. CO., LONDON & NORTH WESTERN RY. CO., MIDLAND RY. CO. & PEMBROKE

PART X. SECT. 1, SUB-SECT. 7.

1023 i. *Whether failure to afford all reasonable facilities.*]—A ry. co. does not afford reasonable facilities under 1854 Act, s. 2, when it makes illegal & excessive charges for conveyance of traffic.—ABERDEEN COMMERCIAL Co. *v.* GREAT NORTH OF SCOTLAND RY. Co. (1878), 6 R. (Ct. of Sess.) 67; 16 Sc. L. R. 28.—SCOT.

PART X. SECT. 2, SUB-SECT. 1.

1027 i. *Who may apply—Railway company—Interested in through traffic.*]—The co. requiring traffic to be forwarded at through rates under 1873 Act, s. 11, need not themselves be a forwarding co. as regards the particular traffic; it is enough if they are interested in the forwarding.—GREENOCK & WEMYSS BAY RY CO.

& TENBY RY. CO., 4 Ry. & Can. Tr. Cas. 110 ; 52 L. J. Q. B. 211 ; 31 W. R. 321, D. C.

Annotations :—As to (2) **Consd.** G. W. Ry. *v.* Severn & Wye & Severn Bridge Ry. & Mid. Ry., Severn & Wye & Severn Bridge Ry. *v.* G. W. Ry. (1887), 5 Ry. & Can. Tr. Cas. 170. **Refd.** Didcot, Newbury & Southampton Ry. *v.* G. W. Ry. & L. & S. W. Ry. (1896), 9 Ry. & Can. Tr. Cas. 210.

1028. —— —— ——.]—(1) To entitle a railway co. to apply for an order for through rates under 1873 Act, s. 11, it is enough that it is a co. with an interest in the through route, & it is not necessary to measure its interest & to refuse it a *locus standi*, even though its proposals should be more of detriment to the other railway cos. than a benefit to itself, the other conditions to which the granting of through rates is subject amply providing for the fair interests of all railway cos., large or small, being considered & allowed for. For the particular facility of through rates, an application by the smallest co. stands on a footing of equality with the largest.

(2) The method in which traffic is to be worked enters as much into the reasonableness of a route as the physical fitness or unfitness of a line.

A proposed through rate for coal traffic entailed a traffic being forced upon the carrying co. which they would have to work over twenty-six miles of line under running powers & upon the terms of paying all receipts, less only a percentage for working expenses, to the owning co., & which the co. who own the line & work & use it for every sort of traffic would be perfectly able to accommodate : —*Held :* the proposed route, which otherwise had many advantages, was not on the whole a reasonable route, owing to the mode in which the traffic was required to be worked over one portion of it.

(3) As a general rule, in apportioning through rates, it is reasonable that where a railway co. have a very short distance that it should have more in proportion than the co. which has a long distance.—SEVERN & WYE & SEVERN BRIDGE RY. CO. *v.* GREAT WESTERN RY. CO. (1886), 5 Ry. & Can. Tr. Cas. 156.

Annotation :—As to (1) & (2) **Refd.** G. W. Ry. *v.* Severn & Wye & Severn Bridge Ry. & Mid. Ry., Severn & Wye & Severn Bridge Ry. *v.* G. W. Ry. (1887), 5 Ry. & Can. Tr. Cas. 170.

See, also, No. 1034, *post.*

1029. —— —— **What is—Canal company.**]—(1) A canal co. authorised by Act of Parliament to construct railways on their quays & land, & to charge reasonable tolls & charges for the use of them within a maximum fixed by their Charges Confirmation Act, although under no obligation to admit the public as carriers upon their lines under 1845 Act, are a railway co. within 1888 Act, &, whether express powers of carrying upon their lines have been given them or not, are competent to propose through rates under 1888 Act, s. 25.

(2) When a railway co. has agreed rates from a port to inland towns with other cos. in their joint interest, such rates should not be treated as local rates of that co., so as to compel them to carry to the common point from another port at rates equal, distance for distance, to such agreed rates. —MANCHESTER SHIP CANAL CO. *v.* MIDLAND RY. CO. (1897), 10 Ry. & Can. Tr. Cas. 54.

Annotations :—As to (1) **Distd.** London & India Docks Co. *v.* G. E. Ry., [1902] 1 K. B. 568. **Refd.** Trafford Park Co. *v.* Cheshire Lines Committee & Mid. Ry. (1915), 16 Ry. & Can. Tr. Cas. 10.

1030. —— —— —— **Dock company.**]—Pltfs., a dock co., had constructed & used under statutory powers lines of rails & sidings in their docks, which communicated with the railway of a railway co. Goods were conveyed over these lines & sidings, in trucks of the railway co. drawn by engines of the dock co., to & from the quays & warehouses in the docks from & to the railway of the railway co. The private Acts under which these lines & sidings were constructed & used did not incorporate the Railways Clauses Consolidation Acts or contain the provisions usual in the case of railways :—*Held :* the dock co. were not a railway co. & the lines & sidings were not a railway within 1888 Act, s. 25, & the dock co. were not entitled to through rates under that sect.—LONDON & INDIA DOCKS CO. *v.* GREAT EASTERN RY. & MIDLAND RY., [1902] 1 K. B. 568 ; 11 Ry. & Can. Tr. Cas. 57 ; 71 L. J. K. B. 369 ; 86 L. T. 339 ; 50 W. R. 461 ; 18 T. L. R. 324 ; 46 Sol. Jo. 295, C. A. ; *subsequent proceedings* (1904), 20 T. L. R. 371.

1031. —— **Trader interested—To private siding.**]—BRUNNER, MOND & Co., LTD. *v.* CHESHIRE LINES COMMITTEE, & LONDON & NORTH WESTERN RY. Co., No. 1055, *post.*

See 1921 Act, s. 78.

1032. Agreement for fixing through rates—Effect of—Statutory agreement.]—CITY OF DUBLIN STEAM PACKET CO. *v.* LONDON & NORTH WESTERN RY. Co., No. 1173, *post.*

1033. —— ——.]—Appcts. were the owners of a light railway constructed on an estate adjoining the Ship Canal at Manchester, & connected with the railway of the Cheshire Lines Committee at a certain junction. In 1906 appcts. entered into an agreement with the Committee & the M., G. N., & G. C. Ry. Cos., which provided *inter alia* (1) the Committee & the other cos. should have running powers over appcts.' railway ; (2) except in the case of a port rate, the Committee & the three cos. should have the right to fix the rates to & from appcts.' railway ; & (3) appcts. & the other parties to the agreement should afford to each other all such reasonable facilities as regarded traffic of all kinds as were usual between friendly railway cos. for the convenient conduct & interchange of such traffic. In 1915 appcts. were erecting on the estate a bonded warehouse which they intended to use for tobacco traffic, & they made to the Cheshire Lines Committee & to the M. Ry. Co. certain proposals for through routes & through rates for such traffic. The proposals were refused, & appcts. applied to the ct. for through routes & certain through rates for tobacco leaf from their bonded warehouse to London & to Bristol over the lines of the Committee & the M. Ry. Co. :—*Held :* (1) the agreement did not give the exclusive user of appcts.' railway for through traffic to defts., & appcts. were entitled to a through route & to convey traffic over their lines, to be interchanged with defts. at the junction ; (2) under the agreement the Committee & the three cos. alone had power to fix through rates, other than a port rate, for all through traffic passing to & from appcts.' railway, whether such traffic was worked by them under their running powers or not, & the application for through rates proposed by appcts. must be refused.—TRAFFORD PARK CO. *v.* CHESHIRE LINES COMMITTEE & MIDLAND RY. CO. (1915), 16 Ry. & Can. Tr. Cas. 10.

1034. Proceeding pending to enforce equities between company—Effect of.]—(1) The Railway Comrs. have jurisdiction under 1873 Act, s. 11, to determine any question of through rates brought before them by any railway co. having an interest in a route over which it is proposed that the traffic shall be carried.

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v. CALEDONIAN RY. CO. (No. 3) (1875), 3 Ry. & Can. Tr. Cas. 145.—**SCOT.**

q. —— *Harbour Board.*]—A harbour board cannot apply for through rates under 1873 Act, s. 11.—AYR HARBOUR TRUSTEES & BARR (P.) & Co. *v.* GLASGOW & SOUTH WESTERN RY. Co., CALEDONIAN RY. Co., NORTH BRITISH RY. Co., & NORTH EASTERN RY. Co. (No. 1) (1881), 4 Ry. & Can. Tr. Cas. 81.—**SCOT.**

Sect. 2.—Through rates: Sub-sects. 1 & 2, A. & B.]

(2) Wherever a continuous line of railway belonging to two or more railway cos. exists, & any one of the cos. interested in the route has given the proper statutory notices so as to bring the case within 1873 Act, s. 11, & a difference has arisen between the cos. as to whether the proposed rates shall come into operation or not, the jurisdiction of the Comrs. to determine that question at once arises, & cannot be ousted in any way by any equities that may exist between the different cos. themselves.

(3) The Comrs. refused to entertain an application for through rates & through booking, where a similar application was pending in the Ch. Div., unless appcts. discontinued the proceedings in the Ch. Div.—METROPOLITAN DISTRICT RY. CO. *v.* METROPOLITAN RY. CO. (1886), 5 Ry. & Can. Tr. Cas. 126.

SUB-SECT. 2.—MAKING OF ORDER.

A. General Interests of Public.

1035. General rule.]—EAST & WEST JUNCTION RY. CO. *v.* GREAT WESTERN RY. CO., No. 1044, *post*.

1036. ——.]—The ct. refused to grant a through rate between appcts.' V. & A. Docks in London & certain places in the provinces, being of opinion that it was inexpedient to disturb the existing rates or charges to those docks.—PORT OF LONDON AUTHORITY *v.* MIDLAND RY. CO., LONDON & NORTH WESTERN RY. CO. & GREAT NORTHERN RY. CO., INTERVENERS (1912), 15 Ry. & Can. Tr. Cas. 23; 106 L. T. 652; 28 T. L. R. 236.

1037. Evidence.]—GREAT WESTERN RY. CO. *v.* CENTRAL WALES RY. CO., No. 1027, *ante*.

1038. Objection that maximum remuneration insufficient—Validity of.]—A railway co. were authorised by their special Act to charge a maximum sum for the conveyance of coal along their line, to include every expense incidental to the conveyance, but by a proviso they might charge in addition a reasonable sum for the delivery or collection of goods, & other incidental services to the business of a carrier:—*Held:* (1) shunting & marshalling the coal traffic, & the provision of siding accommodation & unloading platforms with approach roads were not services for which a charge could be made under the proviso; (2) invoicing & taking accounts of all consignments, & the expense of keeping a staff & offices for the purpose, & giving notice to the consignees of each consignment, were not services for which a charge could be made, but were services incidental to conveyance, & so included in the mileage rate.

(3) To a proposed through rate made up of a rate for the I. Ry. Co. at the maximum which the co. had the power to charge, the only objection was as regards the portion appropriated to the I. Ry. Co., viz. that their maximum was not sufficient:—*Held:* not a valid objection, & as the through rate was advisable in the interest of the public, it should be allowed.

(4) It would be unreasonable, that a railway co. should receive more out of the through rate than it could receive for carrying similar traffic at a local rate.—ISLE OF WIGHT (NEWPORT JUNCTION) RY. CO. *v.* ISLE OF WIGHT RY. CO. (1882), 4 Ry. & Can. Tr. Cas. 128.

1039. Desirability of alternative routes.]—To a proposed through rate by a route shorter by 57 miles than a route on which through rates already existed it was objected that the proposed rates were not in the public interest, because the quantity of traffic to which they could apply was small; because no time would be saved if the traffic were carried by the proposed route; & that the number of exchanges on the portion of the proposed through route worked by other companies was great:—*Held:* (1) these were not reasons for refusing through rates any more than they would be for withholding facilities under 1854 Act, s. 2. That through rates exist by an alternative route, & that to maintain competition by the proposed route a similar facility is necessary, is a reason for granting through rates; (2) that the distance between the points of arrival & departure of two through routes is the same, is too vague a ground for deciding that the rates charged in respect of these routes should be the same.—CENTRAL WALES & CARMARTHEN JUNCTION RY. CO. *v.* LONDON & NORTH WESTERN RY. CO. & GREAT WESTERN RY. CO. (1883), 4 Ry. & Can. Tr. Cas. 211.

Annotation:—As to (1) **Refd.** G. W. Ry. *v.* Severn & Wye & Severn Bridge Ry. & Mid. Ry., Severn & Wye & Severn Bridge Ry. *v.* G. W. Ry. (1887), 5 Ry. & Can. Tr. Cas. 170.

1040. ——.]—A route, for which through rates are proposed, that would be a reasonable & serviceable route if worked throughout by one railway co., does not lose its serviceableness because two or more cos. are concerned in working it.

The S. Ry. formed an alternative route between certain stations on the G. W. Ry. & other stations on the S. W. Ry. The S. Ry. Co. applied for through rates between such stations *viâ* their railway, the rates to be the same as the existing rates between such stations by the competitive route, which were agreed through rates; the route proposed by the S. Ry. Co. would effect a great saving in time & distance; the transfers at junctions were the same by either route:—*Held:* (1) the through rates & route proposed should be allowed; the interests of the public were, in the circumstances, in favour of the existence of an alternative railway route at equal rates; (2) rates that excluded traffic from the shorter of these two routes, & confined it to the longer, could not but be at the expense of public policy; & though the quantity of traffic might be insignificant, & equal rates might not have much effect in developing through traffic by the route in question, it was a principle of importance to the public that a route between places offering the best opportunities for railway carriage, as far as distance was concerned, should not be placed at a disadvantage merely because portions of the route belonged to cos. which had an alternative route & made lower charges in favour of the latter.

(3) It would be an undue preference if a co., as to traffic of the same description going between the same places, worked it at through rates if the traffic passed off their line at one point, & refused that facility if it passed off their line at another point.—SWINDON, MARLBOROUGH & ANDOVER RY. CO. *v.* GREAT WESTERN RY. CO. & LONDON & SOUTH WESTERN RY. CO. (1884), 4 Ry. & Can. Tr. Cas. 349.

Annotation:—As to (1) **Distd.** Didcot, Newbury & Southampton Ry. *v.* L. & S. W. Ry. & G. W. Ry. (1896), 75 L. T. 401.

PART X. SECT. 2, SUB-SECT. 2. A.

1035 i. *General rule.*]—To induce the Railway Comrs. to impose a through rate, there must be evidence that it is required in the public interest.—BELFAST CENTRAL RY. CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND, GREAT NORTHERN RY. CO. OF IRELAND *v.* BELFAST CENTRAL RY. CO. (1832), 4 Ry. & Can. Tr. Cas. 159.—**IR.**

1035 ii. ——.]—ALGOMA CENTRAL & HUDSON BAY RY. CO. *v.* GRAND TRUNK RY. CO. (1908), 8 Can. Ry. Cas. 46.—**CAN.**

1041. ——.]—GREAT WESTERN RY. CO. *v.* SEVERN & WYE & SEVERN BRIDGE RY. CO. & MIDLAND RY. CO., SEVERN & WYE & SEVERN BRIDGE RY. CO. *v.* GREAT WESTERN RY. CO. (No. 2), No. 1049, *post.*

1042. —— **Convenience of access.**] — DIDCOT, NEWBURY & SOUTHAMPTON RY. CO. *v.* GREAT WESTERN RY. CO. & LONDON & SOUTH WESTERN RY. CO., No. 1047, *post.*

1043. ——.]—The railways or parts of the railways of the S. Ry. Co., the L. Ry. Co., the D. Ry. Co., & the H. Ry. Co. formed a continuous route from D. Colliery to the A. dock, Hull. The L. Ry. Co. were joint owners of the S. Ry. & had a controlling interest in the D. Ry., & were authorised by statute to fix & quote through rates over the former railway. A through rate for coal between the above points was already in operation by means of another route owned as to part by the G. Ry. Co., & as to part by the H. Ry. Co., four miles shorter than the proposed route, & the owning cos. worked the traffic over their own railways respectively. The existing rate was governed by the rate charged by another co. who owned a third competitive route to Hull (but not to the A. dock) 22 miles shorter than the existing G. & H. route. The annual coal traffic between the points in question was 80,000 to 90,000 tons. The L. Ry. Co. & D. Ry. Co. applied for a through rate for coal between the above points of the same amount as the existing through rates:—*Held:* (1) the proposed rate was a reasonable facility, & must be granted subject to the condition that defts., in view of the circumstances of the case, should be allowed the same tonnage apportionment thereof as they received out of the existing rate, over the alternative route of which they were part owners; (2) as defts. were not carrying throughout the entire alternative route, 1888 Act, s. 25 (9), did not apply to the application.—LANCASHIRE & YORKSHIRE RY. CO. & DEARNE VALLEY RY. CO. *v.* HULL & BARNSLEY RY. CO. (1912), 15 Ry. & Can. Tr. Cas. 59.

B. Reasonableness of Route.

See 1921 Act, s. 47 (3).

1044. Whether route reasonable—Considerations of distance.]—A sending co. having two alternative routes for through traffic, one eight miles longer than the other, proposed, for the purpose of a through rate, to carry by the longer one, at a double cost & labour in working & maintaining the junctions, with the object of making their own mileage more & the mileage of the forwarding co. less:—*Held:* (1) such longer route was not a reasonable route, within 1873 Act, s. 11 (5); (2) if the co. wished to take the through traffic by the longer route, it would be a fair arrangement to allow them that route, but to stipulate that they should not receive anything out of the through rate for the excess of distance & the gratuitous addition to the total mileage, though they would still receive a larger proportion of the through rate by such route than by the other.

(3) A "route," within 1873 Act, s. 11, is a route from the station on the sending line, where the traffic arises, to the station on the forwarding line where such traffic is delivered.

(4) The comrs. will judge of the reasonableness of a route by the circumstances for & against it, & upon a full consideration of all the circumstances to which their attention is called.—EAST & WEST JUNCTION RY. CO. *v.* GREAT WESTERN RY. CO. (1874), 1 Ry. & Can. Tr. Cas. 331; 31 L. T. 762.

Annotation:—As to (1) **Expld.** Lloyd *v.* Northampton & Banbury Junction Ry. (1878), 3 Ry. & Can. Tr. Cas. 259.

1045. —— ——.]—GREAT WESTERN RY. CO. *v.* CENTRAL WALES RY. CO., No. 1027, *ante.*

1046. —— —— **Route worked by two companies.**]—SWINDON, MARLBOROUGH & ANDOVER RY. CO. *v.* GREAT WESTERN RY. CO. & LONDON & SOUTH WESTERN RY. CO., No. 1040, *ante.*

1047. —— ——.]—A route proposed for the traffic for which through rates were asked, from S. to P., the London terminus of G. Co., was 15 miles longer than the route between S. & N. E. a terminus of L. Co., & contrasted unfavourably with the latter in method of working, but it had advantages in other ways in that parts of London were connected by rail with P. & not with N. E.:—*Held:* (1) the route was a reasonable route; (2) it was not for the benefit of the public that the carrying trade between two termini should be restricted to one railway co. to the exclusion of others, when one of such termini was in London, where no single station could possibly serve conveniently as its only centre for every part of the metropolis; (3) it was no answer to this application for through rates, so far as through booking or invoicing was involved in it, that it touched traffic which the L. Co. carried as local traffic, & claimed to be non-competitive, or that it set up a mixed control over rates to & from S., which, from the constant changes called for to meet special circumstances, or to get the best possible return for their outlay on the docks, the L. Co. considered they alone should be concerned with.

(4) The decisions of the Railway Commission since its commencement are binding on the Ct.—DIDCOT, NEWBURY & SOUTHAMPTON RY. CO. *v.* GREAT WESTERN RY. CO. & LONDON & SOUTH WESTERN RY. CO. (1896), 9 Ry. & Can. Tr. Cas. 210; *affd.*, [1897] 1 Q. B. 33, C. A.; *subsequent proceedings*, 10 Ry. & Can. Tr. Cas. 9.

Annotations:—As to (2) **Refd.** Plymouth, Devonport & South Western Junction Ry. *v.* G. W. Ry. & L. & S. W. Ry. (1899), 10 Ry. & Can. Tr. Cas. 68. *As to* (4) **Apld.** Pickford's *v.* L. & N. W. Ry. (1905), 12 Ry. & Can. Tr. Cas. 154.

1048. —— **Affected by mode of working.**]—SEVERN & WYE & SEVERN BRIDGE RY. CO. *v.* GREAT WESTERN RY. CO., No. 1028, *ante.*

1049. —— **Probability of efficiency.**]—(1) 1854 Act, s. 2, gives a customer a right to require any number of railway cos. in Great Britain to combine to form a continuous route by which his traffic may be sent at a single booking & for a single payment.

(2) 1854 Act gives every customer the right to select what co. he pleases to deliver his traffic to & to require, without a second booking or payment, that the traffic shall be delivered at the station he desires, provided there are proper facilities for receiving it & delivering it at the stations he selects & that there is a continuous connecting route.

(3) Apart from a through rate, the charge for the transit is the total of the local rates of the various cos. over whose line the traffic passes.

(4) A railway co. may, apart from the question of through rates, collect what traffic it can, carry it as far as it can by its own line, & at the point

PART X. SECT. 2, SUB-SECT. 2.—B.

1044 i. *Whether route unreasonable.*]—A route is not unreasonable within 1873 Act, s. 11, because the delivering co. propose to hand over to the forwarding co. long distance competitive traffic, at a junction but a few miles from its destination on the forwarding co.'s line, where the delivering co.'s route between the two junctions is the shorter, because the forwarding co. could receive the traffic at another junction further distant from its destination & forward it thence by their own route.—CALEDONIAN RY. CO. *v.* NORTH BRITISH RY. CO. (No. 4) (1880), 3 Ry. & Can. Tr. Cas. 403.—**SCOT.**

Sect. 2.—*Through rates: Sub-sect.* 2, *B. & C.*]

most convenient to itself, hand it over to the co. which is to forward it.

(5) The Comrs. must, unless they refuse the rate altogether (which they will not do unless the rate is so high as to make it useless to the public, or so low as to prevent them from apportioning it equitably between the cos. or from complying with 1873 Act, s. 11), accept the amount proposed, although they may consider some other amount more equitable.

(6) *Primâ facie* it is in the interest of the public that there should be at least two railway routes open between any two given places, provided that those routes are practically independent of one another, fairly alternative, & reasonably calculated to keep one another in check.

(7) *Held:* a route capable of maintaining a competition with quicker or cheaper routes, & efficient enough to be likely to be preferred for some portion of the traffic was a reasonable one, within 1873 Act, s. 11.

(8) The question whether a condition as to a proposed rate is in the interest of the public is a question of fact on which the comrs. have no authority to state a case.

(9) The fact that a route, in other respects reasonable, is not so good as some other route between the same places does not, as far as provisions of 1873 Act are concerned, prevent the Comrs. making the former a through route at through rates.

(10) If the granting of a through rate is a due & reasonable facility in the interests of the public, & the route proposed is a reasonable route, the Comrs. must allow it; if the two conditions are not satisfied they must refuse it; the only discretion they have is that of apportionment.

(11) A co. cannot complain that a proposed rate is too low, when they are themselves charging the same rate for a longer distance.

(12) The question whether a through rate is reasonable in the interests of the public cannot be decided apart from the nature & character of a through route; in some cases evidence as to the through route may alone be sufficient to settle the question in favour of the through rate being in the interests of the public.—GREAT WESTERN RY. CO. *v.* SEVERN & WYE & SEVERN BRIDGE RY. CO. & MIDLAND RY. CO., SEVERN & WYE & SEVERN BRIDGE RY. CO. *v.* GREAT WESTERN RY. CO. (No. 2) (1887), 5 Ry. & Can. Tr. Cas. 170.

Annotation:—As to (1) & (3) **Dbtd.** Didcot, Newbury & Southampton Ry. *v.* G. W. Ry., [1897] 1 Q. B. 33.

1050. —— Reasonable junctions.]—By a clause in an agreement made between two railway cos. & a third co., the two cos. agreed between themselves that they should agree upon through rates for coal & other traffic from & to certain works, collieries & places, such through rates to be *vid* a reasonable & convenient junction or junctions to be agreed upon between them or to be settled by arbn. as provided:—*Held:* the Commissioners in construing the clause, had power to find that certain stations specified were reasonable & convenient junctions although not on the line of the third railway.—*Re* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. & LONDON & NORTH WESTERN RY. CO. (1888), 4 T. L. R. 544, D. C.

1051. —— Point of exchange impracticable.]—(1) On an application for through rates, the fact that the station where it is proposed to exchange the traffic is not, in any reasonable sense, a practicable one for that purpose will go to show that the proposed route is not a reasonable route within 1888 Act, s. 25 (5).

(2) The Ct. will consider not only the public interest in a competitive route, but also the right of a railway co. to a long run in respect of traffic originating on its own system.

(3) A station, proposed as a station for the exchange of traffic, was constructed entirely for passenger traffic:—*Held:* having regard to this fact & to the bulk of the passenger traffic passing through it, to the time which must necessarily be occupied in exchanging trucks or transferring packages, & to the large traffic to be dealt with in a station not designed for that purpose, it was not a practicable station, in any reasonable sense, for the interchange of traffic.—PLYMOUTH, DEVONPORT & SOUTH WESTERN JUNCTION RY. CO. *v.* GREAT WESTERN RY. CO. & LONDON & SOUTH WESTERN RY. CO. (1899), 10 Ry. & Can. Tr. Cas. 68.

See, also, No. 1003, *ante.*

C. Fixing, Apportionment and Rescission of Rate.

See 1921 Act, ss. 47, 51, 86, Sched. IX., Part II.

1052. Fixing—Effect on other rates.]—(1) Iron ore was sent from B. to W. by alternative routes, one of which was by the N. Ry. to K., & the other by the E. Ry. to D., the continuation in each case being by the G. W. Ry. The G. W. Company refused to agree to a lower through rate by the D. route, than that charged by the K. route, although the distance by the former was twenty miles shorter; the G. W. mileage being practically equal in both cases. The proposed through rates gave the G. W. Co. about ½*d.* per ton per mile:—*Held:* the apprehension of the G. W. Co. that a reduction of rates by the shorter route would entail a similar reduction of the rates by the longer route, & so render the traffic carried by the latter unprofitable, did not justify them in raising the rates by the shorter route above their natural & proper level; &, as the G. W. Co. carried the like traffic in similar circumstances for about ½*d.* per ton per mile, the rates proposed should be allowed, on condition that the E. Co. should maintain a traffic by their route averaging 500 tons a week.

PART X. SECT. 2, SUB-SECT. 2.—C.

r. *Fixing—Whether remuneration reasonable.*]—N. & A. Ry. Co. applied to the comrs. to authorise an abatement or deduction to be made from existing through rates with G. N. (Ireland) Ry. Co., to the amount of ½*d.* per ton per mile in the case of traffic carried in owners' waggons:—*Held:* the effect of making an order requiring the co. to pay 4 times as much as they had theretofore paid for the use of waggons, would be that the residue would not be sufficient to remunerate them for the working expenses of their line & for its maintenance. In these circumstances the rates could not be allowed.—NEWRY & ARMAGH RY. CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND (1877), 3 Ry. & Can. Tr. Cas. 28.—**IR.**

s. —— —— *Raising well established rate.*]—The comrs. will not grant through rates which will have the effect of raising a long established rate & unsettling interests which have been founded on its continuing, unless the ry. co. asking for such through rates can show that an alteration is required to give them a fair return upon the traffic carried.—GREAT NORTHERN RY. CO. *v.* BELFAST CENTRAL RY. CO., BELFAST CENTRAL RY. CO. *v.* GREAT NORTHERN RY. CO. (1880), 3 Ry. & Can. Tr. Cas. 411.—**IR.**

t. —— —— *Comparison of rates.*]—An application was made by B. C. Ry. Co. to fix through rates for coal sent from B. quay over their railway to stations beyond A. on G. N. (Ireland) Co.'s railway, the rate as far as A. was fixed at 3*s.* 6*d.*; the extra distance involved no expense to G. N. Co. other than haulage:—*Held:* the question whether any proposed rates were or were not reasonable in the interests of the public depended upon whether the difference between the rate of 3*s.* 6*d.* & a proposed rate afforded a reasonable remuneration for the haulage for the extra distance.—BELFAST CENTRAL RY. CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND (No. 2) (1880), 3 Ry. & Can. Tr. Cas. 419.—**IR.**

u. —— —— *What costs material.*]—The delay in unloading waggons at a particular station is not a cost which

(2) Where a line is opened by which distance & cost of carriage are lessened, it is a reasonable consequence that the rates charged to the public who are in a position to avail themselves of the shorter route should be also in some measure reduced. The quantity carried is an element in the cost of carriage, &, equally with distance, affects the rate at which the work can profitably be done.—EAST & WEST JUNCTION RY. CO. *v.* GREAT WESTERN RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 147.

1053. —— Competing routes—Mileage proportions.]—(1) In an Act amalgamating three of the railway cos. in the Isle of Wight, a fourth co. had a clause inserted that the cos. should respectively afford to each other all reasonable facilities, including through booking & invoicing for the convenient working of the traffic, & the amount of such fares & rates, & that their apportionment as between the cos. should be determined by the Railway Comrs. as arbitrators. On an application by the fourth co. against the amalgamated co., asking for equal rates by either route:—*Held:* the routes were intended to be competing routes, & equal rates should be fixed by both routes.

(2) Appcts. were in some instances refused their full mileage proportion out of the traffic carried by the longer route.—ISLE OF WIGHT RY. CO. *v.* ISLE OF WIGHT CENTRAL RY. CO. (1888), 6 Ry. & Can. Tr. Cas. 35.

1054. —— Virtual existence of rate—Onus—Consideration of distance.]—(1) In allowing or fixing through rates the Railway Comrs. will consider all the circumstances of the case; one of the circumstances is, what powers the particular railway cos. whose lines are part of the through route have of demanding rates.

(2) On an application to allow a through rate, it was proved that there was in existence a rate arranged between the parties which was virtually a through rate, & was much lower than the sum of the local rates over the lines which constituted the through route. The through rate applied for involved a still further reduction of about 6*d.*:—*Held:* in the circumstances the *onus* was upon appcts. to prove that the through rate which they proposed was just & reasonable.

(3) A proposed rate was over a route composed of three lines, which carried for about six, forty-five & twenty-five miles respectively of the route. There was an alternative route composed of two lines, the same six miles as the proposed route, & a residue of seventy-five miles over lines of another co.; there was an existing rate by the alternative route of 6*d.* less than the existing rate over the route for which a through rate was proposed:—*Held:* the existing rate over the route composed of three railways, was not necessarily unreasonable, the conditions under which the two traffics were carried being totally different.—BIRMINGHAM CORPN. & SHEFFIELD COAL CO., LTD. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO., MIDLAND RY. CO. & LONDON & NORTH WESTERN RY. CO. (1897), 10 Ry. & Can. Tr. Cas. 62.

1055. —— Amounting to reduction of existing rates.]—Appcts., owners of a private siding, asked for through rates for slack between certain collieries & their siding. The proposed route was ten miles shorter than that by which the traffic was ordinarily carried; through rates for slack were already in existence, & applied to traffic consigned by either route. The rates proposed were in each case 1*s.* 2*d.* per ton as compared with the existing rate of 1*s.* 11*d.* No evidence was given that the proposed rates were in the public interest:—*Held:* (1) the ct. could not assume without evidence that the proposed rates would be in the interest of the public; (2) 1888 Act, s. 25, was not intended to have the effect of reducing rates but only to enforce the granting of facilities; (3) in the absence of evidence that the existing through rates were unreasonable, there was no ground for fixing any other rate.

(4) A trader interested may apply for a through rate to a private siding.—BRUNNER, MOND & CO., LTD. *v.* CHESHIRE LINES COMMITTEE & LONDON & NORTH WESTERN RY. CO. (1909), 14 Ry. & Can. Tr. Cas. 124; 25 T. L. R. 618.

Annotation:—As to (1) **Distd.** L. & Y. Ry. & Dearne Valley Ry. *v.* Hull & Barnsley Ry. (1912), 15 Ry. & Can. Tr. Cas. 59.

1056. Apportionment—Mileage proportion—Terminal costs.]—(1) The special Act of the C. railway Co., passed in 1883, provided for the provision of facilities for through traffic by C., G., & L. Cos., including through rates. Through rates were put in operation, but the cos. were unable to agree upon an apportionment, & the G. Co. contending for an apportionment by mileage according to the route which the traffic would take if sent in accordance with a statutory agreement made between the L. Co. & the G. Co. in 1863:—*Held:* through traffic passing by the C. Ry., under the special Act of 1883, between the L. Ry. & the G. Ry. was not traffic exchanged between the cos. within the statutory agreement of 1863, or subject to its provisions, as respects the apportionment between the cos. of the receipt for the traffic.

(2) The Comrs. in apportioning the rates took into consideration the fact that the special Act of 1883, to the distinct advantage of the L. Co., diverted traffic from the route agreed upon by the two cos. in 1863 for the traffic exchanged & directed that after payment of the usual clearing house terminals the residue should be divided between the cos. interested therein by mileage, according to the actual route, each two miles over the G. Ry. to be reckoned as three miles, the total sum received by the G. Co. out of each such through rate for mileage & terminals, exclusive of any extra charge for services permissible as against the public, not to exceed their maximum local rate for conveyance for the actual distance which the traffic was carried on their railway.—

ought to make the through rate to that station higher.—BELFAST CENTRAL RY. CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND, GREAT NORTHERN RY. CO. OF IRELAND *v.* BELFAST CENTRAL RY. CO. (1882), 4 Ry. & Can. Tr. Cas. 159.—IR.

v. —— *Effect of statutory agreement.*]—The comrs. may refuse to fix & apportion through rates on the ground that the proposed rates are not in the terms of a statutory agreement made between 2 ry. cos. over whose railways the rates are sought to be charged.—NORTH MONKLAND RY. CO. *v.* NORTH BRITISH RY. CO. (1878), 3 Ry. & Can. Tr. Cas. 282.—SCOT.

w. —— *Through rates exceeding sum of local rates.*]—*Re* FULLERTON LUMBER & SHINGLE CO., LTD. & CANADIAN PACIFIC RY. CO. (1914), 27 W. L. R 389.—CAN.

a. *Apportionment — What particulars required.*]—Full particulars of rates are required of rates proposed for apportionment, which should include their amount, the termini for each rate & the route between those termini, in order that no mistake may occur in the identification of the rates.—FORTH BRIDGE & NORTH BRITISH RY. CO. *v.* GREAT NORTH OF SCOTLAND & CALEDONIAN RY. CO. (1898), 11 Ry. & Can. Tr. Cas. 1.—SCOT.

b. *Rescission — Motive of application.*]—D. Co. applied for an order declaring that the through rates in force by G. N. Co. were not a reasonable facility or required in the interests of the public, & that they should no longer be in force. On the facts:—*Held:* no case had been made for rescinding the through rates, the object being to get rid of G. N. competition.—GREAT NORTHERN RY. CO. OF IRELAND *v.* DONEGAL RY. CO., DONEGAL RY. CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND (1901), 11 Ry. & Can. Tr. Cas. 47.—IR.

Sect. 2.—*Through rates: Sub-sect.* 2, *C.; sub-sects.* 3 & 4. *Sect.* 3: *Sub-sect.* 1.]

LONDON & NORTH WESTERN RY. CO. *v.* GREAT WESTERN RY. CO. & CENTRAL WALES & CARMARTHEN JUNCTION RY. CO. (1885), 5 Ry. & Can. Tr. Cas. 20.

Annotation :—*As to* (2) **Distd.** G. W. Ry. *v.* Severn & Wye & Severn Bridge Ry. & Mid. Ry., Severn & Wye & Severn Bridge Ry. *v.* G. W. Ry. (1887), 5 Ry. & Can. Tr. Cas. 170.

1057. —— —— Comparison of distances.]—SEVERN & WYE & SEVERN BRIDGE RY. CO. *v.* GREAT WESTERN RY. CO., No. 1028, *ante*.

1058. —— —— ——.]—In dividing the total amount of a through rate between two forwarding cos. where the traffic is carried on one of the railways a short distance, the charge which such a co. may make for short distances under their special Act is to be taken into account in favour of such a co.—TAL-Y-LLYN RY. CO. *v.* CAMBRIAN RY. CO. (1886), 5 Ry. & Can. Tr. Cas. 122.

1059. —— Comparison of services performed.]—The G. Co. had certain rates in force for traffic between their stations inland & their stations in P. at M. & S. lower than the rates at which similar traffic was carried between such inland stations as were within a radius of forty miles from P. & C. & T., stations in P. These last were stations of the S. Co., & short branch lines connecting them with the G. Ry. were also owned & worked by them. The rates at which goods were carried between C. or T. & the G. Co.'s inland stations were divided between that co. & the S. Co.

Upon a complaint against the railway cos. under 1888 Act, s. 30, of the difference between the S. & M. rates, & the C. & T. rates :—*Held* : (1) the G. Co. only had it in its power to give an undue preference within the sect., as that co. alone, or in conjunction with the S. Co., did carry between its own stations & all four ports or docks, but the S. Co., carrying only to its own ports, was not in any way limited as to the charges it chose to make at those ports, by what the railway charges might be to any of the other ports at P. ; (2) as to the G. Co.'s portion of the through rates between C. or T. & such co.'s inland stations, there ought to be between it & that co.'s local charges to & from its own termini, a difference corresponding with the difference in services performed ; (3) if the S. Co., having the usual powers of charging for services performed, fixed the charge for their part of the through rates so as to make it, when united with the G. Co.'s charge, into a charge to & from their ports higher than the charge to & from the G. Co.'s ports, it was not a contravention of the sect., for they showed no preference due or undue, having as respects the traffic in question nothing to do with any conveyance to & from any ports except their own two.

(4) However desirable a reduced rate may be in the interests of the public, it is always necessary to see whether there is a commensurate advantage to the railway co., who may be forced by the decision of the Comrs. to accept a lower scale of charge than that which it is actually making, & to which it is entitled (COLLINS, J.).—PLYMOUTH INCORPORATED CHAMBER OF COMMERCE *v.* GREAT WESTERN RY. CO. & LONDON & SOUTH WESTERN RY. CO., BURNARD & ALGER *v.* GREAT WESTERN RY. CO. & LONDON & SOUTH WESTERN RY. CO. (1895), 9 Ry. & Can. Tr. Cas. 72.

1060. —— Agreed apportionment of existing rate—Reapportionment.]—Where there is an agreed through rate for through traffic over the lines of two railway cos. & an agreed apportionment between the two cos. which has not been cancelled, the Comrs. have no jurisdiction to make a fresh apportionment of that agreed rate, or of one of the same amount, at the instance of one of the railway cos., the duty & power of apportionment being incidental only to the fixing of reasonable facilities for the conveyance of through traffic from one point to another.—MANCHESTER SHIP CANAL CO. *v.* LONDON & NORTH WESTERN RY. CO., [1911] 1 K. B. 657 ; 14 Ry. & Can. Tr. Cas. 141 ; 80 L. J. K. B. 676 ; 104 L. T. 81, C. A.

See, also, No. 1053, *ante*.

See 1921 Act, s. 47 (6), (8).

SUB-SECT. 3.—THROUGH BOOKING.

See 1921 Act, s. 75.

1061. Considerations governing order—Not a matter of right.]—An application for through booking over a route passing along several lines of railway is not a matter of right, but the granting of it is governed by the considerations that affect an application for a through rate under 1888 Act, s. 25.—DIDCOT, NEWBURY & SOUTHAMPTON RY. CO. *v.* GREAT WESTERN RY. CO., [1897] 1 Q. B. 33 ; 10 Ry. & Can. Tr. Cas. 1 ; 66 L. J. Q. B. 33 ; 75 L. T. 401 ; 45 W. R. 282, C. A.

Annotation :—**Consd.** Plymouth, Devonport & South Western Junction Ry. *v.* G. W. Ry. & L. & S. W. Ry. (1899), 10 Ry. & Can. Tr. Cas. 68.

1062. Continuous communication not necessary —Special Act.]—INNES *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & LONDON & SOUTH WESTERN RY. CO., No. 989, *ante*.

1063. Continuous communication existing — Reasonable facility.]—UCKFIELD LOCAL BOARD *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & SOUTH EASTERN RY. CO., No. 1005, *ante*.

1064. Whether reasonable & in public interest—Primâ facie evidence.]—(1) 1854 Act, s. 2, the Railway Comrs. have power, upon proof that it is reasonable & in the interests of the public, to order through booking of both passengers & goods at the sum of the local rates charged on the two lines of railway constituting the through route (COLLINS, J.).

(2) If the demand for such through booking is made *bonâ fide* by a member of the public, & *a fortiori* by a community, there is *ipso facto* a strong *primâ facie* case of reasonableness & public interest (COLLINS, J.).

(3) In applications under 1888 Act, s. 25, the Comrs. require evidence of public interest & reasonableness in favour of the proposed through rate & route adequate to outweigh the interference with the vested legal rights of railway cos.

PART X. SECT. 2, SUB-SECT. 3.

c. *On what basis ordered.*]—G. S. Ry. Co. had with G. W. Ry. Co. of England established lower through fares & rates for a more extensive system of through booking by their new cross channel route *via* R. than the fares established by them for traffic passing over their system to cross channel stations *via* D. :—*Held* : a system of through booking & rates *via* D. based on the principle of equal rates where there was reasonable competitive routes must be put into force by G. S. Ry. Co.—DUBLIN PORT & DOCKS BOARD *v.* GREAT SOUTHERN & WESTERN RY. CO., LONDON & NORTH WESTERN RY. CO. *v.* GREAT SOUTHERN & WESTERN RY. CO. (1907), 13 Ry. & Can. Tr. Cas. 209. —IR.

d. *Reasonable through fares existing.*]—Where reasonable through fares exist, it is for the co. proposing new fares to show that new through fares at lower rates were reasonable & do not interfere with existing rights.—GREAT WESTERN RY. CO. *v.* DUBLIN & SOUTH EASTERN RY. CO., FISHGUARD & ROSSLARE RYS. & HARBOUR CO. & GREAT SOUTHERN & WESTERN RY. CO., LONDON & NORTH WESTERN RY. CO. & CITY OF DUBLIN STEAM PACKET CO., INTERVENIENTS (1907), 13 Ry. & Can. Tr. Cas. 227.—IR.

D. Co. had a through route from Southampton to P., the London terminus of the G. Co., & proposed not only to carry traffic to & from P. at the same rate as that in force between Southampton & N. E., the London terminus of the L. Co., but also to carry to & from S. & R. Stations in London, four & ten miles further respectively, at the same rates. The route from Southampton to N. E. was sixteen miles shorter than that from Southampton to P., & the rate was admittedly low owing to sea competition. Both the G. Co. & L. Co. paid tolls to another co. for hauling traffic from R. to join their systems, & the G. Co. paid for carrying their traffic from S. to P.:—*Held:* (4) the through rate from R. must be not lower than that in force by the L. Co.'s route to R.; (5) the rate to S. must take adequately into account the difference in the cost of carriage between P. & S.—DIDCOT, NEWBURY & SOUTHAMPTON RY. CO. *v.* LONDON & SOUTH WESTERN RY. CO. (1897), 10 Ry. & Can. Tr. Cas. 9.

Through traffic—Facilities for.]—*See* Sect. 1, sub-sect. 5, *ante*.

SUB-SECT. 4.—AS REGARDS STEAMSHIPS.

See 1921 Act, ss. 47 (9), 53.

1065. Comparison with prior rates.]—*Held:* the fact that a rate of 10s. 5*d*. per ton between G. & B. had been allowed to appcts. as the proportion of a throughout land & sea rate between L. & B. afforded no ground for ordering a similar through rate as between G. & B., between which places an admittedly reasonable through rate already existed.—JESCOTT (LEEDS) LTD. *v.* LANCASHIRE & YORKSHIRE RY. CO. & GREAT NORTHERN RY. CO. (1908), 13 Ry. & Can. Tr. Cas. 276.

SECT. 3.—**UNDUE PREFERENCE.**

See 1888 Act, ss. 12, 13, 27; 1921 Act, ss. 40 (5), 41 (2).

Exceptional rates, *see* Sect. 6, *post*.

SUB-SECT. 1.—THE STATUTES AND THEIR APPLICATION.

1845 Act, s. 90.]—*See* Sub-sect. 2, *post*.

1066. 1854 Act, s. 2—Separate navigations maintained by railway.]—Where a duty was imposed by Act of Parliament upon a railway co. to keep in order two distinct navigations, & they permit one to fall out of repair, the effect of which is that vessels enter the other to the advantage of the co. who possess wharves thereto adjoining, the Ct. of Common Pleas would not entertain an application for an injunction on the ground of undue preference, under 1854 Act, that Act being intended to apply, not to the case of two distinct navigations, but to a case of undue preference in respect of one navigation.—BENNETT *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1859), 6 C. B. N. S. 707; 1 Ry. & Can. Tr. Cas. 288; 33 L. T. O. S. 223; 7 W. R. 585; 141 E. R. 629.

Annotations:—**Consd.** S. E. Ry. *v.* Ry. Comrs. (1880), 5 Q. B. D. 217. **Refd.** Distington Iron Co. *v.* L. & N. W. Ry., Furness Ry. & Cleator & Workington Junction Ry. (1889), 6 Ry. & Can. Tr. Cas. 108.

1067. —— Individual preference—Does not apply to public wrong.]—1854 Act, ss. 2 & 6, do not apply to the case of a public wrong, but to the unjust preference which a co. give to certain individuals or classes of individuals over others.—A.-G. *v.* GREAT NORTHERN RY. CO. (1860), 1 Drew. & Sm.

PART X. SECT. 2, SUB-SECT. 4.

e. *Application of* 1873 *Act, s.* 11.]—A ry. co. applying for through rates, had agreed with another ry. co. for the carriage of passengers by steamer in connection with the line of the former co.:—*Held:* above sect. applied during the continuance of the agreement.—GREENOCK & WEMYSS BAY RY. CO. *v.* CALEDONIAN RY. CO. (No. 3) (1875), 2 Ry. & Can. Tr. Cas. 227.—**SCOT.**

f. —— *Agreement with shipowner—Liability of railway company.*]—Where a ry. co. contracts to carry across sea & arranges with a shipowner for the sea transit, the liability of the ry. co. under above sect. with respect to the carriage by rail is the same as if the charge was a separate one for carriage by rail only.—AYR HARBOUR TRUSTEES & BARR (P.) & CO. *v.* GLASGOW & SOUTH WESTERN RY. CO., CALEDONIAN RY. CO., NORTH BRITISH RY. CO., & NORTH EASTERN RY. CO. (No. 1) (1881), 4 Ry. & Can. Tr. Cas. 81.—**SCOT.**

g. —— —— *Essentials of.*]—To constitute an arrangement for "using" a steam vessel within above sect., the agreement between the ry. co. & the owner of the steamboat must be definite, & contain obligations on the part of such owner, to ply between the specified ports & to conduct the sea service under such conditions as will not admit of its performance being evaded, & as will give security that the sea & land route, for which a through rate has been authorised to be taken, shall be maintained for the use & benefit of the public.—CALEDONIAN RY. CO. *v.* GREENOCK & WEMYSS BAY RY. CO. (No. 2) (1881), 4 Ry. & Can. Tr. Cas. 70.—**SCOT.**

h. —— —— ——.]—An agreement between a s.s. co. & a ry. co. that steam vessels belonging to the former shall ply between two ports for one year & after until written notice to terminate the agreement "daily or at least upon alternate days of each week, the hours of departure of the boats to be determined by the s.s. co., regard being had, however, to the convenience of the ry. co. & to the times of the arrival & departure of their trains," & containing a clause that any dispute as to the provisions of the agreement should be referred to arbn. is an arrangement for using, maintaining, or working steam vessels within 1873 Act, s. 11.—BELFAST CENTRAL RY. CO. *v.* GREAT NORTHERN RY. CO. OF IRELAND (No. 4) (1884), 4 Ry. & Can. Tr. Cas. 379.—**IR.**

i. *Effect of statutory agreement.*]—An application by D. Steam Packet Co. for through rates for passengers between K. & L. *viâ* the co.'s steamers & N. W. Co.'s railway was refused on the ground that D. Steam Packet Co. had agreed, under statutory powers, that the charges for the conveyance of passengers' traffic between L. & K. were to be fixed from time to time, as regards the through rates, by the ry. co.—CITY OF DUBLIN STEAM PACKET CO. *v.* LONDON & NORTH WESTERN RY. CO. (1881), 4 Ry. & Can. Tr. Cas. 10.—**IR.**

k. *Steamships owned by railway company—Differential sea rates.*]—The amalgamation of 2 Irish ry. cos. was authorised by an Act of Parliament whereby running powers & traffic facilities were given to a third ry. co. which by means of its line & the exercise of such running powers afforded a competing although longer route between stations on the railway of the amalgamated co. on the one hand & D. & cross-channel stations on the other hand.

The amalgamated co. had in conjunction with G. W. Ry. Co. of England established a new daily cross-channel service *viâ* R. In order to protect their interests the ports of D. & W. had obtained protective sects. in the Act authorising the amalgamation, which were to the effect that the amalgamated co. should not by their rates place those ports at an undue disadvantage & that there should be through rates *viâ* those ports, with power in the case of W. to fix group rates for W. &-R.

Certain long sea differential through rates *via* W. to E. & S. ports were in existence prior to the amalgamation, & it was further proposed to establish a new differential rate *viâ* W. to F. which was only 106 miles from W.:—*Held:* the existing long sea differential rates *viâ* W. to the more distant ports were justified in view of the distance & the frequency of the service, but the proposed differential rate *viâ* W. to F. on which route there were 6 sailings per week was not justified.—GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND *v.* DUBLIN & SOUTH EASTERN RY. CO., DUBLIN & SOUTH EASTERN RY. CO. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND (1907), 13 Ry. & Can. Tr. Cas. 176.—**IR.**

l. —— ——.]—DUBLIN PORT & DOCKS BOARD *v.* GREAT SOUTHERN & WESTERN RY. CO., LONDON & NORTH WESTERN RY. CO. *v.* GREAT SOUTHERN & WESTERN RY. CO. (1907), 13 Ry. & Can. Tr. Cas. 209.—**IR.**

m. —— ——.]—GREAT WESTERN RY. CO. *v.* DUBLIN & SOUTH EASTERN RY. CO., FISHGUARD & ROSSLARE RYS. & HARBOUR CO. & GREAT SOUTHERN & WESTERN RY. CO., LONDON & NORTH WESTERN RY. CO. & CITY OF DUBLIN STEAM PACKET CO., INTERVENIENTS (1907), 13 Ry. & Can. Tr. Cas. 227.—**IR.**

n. *Agreement with shipowners—Whether objectionable.*]—OWEN SOUND S.S. CO. *v.* CANADIAN PACIFIC RY. CO. (1889), 17 O. R. 691; *affd.* 17 A. R 482.—**CAN.**

Sect. 3.—Undue preference: Sub-sects. 1 & 2, A.]

154 ; 29 L. J. Ch. 794 ; 2 L. T. 653 ; 6 Jur. N. S. 1006 ; 8 W. R. 556 ; 62 E. R. 337.

Annotations :—**Consd.** A.-G. *v.* G. E. Ry. (1879), 11 Ch. D. 449. **Refd.** McCormac *v.* Queen's University (1867), 15 W. R. 733 ; Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254. **Mentd.** Hare *v.* L. & N. W. Ry. (1861), 30 L. J. Ch. 817 ; G. W. Ry. *v.* Met. Ry. (1863), 9 Jur. N. S. 562 ; Norton *v.* L. & N. W. Ry. (1878), 9 Ch. D. 623 ; A.-G. *v.* Shrewsbury (Kingsland) Bridge Co. (1882), 30 W. R. 916 ; A.-G. *v.* Manchester Corpn., [1906] 1 Ch. 643 ; A.-G. *v.* West Gloucestershire Water Co. (1909), 101 L. T. 258.

1068. —— —— Does not refer to excessive charges.]—An application by the D. Co. to the Railway Comrs. set out that certain railway cos. had refused to carry appcts.' traffic except upon payment of rates & charges exceeding the maximum amounts, thus subjecting appcts.' traffic to undue prejudice & disadvantage, & prayed for an order restraining the railway cos. from continuing to subject the said traffic to undue prejudice & disadvantage :—*Held :* the Comrs. had no power to grant an injunction. The words "undue & unreasonable preference or advantage" & "prejudice or disadvantage," in 1854 Act, s. 2, apply to an inequality, an unfairness with reference to others, or a prejudice with reference to other works, & do not mean that because excessive charges were made a prejudice arose. The mere charging of an alleged excess is not the subject of an order by the Comrs., but one to be tried in the ordinary way by the ordinary tribunals.—R. *v.* Ry. Comrs. & Distington Iron Co. (1889), 22 Q. B. D. 642 ; 58 L. J. Q. B. 233 ; 60 L. T. 606 ; 53 J. P. 533 ; 37 W. R. 446 ; 5 T. L. R. 333 ; *sub nom.* Distington Iron Co., Ltd. *v.* London & North Western Ry. Co., Furness Ry. Co., & Cleator & Workington Junction Ry. Co., 6 Ry. & Can. Tr. Cas. 108, D. C.

Annotation :—**Refd.** West Ham Corpn. *v.* G. E. Ry. (1895), 9 Ry. & Can. Tr. Cas. 7.

1069. —— Geographical preference.] — The Comrs. have jurisdiction to inquire into a complaint of undue preference being shown by railway cos. to one town or place over another town or place.—Dover Corpn. *v.* South Eastern Ry. Co. & London, Chatham & Dover Ry. Co. (1873), 1 Ry. & Can. Tr. Cas. 349.

1070. —— Service off line—Incidental to carriage.]—Diphwys Casson Slate Co., Ltd. *v.* Festiniog Ry. Co., No. 1149, *post.*

1071. —— Gravity of grievance immaterial.]—(1) The G. E. Ry. Co. charged for the conveyance of fish from Y. to L. for packages up to 18 lbs. 3*d.*, up to 28 lbs. 4*d.*, up to 42 lbs. 6*d.*, & up to 56 lbs. 8*d.* A trader at Y. sent fish to L. in 20 lb. baskets & was charged 4*d.* He could not alter the size of his baskets without injury to his business. 21 lb. baskets did not cost the co. more expense or labour than 18 lb. baskets :—*Held :* the rate must be 21 lbs. for 3*d.*, so as to make it uniform & in due proportion with the charge for packages of greater weight.

(2) It is sufficient that a grievance should exist by reason of any undue preference without regard to its being a light or serious one.—Woodger *v.* Great Eastern Ry. Co. (1875), 2 Ry. & Can. Tr. Cas. 102.

—— **What amounts to undue preference.**]—*See* Sub-sect. 3, *post.*

1072. —— "Railway company"—Dock company.]—The provisions of 1854 Act, s. 2, relating to undue or unreasonable preference or advantage to or in favour of any particular person or co., or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect are limited to the conveyance & transport of traffic on a railway or canal & do not give jurisdiction to the Railway Comrs., on complaint under 1873 Act, s. 6, to restrain a co. owning two separate docks twenty miles apart, & a line of railway connected with one of such docks, & thereby constituted a railway co. within Railway Cos. Act, 1867 (c. 127), from charging preferential dock dues to the prejudice of one shipowner using the docks, not connected with the line of railway, in favour of other shipowners.—East & West India Dock Co. *v.* Shaw, Savill & Albion Co. (1888), 39 Ch. D. 524 ; 57 L. J. Ch. 1038 ; 60 L. T. 142 ; *sub nom.* Shaw, Savill & Albion Co. *v.* East & West India Dock Co., 6 Ry. & Can. Tr. Cas. 94.

Annotations :—**Mentd.** London & India Docks Co. *v.* G. E. Ry. & Mid. Ry. (1902), 11 Ry. & Can. Tr. Cas. 57 ; Fenton *v.* Thorley, [1903] A. C. 443 ; *Re* Boaler, [1915] 1 K. B. 21.

Sub-sect. 2.—Duty to Charge all Persons Equally.

See 1845 Act, s. 90 ; 1921 Act, s. 40 (5).

A. Goods Traffic.

1073. Railway authorised to use steamers.]—A railway co. incorporated for the conveyance of passengers & goods from London to Folkestone under Acts of Parliament which prohibited them from making unequal charges, obtained another Act enabling them to establish a communication by steam-vessels with Boulogne, which contained no provision as to equality of rates for the carriage of goods. There was nothing in the law of France which disabled the co. as public carriers from making such contracts for that purpose as they might think most for their own interest. The co. by their tariff charged certain rates for small parcels, with a double charge for "packed parcels" :—*Held :* so far as regarded the contract for the carriage of such parcels from Boulogne to London, there was nothing illegal in this increased charge.—Branley *v.* South Eastern Ry. Co. (1862), 12 C. B. N. S. 63 ; 31 L. J. C. P. 286 ; 6 L. T. 458 ; 9 Jur. N. S. 329 ; 142 E. R. 1066.

Annotations :—**Consd.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1 ; G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. **Mentd.** Sutton *v.* S. E. Ry. (1865), L. R. 1 Exch. 32.

1074. Goods carried beyond terminus.]—Baxendale *v.* London & South Western Ry. Co., No. 1084, *post.*

1075. Application of 1845 Act, s. 90—Goods passing between same points of departure & arrival.]—The provision in 1845 Act, s. 90, requiring equality of rates for carriage of goods passing only

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PART X. SECT. 3, SUB-SECT. 2.—A.

o. *Application of* 1845 *Act, s.* 90 *—Non-perishable goods carried by passenger trains—Carrier bound by profession.*]—In an action brought under above sect. complaining of inequality of charge in respect of news-papers carried by defts. by passenger trains from D., as compared with newspapers carried from B., the rate was a flat rate, irrespective of distance, for carriage over defts.' railway & the train times & average length that the respective papers were carried were different :—*Held :* though there was no statutory charge prescribed, & though defts. were not bound to carry papers by passenger trains, still, as they professed so to do, the above sect. applied to preferential treatment in respect of such papers.—Independent Newspapers, Ltd. *v.* Great Northern Ry. Co. of Ireland, [1913] 2 I. R. 255.—IR.

p. *Application of* 1845 *(Scotland) Act, s.* 13*—Goods passing between same points of departure & arrival.*]—*Held :* to justify proceedings under above sect. by a person complaining of an undue preference in the rates charged to another trader, the goods of the

over the same portion of the line of railway in the same circumstances, applies only to goods passing between the same points of departure & arrival, & passing over no other part of the line. Mere inequality in the rate of charge when unequal distances are traversed does not constitute a preference inconsistent with the concluding words of that sect.

A railway co. carried coals from a group of collieries situate at different points along their line, & charged all the collieries with one uniform set of rates in respect of such carriage; the owners of the colliery lying nearest to the point of arrival brought an action for overcharges:—*Held:* (1) the railway co. had not infringed 1845 Act, s. 90; (2) in this case an action did not lie for breach of 1854 Act, s. 2, undue or unreasonable preference or prejudice not having being made out.

(3) *Qu.:* whether in any circumstances an action lies for breach of that sect.

Where goods are carried for different customers over the same portion of the line of railway, the fact that the goods carried for one customer are to be shipped to certain ports in order to develop a new trade, or open up new markets, & so to increase the tonnage carried, does not constitute a difference in the circumstances so as to justify inequality of rates.

A railway co. carried coals over the same portion only of the line to G., both for applts. & also for B., & allowed B. 8*d.* per ton in respect of all coal carried to G. & there shipped for the W. market; & also allowed B. 6*d.* per ton in respect of all coal carried to G., & there shipped by him to certain ports, in consideration of a *bonâ fide* undertaking by B. to develop the trade to those ports, to provide the vessels, & to run the risks incidental to the working of such a traffic:—*Held:* (4) the coals were carried in the same circumstances, & the allowances were breaches of 1845 Act, s. 90; (5) applts. were entitled to recover the overcharges by action against the co., the amount to be ascertained by finding what quantity of coal carried in the same circumstances & over the same portion only of the line was charged at the higher rate to applts. at the time the lower rate was charged to B.

A railway co. which carried coals for applts. & also for B. & J., over the same portion of their line of railway, & made allowances & a rebate to B. & J., proved that they carried for B. & J. at a less cost to the co., but did not show that the allowances & rebate were adequately represented by the saving to the co.:—*Held:* (6) the difference in cost constituted a real difference in the circumstances; (7) there being nothing to show any want of good faith, the co. were not bound to prove that the allowance & rebate were adequately represented by the saving; (8) there was no breach of 1845 Act, s. 90, & applts. could not maintain an action for overcharges under that sect.—DENABY MAIN COLLIERY CO., LTD. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1885), 11 App. Cas. 97; 6 Ry. & Can. Tr. Cas. 133; 55 L. J. Q. B. 181; 54 L. T. 1; 50 J. P. 340; 2 T. L. R. 199, H. L.; *varying* S. C. *sub nom.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. *v.* DENABY MAIN COLLIERY CO. (1884), 14 Q. B. D. 209, C. A.

Annotations:—As to (2) **Refd.** Phipps *v.* L. & N. W. Ry., [1892] 2 Q. B. 229. *As to* (3) **Consd.** L. & Y. Ry. *v.* Greenwood (1888), 21 Q. B. D. 215. **Apld.** Rhymney Ry. *v.* Rhymney Iron Co. (1890), 25 Q. B. D. 146. **Consd.** Liverpool Corn Trade Assocn. *v.* L. & N. W. Ry., [1891] 1 Q. B. 120. *As to* (4) **Apld.** Bannatyne *v.* G. S. & W. Ry. of Ireland (1904), 12 Ry. & Can. Tr. Cas. 105. **Refd.** Charrington Sells Dale *v.* Mid. Ry. (1901), 11 Ry. & Can. Tr. Cas. 222; A.-G. *v.* Long Eaton U. D. C., [1914] 2 Ch. 251; North Staffordshire Ry. *v.* Edge, [1919] 1 K. B. 367. *As to* (5) **Consd.** Chance & Hunt *v.* G. W. Ry., L. & N. W. Ry., Mid. Ry. & North Staffordshire Ry. (1914), 15 Ry. & Can. Tr. Cas. 241.

1076. —— Agreement between railways under 1845 Act, s. 87.]—1845 Act, s. 90, does not prevent a railway co. from making a special charge for goods carried over their railway, in pursuance of a traffic agreement with another co. under s. 87.—HULL, BARNSLEY & WEST RIDING JUNCTION RY. & DOCK CO. *v.* YORKSHIRE & DERBYSHIRE COAL & IRON CO. (1887), 18 Q. B. D. 761; 56 L. J. Q. B. 261; 35 W. R. 385; 3 T. L. R. 451, C. A.

1077. —— Non-perishable goods carried by passenger train.]—(1) Midland Railway Company (Rates & Charges) Order Confirmation Act, 1891, provides (*inter alia*) that the co. shall not be under obligation to convey by passenger train any merchandise other than perishables. A firm of carriers delivered to the co. at one of their stations certain non-perishable goods for conveyance by passenger train, & the co. duly forwarded them, charging a rate including collection, the co. making no rate for such goods by passenger train which did not include collection. In an action by the carriers to recover that portion of the rate which represented the cost of collection:—*Held:* as the co. were under no statutory obligation to carry the goods by passenger train, & no rate was imposed by statute in respect of such carriage, the co., who at the same time were not debarred from so carrying the goods, & had the right so to carry them, did not fall with respect to the carriage of the goods within the "equality" proviso of 1845 Act, s. 90, & the carriers were therefore not entitled to recover back the cost of collection.

(2) The expression "all tolls for the use of the railway" in Midland Railway Act, 1844, s. 203, means all the tolls referred to in the group of sects. in which that sect. is placed, & not all tolls in fact charged by the co. for the use of the railway; the sect. is no wider in its application than 1845 Act, s. 90.—STONE & Co. *v.* MIDLAND RY. CO., [1904] 1 K. B. 669; 73 L. J. K. B. 392; 90 L. T. 194; 52 W. R. 491; 20 T. L. R. 225; 48 Sol. Jo. 259, C. A.

Annotations:—As to (1) **Distd.** Wilkinson *v.* L. & Y. Ry., [1907] 2 K. B. 222. **Consd.** Mid. Ry. *v.* Myers, Rose, [1908] 2 K. B. 356. **Refd.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574.

1078. —— Agreement of compromise—Increase of rates under.]—A railway co. from July 1, 1913, onwards increased the rates for carriage of coal & coke to places beyond their railway. A number of colliery owners objected to the increased rates

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two traders must be carried on precisely the same journey, from the same place & to the same place.—MURRAY *v.* GLASGOW & SOUTH WESTERN RY. CO. (1883), 4 Ry. & Can. Tr. Cas. 456.—**SCOT.**

q. *Application of* 1845 (*Scotland*) *Act, s.* 83—*Goods passing over same line.*]—Under above sect. ry. cos. had power to alter or vary such tolls as they were by their special Acts entitled to charge, provided that all such tolls were at all times charged equally to all persons, & after the same rate in respect of all passengers & of all goods or carriages of the same description, & conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway in the same circumstances. A ry. co. charged a rate per mile, every incomplete mile being reckoned a mile. The sidings of two collieries joined the main line of the railway within the twelfth mile from T., but one was 415 yards nearer T. than the other:—*Held:* the incomplete mile was to be considered as a whole mile in each case.—YEATS' TRUSTEES *v.* GLASGOW & SOUTH WESTERN RY. CO. (1889), 16 R. (Ct. of Sess.) 535; 26 **Sc. L. R. 386.—SCOT.**

r. *Application of Railway Act,* 1906, *s.* 344—*Settler's goods—At reduced rate.*]—WATSON *v.* CANADIAN PACIFIC RY. CO. (1914), 32 O. L. R. 137; 20 D. L. R. 472; 7 O. W. N. 186.—**CAN.**

s. *Rates must be on relatively equal basis.*]—*Re* IMPERIAL RICE MILLING CO. (1912), 23 W. L. R. 591.—**CAN.**

t. *Discrimination between customers—Powers of express companies.*]—JOHNSON *v.* DOMINION EXPRESS CO. (1896), 28 O. R. 203.—**CAN.**

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& took proceedings to challenge them. These proceedings were compromised by an agreement whereby (1) for traffic after Dec. 31, 1915, the colliery owners were to pay a rate of ½*d.* per ton above the original rate on all coal & coke they should send from their collieries to places beyond the railway; (2) for traffic from July 1, 1913, to Jan. 1, 1916, the colliery owners were to pay a rate of ½*d.* per ton above the original rate on all coal & coke they had sent carriage paid by them to places beyond the railway. These payments were to be in satisfaction of the increased rates & of increased charges for services at the private sidings of the colliery owners. The rates specified in the agreement were less than the increased rates. The railway co. also agreed to repay to two of the colliery owners amounts which had been paid by them in excess of the amounts specified in the agreement. A coal merchant who sent coal & coke from the collieries of the owners to places beyond the railway, & who was no party to the agreement, had also objected to & refused to pay the increased rates. The railway co. sued him for the full amount of the increase:—*Held:* (1) the increased rate was not charged equally to all persons in the same circumstances, & was not authorised by 1845 Act, s. 90; (2) the inequality was not justifiable merely as being due to a compromise; (3) pltfs. could recover no more than was being charged to the colliery owners under the agreement.—NORTH STAFFORDSHIRE RY. CO. *v.* EDGE, [1920] A. C. 254; 89 L. J. K. B. 78; 122 L. T. 385; 84 J. P. 33; 36 T. L. R. 115; 64 Sol. Jo. 146; 18 L. G. R. 19, H. L.

Effect of agreement generally, *see* Sub-sect. 4, *post.*

1079. Breach of duty—Other carriers charged more than public—Several parcels in one consignment.]—(1) Defts. by their private Acts, were authorised to carry passengers & goods on their own line & other railways at reasonable charges, & to fix the rates for carrying small parcels not exceeding 500 lbs. in weight. By another private Act the charges for the carriage of passengers or goods were at all times to be charged equally & after the same rate in respect of all passengers, goods, etc., conveyed or propelled by a like carriage or engine, passing on the same portion of the line, & in the same circumstances. Defts. published a list of rates for the carriage of merchandise divided into seven classes, of which the lowest was 16*s.* & the highest 60*s.* per ton: & for "boxes, bales, hampers or other packages, when they contained parcels or other packages or things under 112 lbs. weight each, directed, consigned or intended for different persons, or for more than one person," they imposed a charge of 1*d.* per lb. weight:—*Held:* this last was not a reasonable charge in the case of a package above 500 lbs. weight, made up by a carrier & directed to one person, although containing a number of parcels under 112 lbs. weight each, consigned or directed to different persons.

(2) Defts. also became carriers on the L. & B. line, & published a list of charges for the carriage of goods from M. to L., among which "M. packs" were charged 3*s.* 3*d.* per cwt. or 65*s.* per ton. At the foot of this list was a notice, that "goods were brought to the station at C. T. [in L.] without extra charge," & that there was "no charge for booking or delivery in L." Defts. made an agreement with C. & H. that the latter should carry from the station at C. T. & deliver in L. all such goods carried by the railway & for so doing should receive 10*s.* per ton out of the entire charge of 65*s.* per ton:—*Held:* in the circumstances the charge of 65*s.* per ton, when made to any other persons who were ready to receive their goods at the station at C. T., was both unreasonable & unequal.—PICKFORD *v.* GRAND JUNCTION RY. CO. (1842), 10 M. & W. 399; 3 Ry. & Can. Cas. 193; 152 E. R. 525. S. C. in equity (1844), 3 Ry. & Can. Cas. 538, L. C.

Annotations:—As to (1) **Expld.** Crouch *v.* G. N. Ry. (1856), 11 Exch. 742. **Consd.** Piddington *v.* S. E. Ry. (1858), 5 C. B. N. S. 111. **Expld.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. **Consd.** Sutton *v.* G. W. Ry., Sutton *v.* S. E. Ry. (1865), 35 L. J. Ex. 18. **Refd.** Edwards *v.* G. W. Ry. (1851), 11 C. B. 588; Parker *v.* Bristol & Exeter Ry. (1851), 20 L. J. Ex. 112; Martin *v.* Great Indian Peninsula Ry. (1867), 37 L. J. Ex. 27. *As to* (2) **Consd.** Parker *v.* G. W. Ry. (1844), 7 Man. & G. 253; Parker *v.* G. W. Ry. (1856), 6 E. & B. 77. **Expld. & Distd.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. **Consd.** Baxendale *v.* L. & S. W. Ry. (1866), 4 H. & C. 130. **Refd.** Rickett, Smith *v.* Mid. Ry., Derbyshire Silkstone Coal Co. *v.* Mid. Ry., Grassmoor Co. *v.* Mid. Ry., [1896] 1 Q. B. 260.

1080. —— —— ——.]—By the Acts of Parliament under which a railway co. was incorporated, it was provided, that the charges for the carriage of goods should be reasonable & equal to all persons, & that no reduction or advance should be made, either directly or indirectly, in favour of or against any particular person. The co. acted themselves as carriers for the public, & they issued certain scales of their charges for carriage of goods, including the collection, loading, unloading, & delivery of parcels. They also carried goods for other carriers, to whom they made certain allowances, as an equivalent for the trouble of the collection, &c. of parcels, such collection, &c. being performed by the carriers. But in their dealings with A., a particular carrier, they refused to make such allowances, but were willing to perform for him all the things which formed the consideration for such allowances:—*Held:* (1) the charges to A. were not equal or reasonable.

The co., in their transactions with the public & with carriers, made the following distinction as to their charges for carriage. In the case of the public, if there were several packages from one consignor to several consignees, or from several consignors to one consignee, the charge was upon the aggregate weight. In the case of carriers, if there were several packages for several consignees, the charge was upon the separate weight of each package, unless more than one package belonged to the same consignor, not being the carrier, or was going to the same consignee, in either of which cases the charge was upon the aggregate weight. But in such cases the co. recognised the carrier only as the consignor & consignee of the goods, the agent of such carrier in fact receiving the goods at the end of the transit:—*Held:* (2) the co. were bound to treat a carrier as consignor & consignee, for all purposes, including the mode of charging in the aggregate; (3) A. having paid the extra charges in both of the instances above mentioned, might recover the amount of such payments in an action for money had & received against the co., such payments not being voluntary, but made in order to induce the co. to do that which they were bound to do without requiring such payments.

(4) Acts of Parliament which confer privileges upon a co., & profess to give the public certain advantages in return, are to be construed strictly against the co., & liberally in favour of the public.—PARKER *v.* GREAT WESTERN RY. CO. (1844), 7 Man. & G. 253; 3 Ry. & Can. Cas. 563; 7 Scott, N. R. 835; 13 L. J. C. P. 105; 2 L. T. O. S. 420; 8 Jur. 194; 135 E. R. 107.

Annotations:—As to (1) **Apld.** Edwards *v.* G. W. Ry. (1851),

11 C. B. 588. **Consd.** Finnie *v.* G. & S. W. Ry. (1855), 2 Macq. 177; Crouch *v.* G. N. Ry. (1856), 11 Exch. 742. **Apld.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. **Refd.** Parker *v.* Bristol & Exeter Ry. (1851), 20 L. J. Ex. 112; Crouch *v.* G. N. Ry. (1854), 9 Exch. 556; Baxendale *v.* Eastern Counties Ry. (1858), 4 C. B. N. S. 63; Branley *v.* S. E. Ry. (1862), 12 C. B. N. S. 63. *As to* (3) **Folld.** Close *v.* Phipps (1844), 7 Man. & G. 586. **Consd.** Wakefield *v.* Newbon (1844), 6 Q. B. 276; Gulliver *v.* Cosens (1845), 1 C. B. 788; Pickford *v.* Grand Junction Ry. (1845), 6 L. T. O. S. 213. **Expld.** Higgs *v.* Scott (1849), 7 C. B. 63. **Consd.** Garton *v.* Bristol & Exeter Ry. (1861), 1 B. & S. 112; G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226; Davison *v.* Fernandes (1889), 6 T. L. R. 73; Maskell *v.* Horner, [1915] 3 K. B. 106. **Apld.** Sharp & Knight *v.* Chant (1916), 33 T. L. R. 68. **Refd.** Valpy *v.* Manley (1845), 1 C. B. 594; Kearns *v.* Durell (1848), 6 C. B. 596; Devaux *v.* Conolly (1849), 8 C. B. 640; Pallister *v.* Gravesend Corpn. (1850), 15 L. T. O. S. 253. *As to* (4) **Expld.** Crouch *v.* L. & N. W. Ry. (1854), 2 W. R. 166. **Refd.** Metropolitan Water Board *v.* New River Co. (1904), 20 T. L. R. 687.

1081. —— —— ——.]—PARKER *v.* GREAT WESTERN RY. CO., No. 1085, *post*.

1082. —— —— ——.]—(1) The G. Ry. Co., before 7 & 8 Vict. c. iii. came into operation, was obliged by 2 & 3 Vict. c. xxvii., s. 24 to charge for carriage to all persons equally; they charged P., a carrier, differently from & more than the public:—*Held:* the overcharge was recoverable as money received to the carrier's use.

(2) 7 & 8 Vict. c. iii., ss. 48, 49, & 50 repealed 2 & 3 Vict. c. xxvii., s. 24 & re-enacted it, with the difference that in s. 50, the words "under like circumstances" were introduced. The co. continued to charge P. more than the public:—*Held:* he might recover the overcharge, the fact of his being a carrier only not rendering the circumstances unlike.

(3) Under the co.'s original Act 5 & 6 Will. 4, c. cvii., s. 171 they were authorised to fix the sums to be charged for small parcels, provided they were not sent in large aggregate quantities made up of separate & distinct parcels. The co. published scale-bills in which they specified divers classes, containing different kinds of goods, & one class comprised miscellaneous goods, "not being aggregate of one class or kind" which were charged at a higher tonnage rate, with an extra charge for each parcel. The co. charged P. under the miscellaneous class for aggregate goods, which though of different kinds were within the same class in the scale-bills:—*Held:* this was an overcharge; the word "class" must be taken to mean something more than "kind" & to apply to the classes mentioned in the scale-hills.

(4) With regard to all the foregoing overcharges:—*Held:* it made no difference that the separate parcels, which were all to be delivered to the carrier or his agents at the end of the journey, were destined for different ultimate consignees.

(5) P.'s servants assisted the co.'s servants in loading, unloading, & weighing, but not at the co.'s request, & the public gave no such assistance. The co., before the decision of *Parker* v. *Great Western Ry. Co.* (No. 1085, *post*), had allowed carriers 10 per cent. for such assistance & P. in this case claimed a similar deduction:—*Held:* P. was not entitled to any deduction on this ground.

(6) The co., before the decision in *Parker* v. *Great Western Ry. Co.* (No. 1085, *post*), had entered into an agreement with K. to allow him 10 per cent. discount, but after that decision they refused to make the allowance. K. brought an action & recovered a verdict for 10 per cent., which the co. paid accordingly: P. claimed the 10 per cent. on the ground that he & K. had been charged unequally, K. having been allowed that amount:—*Held:* this was not an allowance which made the charge unequal.—EDWARDS *v.* GREAT WESTERN RY. CO. (1851), 11 C. B. 588; 21 L. J. C. P. 72; 138 E. R. 603; *subsequent proceedings* (1852), 12 C. B. 419.

Annotations:—As to (1) **Refd.** Crouch *v.* G. N. Ry. (1854), 9 Exch. 556; Lyles *v.* Southend-on-Sea Corpn. (1905), 92 L. T. 586. *As to* (2) **Refd.** Sutton *v.* G. W. Ry. (1865), 3 H. & C. 800; G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. *As to* (3) **Consd.** Parker *v.* G. W. Ry. (1851), 11 C. B. 545. **Refd.** Crouch *v.* G. N. Ry. (1856), 11 Exch. 742; Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1.

1083. —— —— ——.]—G. N. Ry. Co.'s special Act, 13 & 14 Vict. c. lxi, s. 14 empowers the co. to charge for the carriage of small parcels any sum which they may think fit. 1845 Act, s. 90 is incorporated in the special Act:—*Held:* (1) the co. are bound to charge the public alike; (2) the fact of a party using their line being a common carrier does not justify the co. in charging him more than the rest of the public.—CROUCH *v.* GREAT NORTHERN RY. CO. (1854), 9 Exch. 556; 7 Ry. & Can. Cas. 787; 23 L. J. Ex. 148; 156 E. R. 238.

Annotations:—As to (1) **Consd.** G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. **Refd.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. *As to* (2) **Folld.** Crouch *v.* G. N. Ry. (1856), 11 Exch. 742. **Refd.** Branley *v.* S. E. Ry. (1862), 12 C. B. N. S. 63.

1084. —— —— ——.]—(1) Defts., a railway co., incorporated by a special Act of Parliament, containing an equality clause, in the ordinary form, requiring them to take the same rates & tolls from all persons in the same or similar circumstances, were in the habit of charging a tonnage-rate upon packages weighing more than 1 cwt., & a higher rate upon packages weighing less. When several parcels were delivered by the same person in one consignment, addressed to the same consignee, they were not weighed & charged for separately, but were weighed together, & a tonnage-rate charged for the whole consignment, if the gross weight exceeded 1 cwt. Pltfs. were common carriers, trading under the name of "P. & Co.," & were in the habit of collecting parcels in L. & forwarding them to customers in the country. Each parcel was addressed to the person to whom it was ultimately to be delivered; but it was labelled with the name of "P. & Co." and that of the station to which it was to be sent; & all the parcels for the same station were delivered in one consignment consigned to pltfs. at that station. Defts. refused to charge pltfs. for the carriage of their parcels at a tonnage-rate upon the gross weight, & charged for each parcel separately according to its individual weight:—*Held:* this created an inequality.

(2) Defts. were in the habit of carrying goods from L. to I., by their own railway from L. to S., & thence by tramway & steamer. Pltfs. also were in the habit of carrying goods from L. to I., using defts.' line from L. to S., & thence conveying them by carts & steamer. Pltfs. claimed to have their goods carried by defts. from L. to S. at a sum equivalent to defts.' through-charge from London to I., less a fair charge for collection in London, & for carrying from S. station to I.:—*Held:* they were not entitled to this; the delivery by defts. beyond the limits of their line not being a delivery auxiliary or subsidiary to their business as carriers on their own line, but to their general business as common carriers, & differing from a case of delivery in the immediate neighbourhood of a station.—BAXENDALE *v.* LONDON & SOUTH WESTERN RY. CO. (1866), L. R. 1 Exch. 137; 4 H. & C. 130; 35 L. J. Ex. 108; 14 L. T. 26; 12 Jur. N. S. 274; 14 W. R. 458.

Annotations:—As to (2) **Consd.** East & West India Dock Co. *v.* Shaw, Savill, & Albion Co. (1888), 39 Ch. D. 524. **Refd.** A.-G. *v.* Mersey Ry., [1907] 1 Ch. 81 (*see* [1907] A. C. 415).

1085. —— —— **Higher rate for "packed parcels."**]—(1) 5 & 6 W. 4, c. cvii, s. 175 enacted that

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rates & tolls should be charged equally & after the same rate in respect of the same articles & that no reduction or advance in the said rates & tolls should, either directly or indirectly, be made partially or in favour of or against any particular person or co., &c., & 7 & 8 Vict. c. iii. s. 50 provided that, in whatever way the charges, which the co. were authorised to make, were made, they should be made equally to all passengers & to all persons in respect of all goods, &c., & things of a like description & quality, & conveyed in or propelled by a like carriage or engine passing only over the same portion of, & over the same distance along, the railway, & in the like circumstances; & that no reduction, or advance in any of such charges should be made partially, either directly or indirectly, in favour of or against any particular co. or person. The co. required carriers who brought goods to them for conveyance on the railway, to deliver with them a printed note filled up with the description, contents, & weight of the several packages to be carried, without which the co. refused to receive them. In consideration of this additional trouble, the co. formerly allowed the carriers a discount of 10 per cent. on the sums paid by them for carriage:—*Held:* the discontinuance of this allowance did not constitute an inequality of charge, as between carriers & the rest of the public, so as to give the carrier a claim for money had & received, whatever other remedy he might have against the co.

(2) The co. had entered into an agreement with S., a carrier, to collect & deliver parcels for them in L., for which service they paid him £1000 *per annum*, he on his part relinquishing the customary carrier's charge for "booking":—*Held:* this did not constitute an inequality of charge, within 5 & 6 W. 4, c. cvii., s. 175.

(3) 5 & 6 W. 4, c. cvii. s. 171 empowered the co. to fix the sum to be charged by them in respect of small parcels, not exceeding 500 lbs. weight, but that provision did not extend to articles sent in large aggregate quantities, although made up of separate & distinct parcels, such as, bags of sugar, coffee, meal, & the like, but only to single parcels unconnected with parcels of a like nature, which might be sent upon the railway at the same time. The co. had, during the period embraced by this action issued three printed bills of charges, called "scale-bills," the first & third of which contained four, & the second five, classifications of goods, & at the end an intimation that "packed parcels" would be charged by the co. 50 per cent. in addition to the highest class, that is, the fourth class in the first & third, & the fifth class in the second scale-bill. This additional charge of 50 per cent. was imposed upon pltf. & other carriers only, & not upon the public:—*Held:* a violation of the equality clauses, 5 & 6 W. 4, c. cvii., s. 175, & 7 & 8 Vict. c. iii., s. 50, & pltf. was entitled to recover back the overcharge.

(4) According to the co.'s scale-bills, all packages of less than a given weight were to be charged, in their respective class, according to the parcel-rate, & all above that weight in their respective class, according to the tonnage-rate. The co. did not treat carriers as consignor & consignee of the goods carried for them, for the purpose of calculating the charge to be made for their carriage, but when several packages of goods of different descriptions, but of one class, appeared to be intended for the same ultimate consignee, all such goods were lumped together & charged at one gross weight, so as to bring them into the tonnage-rate, although severally the packages might be of such weight as would have brought them into the parcel-rate; but, if such goods, though in the same class were not intended for the same ultimate consignee, each package or number of packages going to each ultimate consignee, was charged separately, & according to the tonnage or parcel-rate, according as the weight was above or below the dividing point between the one rate & the other:—*Held:* this was an inequality of charge, within 5 & 6 W. 4, c. cvii., s. 171; the fact that pltf. was a carrier, & not the ultimate consignee of the goods, did not show that the goods were not carried in the same circumstances, within 7 & 8 Vict. c. iii., s. 50.

(5) By the first scale-bill, the co. intimated, that, on miscellaneous goods, not being aggregate of one kind or class, an additional charge of 2*d.* per package or article, up to 2 cwt., would be made. On some occasions, when packages sent by pltf., in manner before mentioned, contained goods of one class, & each package was of a weight less than the limited weight for the parcel-rate, & was intended for a different ultimate consignee, but the several packages together exceeded the limit, the co. charged them as miscellaneous goods, on which, in addition to the higher rate of charge, this further charge of 2*d.* per package was imposed:—*Held:* the words "kind" & "class" being used synonymously, this additional charge was, in the circumstances, unjustifiable.

(6) Where the carrier has collected from several original consignors several parcels intended for several ultimate consignees, the whole of which together do not in weight exceed the dividing point between parcel & tonnage-rates, according to the scale-bill, & do not amount to 500 lbs. in weight, & has delivered them to, & received them from, the co. in one lot:—*Held:* if the nature of the parcels be such that the co. are entitled to charge them to the public at the parcel-rate, under 5 & 6 W. 4, c. cvii., s. 171, the fact of the contents being goods of the same "class" in the scale-bill, for a different purpose, does not disentitle the co. so to charge them to the carrier.—PARKER *v.* GREAT WESTERN RY. CO. (1851), 11 C. B. 545; 21 L. J. C. P. 57; 138 E. R. 585.

Annotations:—As to (1) **Apld.** Crouch *v.* G. N. Ry. (1854), 9 Exch. 556. **Folld.** Sutton *v.* G. W. Ry. (1865), 3 H. & C. 800. *As to* (3) **Consd.** Crouch *v.* G. N. Ry. (1856), 11 Exch. 742. **Reld.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. *As to* (4) **Consd.** G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226.

1086. —— —— ——.]—A declaration by a carrier against a railway co. for not carrying a parcel to D. in a reasonable time, & for not delivering it, laid, as damages, that pltf. was injured in his trade as a collector of parcels, & lost the custom of several persons. Pltf., a carrier in L., was in the habit of collecting in L. small parcels from different persons to be sent to various persons in the country. After collecting them, he used to make them into one parcel, called a "packed parcel," which he directed to his agent in the country, and brought to defts. to be carried. Pltf. was also in the habit of bringing to defts. for carriage into the country parcels, containing other small parcels, belonging to one individual in L., & sent by him to one individual in the country. These parcels were called "enclosures." Defts. charged pltf. at a higher rate for "packed parcels" than for "enclosures," & they also charged him at a higher rate than the rest of the public:—*Held:* (1) an action of trover against defts. could not be brought by each of the owners of the packages contained in the "packed parcels," in the event of loss or misdelivery, although an action might lie by each owner for the destruction of the packages by

defts., independently & beyond their duty as carriers; (2) it was rightly left to the jury to say whether there was a difference as regarded the risk between carrying "packed parcels" & "enclosures," the question of risk as regarded the two kinds of parcels being a question of fact, and not of law.

(3) The jury having found for pltf. with damages at £200 on the ground that pltf. had sustained injury in his trade & loss of custom to that extent in consequence of defts.' acts:—*Held:* as the declaration was framed, pltf. was not entitled to recover the 200*l.* as damages for the injury to his trade and loss of custom.—CROUCH *v.* GREAT NORTHERN RY. CO. (1856), 11 Exch. 742; 25 L. J. Ex. 137; 26 L. T. O. S. 293; 156 E. R. 1031.

Annotations:—As to (1) **Refd.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. *As to* (2) **Consd.** G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226. **Refd.** Branley *v.* S. E. Ry. (1862), 12 C. B. N. S. 63. *As to* (3) **Consd.** Sutton *v.* S. E. Ry. (1865), L. R. 1 Exch. 32. *Generally* **Mentd.** Piddington *v.* S. E. Ry. (1858), 5 C. B. N. S. 111; Morritt *v.* N. E. Ry. (1876), 45 L. J. Q. B. 289.

1087. —— —— ——.]—Pltf., a "packed parcel" carrier, having been charged by defts., & having paid to them under protest, a sum for the carriage of his packed parcels beyond the sum charged by them to certain wholesale houses for the carriage of goods of a similar description, brought an action against them to recover the amount of the overcharge, & obtained a verdict. Defts. continued, however, to make the same charges, & to receive the same sums of money from pltf. for the carriage of his goods, as before, & he therefore issued a fresh writ to recover the money paid by him during another & more recent interval of time. After issuing the writ, he applied, under C. L. P. Act, 1854 (c. 125), ss. 79, 82, for an injunction to restrain defts. from charging him for the carriage of his goods otherwise than equally with all other persons, & after the same rate, in respect of goods of the like description in the like circumstances:—*Held:* the case was not one in which the ct. would exercise their statutory power to grant an injunction.—SUTTON *v.* SOUTH EASTERN RY. CO. (1865), L. R. 1 Exch. 32; 4 H. & C. 325; 35 L. J. Ex. 38; 13 L. T. 438; 11 Jur. N. S. 935; 14 W. R. 130.

Annotation:—**Refd.** London Assocn. of Shipowners & Brokers *v.* London & India Docks Joint Committee, [1892] 3 Ch. 242.

1088. —— —— ——.]—Pltf., a carrier, was in the habit of collecting small parcels & sending them together in large packages by defts.' railway. Defts. charged different rates of carriage for different classes of goods, the highest charge being for packed parcels. A declaration was required from pltf. as to the description of his parcels. He declared them as "packed parcels," & was charged & paid accordingly. Pltf., finding that other firms sent packed parcels, from whom no declaration was required, & who were charged for them at a less rate, sued the co. in *assumpsit* to recover the alleged excess as for money had & received. On the trial he gave evidence that the practice of the other firms in sending "packed parcels" was notorious:—*Held:* (1) the evidence produced was admissible, & was sufficient to show that defts. knew of the practice of the other firms to pack their parcels, & that with such knowledge they had improperly charged pltf. with a higher rate of charge, & had thus infringed the equality clauses; (2) pltf. was entitled to recover the amount so charged in excess in an action for money had & received.—GREAT WESTERN RY. CO. *v.* SUTTON (1869), L. R. 4 H. L. 226; 38 L. J. Ex. 177; 22 L. T. 43; 33 J. P. 820; 18 W. R. 92, H. L., *affg.* S. C. *sub nom.* SUTTON *v.* GREAT WESTERN RY. CO., SUTTON *v.* SOUTH EASTERN RY. CO. (1865), 3 H. & C. 800, Ex. Ch.

Annotations:—As to (1) **Consd.** Denaby Main Colliery Co. *v.* M. S. & L. Ry. (1885), 11 App. Cas. 97; Taylor *v.* Met. Ry., [1906] 2 K. B. 55. **Refd.** M. S. & L. Ry. *v.* Denaby Main Colliery Co. (1884), 14 Q. B. D. 209; Stone *v.* Mid. Ry., [1903] 1 K. B. 741; Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858. *As to* (2) **Apld.** L. & N. W. Ry. *v.* Evershed (1878), 3 App. Cas. 1029. **Consd.** Maskell *v.* Horner, [1915] 3 K. B. 106. **Refd.** Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254; Murray *v.* G. & S. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 456; Crossfield *v.* Manchester Ship Canal Co., (1903), 19 T. L. R. 398.

See, now, 1921 Act, s. 55, Sched. V. 17.

1089. —— **Allowance for extra trouble—Discontinuance of.**]—PARKER *v.* GREAT WESTERN RY. CO., No. 1085, *ante.*

1090. —— —— **Discontinuance of cartage rebates.**]—By 7 & 8 Vict. c. iii., s. 50, the G. W. Ry. Co. may, whenever they act as carriers, fix charges for the carriage of goods, etc., within the statutory limits, provided such charges are made to all persons equally; by s. 51 they may enter into such arrangements as they may think fit, with reference to the collection and delivery of goods. By 10 & 11 Vict. c. ccxxvi., s. 53, they may charge for small parcels, that is, parcels not exceeding 500 lbs. in weight, any sum which they think fit:—*Held:* the co. are still bound to charge equally, & cannot lawfully demand for the carriage of parcels from station to station a sum which shall include the cost of collection & delivery, & so impose an unequal burthen on those who do not require the performance of this latter service at their hands; & money had & received will lie to recover back sums demanded & received in excess.—BAXENDALE *v.* GREAT WESTERN RY. CO. (1864), 16 C. B. N. S. 137; 3 New Rep. 608; 33 L. J. C. P. 197; 9 L. T. 814; 10 Jur. N. S. 496; 12 W. R. 602; 143 E. R. 1077, Ex. Ch.

Annotations:—**Consd.** Sutton *v.* G. W. Ry. (1865), 3 H. & C. 800; G. W. Ry. *v.* Sutton (1869), 38 L. J. Ex. 177; Stone *v.* Mid. Ry., [1904] 1 K. B. 669. **Mentd.** *Re* Chelsea Water Co. & Metropolitan Water Board (1904), 73 L. J. K. B. 532.

Cases under 1854 Act, *see* Sub-sect. 3, A., *post.*

1091. —— **Carrier's own agents preferred.**]—PICKFORD *v.* GRAND JUNCTION RY. CO., No. 1079, *ante.*

1092. —— ——.]—PARKER *v.* GREAT WESTERN RY. CO., No. 1085, *ante.*

1093. —— ——.]—(1) By special Acts a railway co. was entitled to charge for goods carried on their line at rates not exceeding certain rates per ton. They were permitted to charge a higher rate for small parcels not exceeding 500 lbs. weight, provided that articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, & the like, should not be deemed small parcels, but such term should apply only to single parcels in separate packages. Pltf., a carrier, sent to the co. at once many packages, all consigned to one consignee, each less than 500 lbs., of articles of similar classes, but not being separate packages of one article. The co. charged for them as separate parcels:—*Held:* they were justified in so doing; the proviso applying only to articles that were of such a nature that a large quantity was generally made up in separate packages.

(2) Pltf. also sent a parcel of coffee less than 500 lbs. weight; & afterwards, on the same day, another parcel of coffee, both consigned to himself, & for the same train. When the first was left, notice was given that pltf. probably would send more; but it was not received on any special terms. The co. charged for these as separate parcels:—*Held:* they were justified in doing so.

(3) The co. were entitled to charge a certain

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rate "for all cotton & other wools, drugs, & manufactured goods":—*Held:* this meant, not all goods on which human skill was employed, but those articles made in what are in popular language called manufactories.

(4) The co. agreed with agents to collect & deliver goods for them, charging the public a small charge for doing so in addition to the charge for conveyance on the railway; to those agents the co. allowed in addition a sum out of the receipts of the co. Pltf., who collected & delivered his own parcels but was charged as highly as the rest of the public, complained that in effect this arrangement caused his goods to be charged higher than those sent through the agents, & that the difference was an overcharge. By their Act the co. were to charge all persons equally for conveyance, but there was a proviso that they might make agreements as to the collection & delivery of merchandise; there was an appeal given by the Act to Quarter Sessions by any one prejudiced against any arrangement giving special facilities to others:—*Held:* under these enactments, the agreement with the agents, against which there had been no appeal, did not render the charges to pltf. overcharges.—PARKER *v.* GREAT WESTERN RY. CO. (1856), 6 E. & B. 77; 25 L. J. Q. B. 209; 27 L. T. O. S. 15; 2 Jur. N. S. 325; 4 W. R. 365; 119 E. R. 793.

Annotations:—As to (4) **Consd.** Baxendale *v.* G. W. Ry. (1864), 16 C. B. N. S. 137. **Refd.** G. W. Ry. *v.* Sutton (1869), 38 L. J. Ex. 177.

Cases under 1854 Act, *see* Sub-sect. 3, B., *post.*

1094. —— Some carriers preferred to other carriers—Refusal to make usual allowances.]—PARKER *v.* GREAT WESTERN RY. CO., No. 1093, *ante.*

See, also, No. 1085, *ante.*

1095. —— —— ——.]—EDWARDS *v.* GREAT WESTERN RY. CO., No. 1082, *ante.*

Cases under 1854 Act, *see* Sub-sect. 3, C., *post.*

1096. —— Regulation affecting one person only.]—CROUCH *v.* LONDON & NORTH WESTERN RY. CO., No. 6, *ante.*

1097. —— Main & branch line rates.]—(1) The G. Ry. Co. leased a branch line, on which F. a coalowner resided; they made two tables of rates for coals, one applicable to the main line, & the other to the branch line, the latter being the higher of the two rates. When F. sent his coals along the branch line, he was charged at the branch rates, but when his coals got to the main line, then at the main rates; whereas, when coalowners, living on the main line, sent their coals from the main line on to the branch line, they were charged for the whole distance (*i.e.* both on the branch & the main line) at the main line rates only. The special Act applicable to the branch line, which also incorporated 1845 Act, provided that the rates should be made equally to all persons, in respect of goods passing over the same portion of, & over the same distance along the railway & in the like circumstances, & that no reduction or advance should be made partially, either directly or indirectly, in favour of or against any particular person:—*Held:* the rate charged upon F. was no violation of the equal rates clause.

(2) *Qu.:* whether, where a railway co. are bound by their Act to make equal charges to all persons, & they make unequal charges, the person overcharged can by action recover back the difference.—FINNIE *v.* GLASGOW & SOUTH WESTERN RY. CO. (1855), 2 Macq. 177; 26 L. T. O. S. 14, H. L.

Annotations:—As to (1) **Consd.** Denaby Main Colliery Co. *v.* M. S. & L. Ry. (1885), 11 App. Cas. 97. **Refd.** Sutton *v.* S. E. Ry. (1865), L. R. 1 Exch. 32; *Re* Baker, Collins *v.* Rhodes, *Re* Seaman, Rhodes *v.* Wish (1881), 44 L. T. 414; Murray *v.* G. & S. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 456; Davis *v.* Taff Vale Ry., [1895] A. C. 542. *As to* (2) **Refd.** Denaby Main Colliery Co. *v.* M. S. & L. Ry. (1885), 11 App. Cas. 97.

1098. —— Trader with access to competing route—Carriage for longer distance.]—By a canal Act the co. of proprietors were entitled to demand a fixed sum for goods carried upon any part of the canal, the rates to be equal throughout the whole length of the canal. By Canal Tolls Act, 1845 (c. 28), proprietors of canals were empowered from time to time to alter or vary the tolls granted to them, either upon the whole or for any particular portion or portions of such canals, according to local circumstances, or the quantity of traffic, or otherwise as they should think fit, with a proviso that such tolls were to be charged equally to all persons, & after the same rate, whether per mile, or per ton per mile, in respect of all boats, etc., of the like description passing along or using the same portion of the canal, & all goods, etc., of the like description conveyed or propelled in a like boat, etc., passing along or using the same portion of the said canal, etc., in the like circumstances, etc.:—*Held:* (1) it was competent to the co. to take a proportionately less toll per ton per mile for goods carried a given distance (five miles) along any part of the canal, than for goods carried less than that distance; (2) it was competent to the co. to agree to carry at a lower rate for a particular individual, in consideration of a large guaranteed minimum toll, in order to enable them to enter into a successful competition with a rival line of railway.—STRICK *v.* SWANSEA CANAL CO. (1864), 16 C. B. N. S. 245; 4 New Rep. 63; 33 L. J. C. P. 240; 10 L. T. 460; 12 W. R. 711; 143 E. R. 1121.

1099. —— ——.]—LONDON & NORTH WESTERN RY. CO. *v.* EVERSHED, No. 1192, *post.*

For cases under 1854 Act, *see* Sub-sect. 3, J., *post.*

1100. —— Opening new trade & markets not a difference in circumstances—But difference in cost of carriage is.]—DENABY MAIN COLLIERY CO. *v.* MANCHESTER, SHEFFIELD, & LINCOLNSHIRE RY. CO., No. 1075, *ante.*

Cases under 1854 Act, *see* Sub-sect. 3, I., *post.*

1101. —— Proof necessary that goods actually carried at lower rate—Proof of publication of rate not sufficient.]—TAYLOR *v.* METROPOLITAN RY. CO., No. 1215, *post.*

Remedies of persons overcharged.]—*See* Sub-sect. 5, *post.*

B. Passenger Traffic.

See 1921 Act, s. 41 (2).

1102. Same fares for same journeys—Different charges over same portion of line.]—The B. & D. Ry. commencing at D. communicated with the L. & B. Ry. at H. The M. C. Ry. formed a communication between D. & the L. & B. Ry. at R. The B. & D. Ry. might, by statute, receive from passengers conveyed by the co.'s carriages, tolls not exceeding a specified amount. By a subsequent Act, the charges were to be at all times charged equally in respect of all passengers passing on the same portion of the line only & in the same circumstances. After the opening of the M. C. Ry., the B. & D. Ry. Co. charged passengers conveyed

u. *Power to charge reduced rates to members of association—Railway Act,* 1906, *s.* 31.]—GRAND LODGE OF KNIGHTS OF PYTHIAS *v.* GREAT NORTHERN RY. CO. (1908), 7 W. L. R. 425.—CAN.

by their carriages from D. to H. 8*s.* while they charged other persons proceeding from D. to H. & thence to L. only after the rate of 2*s.* between D. & H. The charge of 8*s.* did not exceed the charge allowed by statute:—*Held:* (1) the equality clause was only meant to prevent the exercise of a monopoly to the prejudice of one passenger or carrier & in favour of another; (2) even if the Ct. of Ch. had jurisdiction in such a case, it would not interfere, unless it were clear that the public interest required it, & it being admitted that the higher charge was not more than the Act permitted, it did not appear that the public were prejudiced by the arrangement.—A.-G. *v.* BIRMINGHAM & DERBY JUNCTION RY. Co. (1840), 2 Ry. & Can. Cas. 124.

Annotations:—*As to* (1) **Consd.** Pickford *v.* Grand Junction Ry. (1845), 6 L. T. O. S. 213. **Distd.** Finnie *v.* G. & S. W. Ry. (1855), 26 L. T. O. S. 14. **Refd.** Sutton *v.* S. E. Ry. (1865), L. R. 1 Exch. 32. *As to* (2) **Refd.** A.-G. *v.* L. & N. W. Ry. (1899), 63 J. P. 772.

Cases under 1854 Act, *see* Sub-sect. 3, E., *post.*

SUB-SECT. 3.—"UNDUE OR UNREASONABLE PREFERENCE."

See 1854 Act, s. 2.

A. Of Carrier Himself.

Acts amounting to breach of "equality clause."]—*See* Nos. 1079, 1080, 1084, *ante.*

1103. Railway acting as carrier—Differentiation between other carriers and public—Rate including collection and delivery.]—(1) It is competent to this ct., under 1854 Act, s. 2, to interfere to prevent a railway co. from fixing the rate of tolls to be taken on the railway with a view to the promotion of their own interests, where their so doing subjects others to unreasonable disadvantage, or operates to their prejudice by giving undue preference to third parties.

(2) A railway co. formerly charged a uniform rate of 3*s.* 6*d.* per ton on all goods conveyed on their line between R. & P. The goods were collected & delivered both by the co. & B. at a charge of 4*s.* 10*d.* per ton. The co., who had power under their Acts to impose their own rates of charge for carrying, but no power to impose tolls for collecting & delivering, raised the charge for carrying to 8*s.* 4*d.*, being the aggregate of the above two charges, with an intimation to the public that they would collect & deliver goods free of all charge. The real purpose of this arrangement was to compel persons desiring to have their goods conveyed by the railway to employ the co. to collect & deliver such goods, & thus to secure this business & the profits upon it to the co., as well as to exclude B. from competing with them in this department of business:—*Held:* this arrangement was an undue preference to the co. in their separate capacity of carriers other than on the line of railway; & also an undue prejudice to B.—*Re* BAXENDALE & GREAT WESTERN RY. Co. (1858), 5 C. B. N. S. 336; 1 Ry. & Can. Tr. Cas. 202; 28 L. J. C. P. 81; 32 L. T. O. S. 128; 23 J. P. 229; 4 Jur. N. S. 1279; 7 W. R. 64; 141 E. R. 134; *subsequent proceedings* (1859), 32 L. T. O. S. 257.

Annotations:—*As to* (1) **Folld.** *Re* Palmer & L. B. & S. C. Ry. (1871), L. R. 6 C. P. 194. **Refd.** West *v.* L. & N. W. Ry. (1870), L. R. 5 C. P. 622. *As to* (2) **Folld.** Garton *v.* Bristol & Exeter Ry. (1859), 6 C. B. N. S. 639; Garton *v.* G. W. Ry. (1859), 5 C. B. N. S. 669. **Consd.** Garton *v.* Bristol & Exeter Ry. (1861), 1 B. & S. 112. **Folld.** Baxendale *v.* G. W. Ry. (1863), 14 C. B. N. S. 1. **Consd.** Parkinson *v.* G. W. Ry. (1871), L. R. 6 C. P. 554. **Refd.** Sowerby *v.* G. N. Ry. (1891), 7 Ry. & Can. Tr. Cas. 156; Pickfords *v.* L. & N. W. Ry. (1907), 23 T. L. R. 535. *Generally,* **Refd.** Forwood *v.* G. N. Ry. (1904), 12 Ry. & Can. Tr. Cas. 39. **Mentd.** A.-G. *v.* Long Eaton U. D. C., [1914] 2 Ch. 251.

1104. —— —— Delivery by railway beyond limits of their line.]—BAXENDALE *v.* LONDON & SOUTH WESTERN RY. Co., No. 1084, *ante.*

1105. —— —— Reduced rates to persons using railway.] — GARTON *v.* BRISTOL & EXETER RY. Co., No. 1117, *post.*

1106. —— Cartage rebates—Discontinuance of.]—A railway co. charged certain rates for the conveyance of goods on their line from P. to B. the charge including that of collecting & delivering the goods to & from the stations at P. & B. The co., who had formerly allowed a deduction in respect of goods delivered & received at P. & B. stations, as the expense of carting to & from such stations was thereby saved to the company, discontinued making such allowance, in order to induce persons who sent goods by the railway to employ the co. to collect & deliver such goods, & to exclude common carriers from competing in this with the co.:—*Held:* though no profit was made by collecting & delivering the goods, the system of charge was an undue prejudice to those persons who did not wish to have their goods collected & delivered for them by the co.—GARTON *v.* GREAT WESTERN RY. Co. (1859), 5 C. B. N. S. 669; 1 Ry. & Can. Tr. Cas. 214; 28 L. J. C. P. 158; 5 Jur. N. S. 685; 141 E. R. 269.

Annotations:—**Folld.** Garton *v.* Bristol & Exeter Ry. (1859), 6 C. B. N. S. 639. **Consd.** Evershed *v.* L. & N. W. Ry. (1877), 46 L. J. Q. B. 289. **Refd.** Parkinson *v.* G. W. Ry. (1871), L. R. 6 C. P. 554.

1107. —— ——.]—The S. Ry. Co. undertook to carry goods between L. & S., & also to collect & deliver them at each terminus; they had no goods rate for that traffic except carted rates, which included the collection & delivery by road as well as the carriage by railway; they allowed a deduction off the rate where they were only employed to carry on the railway, & not to cart to & from the station besides, but it was alleged that the amount of this deduction was insufficient, as it was less than the cartage portion of the gross rate & less than the cost of carting:—*Held:* (1) the co. had given themselves & their agents an undue preference; (2) as it was not shown how much of the gross or compound rate was for cartage, it was not a case for an injunction; (3) the above facts would support a proceeding under 1873 Act, s. 14.

(4) Conveyance on the railway is in practice a monopoly of the railway co., but the service of collection & delivery is open to competition, & the public common carriers can all engage in it.

(5) It is not a ground of complaint that a co. give credit to or have a monthly ledger account with certain of their customers & refuse it to persons for whom the goods are collected & delivered by carriers, unless it be shown that the difference was made for the purpose of preventing competition or of otherwise injuring complainant. —GODDARD *v.* LONDON & SOUTH WESTERN RY. Co. (1874), 1 Ry. & Can. Tr. Cas. 308; 31 L. T. 765.

Annotation:—*Generally,* **Refd.** Pickfords *v.* L. & N. W. Ry. (1907), 13 Ry. & Can. Tr. Cas. 31.

PART X. SECT. 3, SUB-SECT. 3.—A.

v. Competing railway — Through traffic.]—Upon complaint that G. N. Co. granted a rebate of 1*s.* per ton out of their portion of the through rates it was proved that G. N. Co. were not acting *malâ fide* nor for the purpose of treating D. Co. unfairly, but to secure a portion of the competitive traffic, & that without such rebate G. N. Co. would lose the traffic altogether owing to the delays caused by D. Co. at S.:—*Held:* no case had been made for prohibiting G. N. Co. from allowing the rebate.—GREAT NORTHERN RY. Co. OF IRELAND *v.* DONEGAL RY. Co., DONEGAL RY. Co. *v.* GREAT NORTHERN RY. Co. OF IRELAND (1901), 11 Ry. & Can. Tr. Cas. 47.—IR.

Sect. 3.—Undue preference: Sub-sect. 3, A. & B.]

1108. —— ——.]—For several years appcts., who were carriers and carters, had been forwarding over defts.' railway goods collected from different traders & they carted the goods to & from defts.' stations. The goods were generally conveyed by the railway co. at C. & D. class or exceptional rates, which included collection & delivery. As appts. performed their own cartage services of collection & delivery they thereby became entitled to rebates from the inclusive C. & D. rates charged by the co. in respect of the railway cartage service of which appcts. did not avail themselves. Appcts. alleged that defts., who were also cartage competitors, did not allow by way of rebate what they really charged & included in the C. & D. rates for cartage:—*Held:* appcts. had not established any case against defts. of unduly preferring themselves or of unduly prejudicing appcts. by reason of the insufficiency of the rebates allowed; (*per* BIGHAM, J.) on the ground that the proper measure of the rebate in such cases was the sum which the trader saved the railway co. by dispensing with the co.'s cartage service & doing the cartage service himself, with or without some measure of profit, if any, which the railway co. would have earned if they had done the cartage themselves, & that appcts. had not shown that the rebates allowed were less than the sum so estimated; (*per* MR. GATHORNE-HARDY) on the ground that the true measure of rebate was charge & not cost, & that appcts. had not established that the rebate allowed to them was less than defts. themselves charged & received for the cartage services.—PICKFORD'S, LTD. *v.* LONDON & NORTH WESTERN RY. CO. (1907), 13 Ry. & Can. Tr. Cas. 31; 98 L. T. 170; 24 T. L. R. 149; 52 Sol. Jo. 113, C. A.

1109. —— **Early delivery required.**]—Injunction granted against a railway co. under 1854 Act, to restrain them from requiring other carriers to bring their goods to the railway station at an earlier hour than they received their goods delivered at their own receiving offices.—BAXENDALE *v.* LONDON & SOUTH WESTERN RY. CO. (1862), 12 C. B. N. S. 758; 1 Ry. & Can. Tr. Cas. 231; 142 E. R. 1340.

Annotation:—**Consd.** *Re* Palmer & L. & S. W. Ry. (1866), L. R. 1 C. P. 588.

1110. —— ——.]—A. collected parcels, & forwarded them by railway; the railway co. refused to admit A.'s vans into their station after 6.30 p.m., but admitted their own vans & those of B. at a later hour with parcels, which they forwarded the same night. The time (6.30 p.m.) fixed by the company as that after which they would not receive goods to be forwarded the same night, was reasonable. The co., in admitting their own vans later acted *bonâ fide*, & not with the intention of gaining an undue advantage over other collecting carriers; they admitted B.'s vans in consequence of an injunction obtained by him. In two similar cases (Nos. 1109, *ante*, 1117, *post*) injunctions under 1854 Act, s. 3, had been granted by this ct. to restrain railway cos. from admitting their own vans into their station with goods to be dispatched the same night at a later hour than those of other persons. On an application by A. for a similar injunction against the present defts.:—*Held:* (1) (ERLE, C.J., & MONTAGUE SMITH, J.) the exercise of this special jurisdiction by the ct. being subject to no review, & depending in each instance on the special facts of the case, cases previously decided under it are not binding on the ct. in the same manner that precedents in law are binding; the injunction prayed would interfere with the transport of traffic, which it was the object of the Legislature to facilitate, & it ought not to be granted; (2) (WILLES & KEATING, JJ.) the above cases were precedents binding on the ct., & also were rightly decided, & the injunction ought to be granted.—*Re* PALMER & LONDON & SOUTH WESTERN RY. CO. (1866), L. R. 1 C. P. 588; Har. & Ruth, 767; 1 Ry. & Can. Tr. Cas. 243; 35 L. J. C. P. 289; 15 L. T. 159; 12 Jur. N. S. 926; 15 W. R. 11.

Annotations:—*As to* (1) **Consd.** *Re* Palmer & L. B. & S. C. Ry. (1871), L. R. 6 C. P. 194. **Refd.** Phipps *v.* L. & N. W. Ry., [1892] 2 Q. B. 229.

1111. —— ——.]—(1) A railway co. fixed an hour in the evening as the latest time at which goods were to be received at their station for dispatch the same night, but although the goods brought by A., a carrier, were never allowed to enter the station after such prescribed time, the railway co. constantly admitted their own vans from their own receiving houses an hour or two later, & forwarded the goods they brought by trains of the same night:—*Held:* A. was entitled to an injunction under 1854 Act to restrain the railway co. from continuing such undue preference to themselves.

(2) *Qu.:* whether the railway co. would have been justified in giving such preference to themselves to the exclusion of other carriers, if it were necessary in order to enable the general public to have the benefit of sending late parcels.—*Re* PALMER & LONDON, BRIGHTON & SOUTH COAST RY. CO. (1871), L. R. 6 C. P. 194; 1 Ry. & Can. Tr. Cas. 271; 40 L. J. C. P. 133; 24 L. T. 135; 19 W. R. 627.

1112. —— —— **Regulation of admission of vans.**]—A railway co. refused to allow carriers' vans with goods for conveyance by railway to enter the goods yard after 8 p.m., by which hour all the co.'s vans, whether their own or hired, were timed to arrive at the yard, unless from any cause, any of the co.'s vans, containing goods to be forwarded the same night were detained, & arrived at the yard after that hour, in which case all the carriers' vans which reached the yard before the arrival of the co.'s last van were admitted, or unless the vans contained goods which were perishable, or for shipment, or travellers' patterns, in which case they were admitted, even after the arrival of the co.'s last van, if the goods could be forwarded the same night. It was one of the co.'s regulations that any carman, other than one in charge of the co.'s vans, who arrived at the yard after 8.30 p.m. should produce his papers to an official of the co., who was appointed to give, & did give to the carman, a pass in either of the two above mentioned events.

The co. after 8 p.m. could not deal with traffic unless the documents relating to the goods were perfectly in order, which was the case with co.'s own vans:—*Held:* the regulation was reasonable, & the co. had not given an undue preference to the goods collected by themselves over those collected by other carriers.—PALMER *v.* LONDON & SOUTH WESTERN RY. CO. (No. 2) (1892), 8 Ry. & Can. Tr. Cas. 53.

1113. Competing railway—Loading facilities.]—GREAT NORTHERN RY. CO. *v.* GREAT CENTRAL RY. CO., No. 1003, *ante*.

1114. Duty as to worked line—Comparison of facilities — Costs of working.]— Appcts.' railway, a single line about eight miles in length, formed an alternative route to defts.' main line between E. & N. Appcts. agreed with defts. that defts. were to work the railway so as to fairly develop the traffic to be accommodated thereby. Appcts.' line had steep gradients & rather sharp

curves, & in this respect compared unfavourably with defts.' main line :—*Held :* (1) the fact that defts.' line was longer between two places than appcts.' route, the same rates being charged by both routes, did not compel defts. to work the goods traffic along the new route where their own route could be worked more cheaply ; (2) defts. were entitled to exercise their discretion as to the running of Sunday trains on appcts.' line.

With regard to all goods traffic coming from appcts.' line & from two local lines connected therewith, defts. "grouped" appcts.' terminus station at E. with their own station situated in the same town, but with regard to the goods traffic from defts.' own system, they charged more for goods consigned to appcts.' terminus than for goods consigned to their own station, a difference of charge which was not based on any mileage calculation :—*Held :* (3) the difference in charge complained of fairly represented the additional cost of working traffic into appcts.' station, & defts. could not be compelled to "group" the two stations for all purposes ; (4) the fact that the additional charge exceeded the statutory mileage rate for the very short distance between the two stations did not make it illegal, the total statutory charge for the transit of the whole distance not being exceeded, inasmuch as the rates for goods going to defts.' station & those for goods going beyond defts.' station to that of appcts. were for different journeys & to different termini & might be fixed independently of each other ; it was immaterial that the rates did not work out at the same sum per mile over such distances as were common to both journeys.

(5) Under the working agreement the gross amount of all tolls was to be divided equally between the parties ; appcts. contended that, after deducting the terminals, the amount charged in a through rate from a third line which represented the special tolls chargeable on their line ought to be retained by them in such division :—*Held :* appcts. were only entitled to their terminal & the mileage proportion of the whole through rate, without considering how far the various portions of the route over which the journey was taken had contributed to earn the toll.

(6) The agreement provided for the division of receipts on interchanged traffic, defined as traffic arising at or destined for places on appcts.' railway, & carried to or from places on defts.' railway, but exclusive of any proportion due to lines worked jointly or worked by defts. :—*Held :* the words "carried to or from places on the defts.' railway" applied also to traffic which did not terminate or arise at such places, but was there handed to or received from another co.—EXETER RY. CO. *v.* GREAT WESTERN RY. CO. (1905), 12 Ry. & Can. Tr. Cas. 182.

1115. Comparison of through & local rates.]—Appcts. who were carriers, conveyed goods in their own steamers between D. & M., the goods being carried on deft. co.'s railway between M. & certain towns in England. Defts. carried goods at a through rate between the same towns in England & D. *viâ* H., the land transit being over defts.' railway, & the sea transit being performed by their steamers. Defts. by allowing rebates to the consignors of goods reduced the rate per mile for the land carriage *viâ* H. so that it was less than the rate for the land carriage *viâ* M. :—*Held :* the reduction was the natural result of, & necessary for, fair competition, & did not, therefore, constitute an undue preference by defts. of themselves.

(2) Defts.' rate-book at D. contained a notice that the sea proportion of rates in the book between D. & English stations was represented by a mileage share as for 70 miles of the throughout distance :—*Held :* this notice was a sufficient compliance with 1888 Act, s. 33 (5).

(3) *Held :* the particulars of the proportion of a through rate appropriated to the conveyance by sea need not appear in the rate-book kept at a port at which the merchandise is received for conveyance but is a port of call only.—DUBLIN & MANCHESTER S.S. CO. *v.* LONDON & NORTH WESTERN RY. CO., [1914] 2 K. B. 192 ; 15 Ry. & Can. Tr. Cas. 88 ; 83 L. J. K. B. 571 ; 108 L. T. 122 ; 28 T. L. R. 511.

Remedies of persons prejudiced by undue preference.]—*See* Sub-sect. 5, *post.*

B. Of Carrier's Agents.

Acts amounting to breach of equality clause.]—*See* Nos. 1079, 1085, 1093, *ante.*

1116. Increased rates—If goods not consigned through agent.]—(1) A railway co. possessed of a line from B. to C., advertised to convey goods from A. to C., in conjunction with another co., at the rate of 50*s.* per ton, provided they were consigned by & to their own agents at those respective places ; but, if consigned through any one else, they charged 2*s.* 6*s.* per ton more :—*Held :* a ground for an injunction under 1854 Act.

(2) The rule was made absolute with costs, although it prayed a writ injoining the co. to charge an equal rate for the carriage from A. to C. & the writ was granted as from B. to C. only.

Semble : (3) both cos. ought to have been brought before the ct. by the rule.—*Re* BAXENDALE *v.* NORTH DEVON RY. CO. (1857), 3 C. B. N. S. 324 ; 1 Ry. & Can. Tr. Cas. 180 ; 30 L. T. O. S. 134 ; 6 W. R. 38 ; 140 E. R. 765.

1117. Delivery facilities to agent.]—(1) A railway co. has no right to impose a charge for the conveyance of goods to or from their station, where the customer does not require such service to be performed by them.

(2) The B. & E. Ry. Co. closed their goods station at B. at 5.15 p.m. against all persons except their agent W., who had a receiving house about a mile distant from the station, & from whom the co. received goods up to 8 p.m. For the conveyance of goods from the receiving-house to the station, W. charged 1*s.* 8*d.* per ton on all goods above 3 cwt., & 3*d.* for each package below that weight :—*Held :* the refusal to receive goods sent by a rival carrier to the station after 5.15 p.m., unless sent through W.'s receiving-house, was imposing upon him an undue prejudice, within 1854 Act, s. 2, although it was sworn on the part of the co. that the goods so brought to the station by W. came there properly classified, weighed, & prepared for loading.

(3) A preference with respect to a reduced rate of carriage of certain goods given by a railway co. to certain individuals in consideration of their contracting to have all such goods consigned to them through the railway, & not by water or other means, is an undue preference within 1854 Act, unless it be clearly shown that it is done in order to prevent a competition with the railway, or that there is secured thereby to the co. such an amount of traffic as to compensate for making the

1117 i. *Delivery facilities to agent—Express company.*]—VICKERS EXPRESS CO. *v.* CANADIAN PACIFIC RY. CO. (1886), 9 O. R. 251 ; 13 A. R. 210.—CAN.

Sect. 3.—*Undue preference: Sub-sect.* 3, *B., C. & D.*]

reduced rate.—GARTON *v.* BRISTOL & EXETER RY. CO. (1859), 6 C. B. N. S. 639; 1 Ry. & Can. Tr. Cas. 218; 28 L. J. C. P. 306; 33 L. T. O. S. 257; 23 J. P. 518; 5 Jur. N. S. 1313; 141 E. R. 606.

Annotations :—*As to* (2) **Follo.** Baxendale *v.* L. & S. W. Ry. (1862), 12 C. B. N. S. 758. **Consd.** *Re* Palmer & L. & S. W. Ry. (1866), L. R. 1 C. P. 588; *Re* Parkinson & G. W. Ry. (1871), 40 L. J. C. P. 222. **Folld.** *Re* Palmer & L. B. & S. C. Ry. (1871), L. R. 6 C. P. 194. **Refd.** West *v.* L. & N. W. Ry. (1870), 39 L. J. C. P. 282. *As to* (3) **Consd.** Phipps *v.* L. & N. W. Ry., [1892] 2 Q. B. 229. **Refd.** Rhymney Iron Co. *v.* Rhymney Ry. (1888), 6 Ry. & Can. Tr. Cas. 60; Liverpool Corn Trade Assocn. *v.* L. & N. W. Ry., [1891] 1 Q. B. 120.

1118. Waiver of conditions.] — A railway co. permitted a carrier, who also acted as superintendent of their goods traffic, to hold himself out as their agent for the receipt of goods to be carried on their line, & his office as the receiving-office of the co.; goods were received by him at that place without requiring the senders to sign conditions which the co. required all other carriers who brought goods to their stations to sign :—*Held :* an undue preference, & the subject of an injunction under 1854 Act.—*Re* BAXENDALE *v.* BRISTOL & EXETER RY. CO. (1862), 11 C. B. N. S. 787; 1 Ry. & Can. Tr. Cas. 229; 142 E. R. 1005.

1119. Refusal of carrier to recognise—Consignees' general orders to deliver to named carrier.] —Complainant P. had a general authority from persons living at C. to receive for them & deliver parcels arriving at the co.'s station at C. The co. refused to deliver to P. except upon a special order being produced for each particular parcel, but delivered to their own agent :—*Held :* the co., by this conduct, gave an undue preference to their own agent, & unduly prejudiced P. & those who chose to employ him.—*Re* PARKINSON & GREAT WESTERN RY. CO. (1871), L. R. 6 C. P. 554; 1 Ry. & Can. Tr. Cas. 280; 40 L. J. C. P. 222; 24 L. T. 830; 19 W. R. 1063.

1120. Cartage allowances—Credit accounts.]—GODDARD *v.* LONDON & SOUTH WESTERN RY. CO., No. 1107, *ante*.

1121. Reduced delivery charges—Favoured list.] —The L. & S. W. Ry. Co. undertook to deliver parcels to F., carriers, who upon receiving them distributed them to their customers. Many parcels had, however, in fact never been delivered to F., but to C., who acted as the co.'s agents in I., & who sent them direct to F.'s customers. C. were carriers on their own account besides being agents of the co. The co. charged F. full rates, but at the same time they kept a "favoured list," & those whose names appeared on it were charged lower rates. C. delivered the parcels in question to F.'s customers at the lower rates, but as between themselves & the co. it was understood that if they did so in the course of their employment as agents they must pay the difference to the co. :—*Held :* as between F.'s customers & themselves, the co. were delivering to the customer at a lower price than they charged to F.; & this was an undue preference.—FORD & CO. *v.* LONDON & SOUTH WESTERN RY. CO. (1890), 7 Ry. & Can. Tr. Cas. 111; 60 L. J. Q. B. 130; 63 L. T. 841.

C. Of Other Carriers.

Acts amounting to breach of "equality clause."] —*See* Nos. 1088, 1090, *ante*.

1122. Assistance in unloading—Convenience of company.]—(1) The S. W. Ry. Co. had been in the habit of unloading goods coming by their railway from the S. Docks consigned to carriers in L., out of their trucks, & of placing them, by their servants, in or conveniently near to the waggons of the consignees, without any extra charge. This practice they discontinued, refusing to allow their servants to unload the trucks without an extra charge for such service, except in the case of P., whose goods they continued to unload as before, the smallness of their quantity, & the fact of their being carried intermixed with the co.'s own traffic, rendering it, as the co. alleged, more convenient to themselves so to do. C., however, another carrier, was denied the aid of the co.'s servants in the unloading of his goods of the same description, & coming from the same place, the co. alleging that the same reasons did not apply to his goods as to P.'s, inasmuch as the former came in large quantities, & in separate trucks :—*Held :* an injunction under 1854 Act,

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1119 i. *Refusal of carrier to recognise—Consignees' general orders to deliver to named carrier.*]—Averments, that a ry. co. refused to give effect to general orders left with them to deliver goods arriving at their stations by a particular carrier, & that the co. refused to hand over goods for delivery by a particular carrier to whose care they were addressed :—*Held :* not relevant allegations of a contravention of 1854 Act, s. 2, & not sufficient to warrant the summary procedure provided for in the Act.—WANNAN *v.* SCOTTISH CENTRAL RY. CO. (1864), 2 Macph. (Ct. of Sess.) 1373; 38 Sc. Jur. 404.—**SCOT.**

a. ——.]—A ry. co. carried traffic from A. at collection & delivery rates, & appointed an agent to perform the service of carting to the station for them. Appct., a carrier, also carted to A. goods for which the ry. co. charged collection & delivery rates. The co. refused to pay appct. anything at all in respect of such cartage :—*Held :* if the ry. co. chose to protect themselves by charging only the rate, less the fair allowance for collection, they could do so; but if the goods were carried & charged for at a collection & delivery rate they were bound to pay a reasonable sum to the person who had performed the collecting service.—MENZIES *v.* CALEDONIAN RY. CO. (1887), 5 Ry. & Can. Tr. Cas. 306.—**SCOT.**

b. —— "*To care of named carrier*"—*Effect of consignment note.*] —A ry. co. which employed agents for delivering in a large town goods brought by the railway to the parties to whom they were addressed, arranged within their station the goods to be delivered by these agents, & afforded to them other facilities in the use of the station :—*Held :* the co., in refusing to give the same advantages to carriers to whom goods were consigned, did not contravene 1854 Act.—PICKFORD *v.* CALEDONIAN RY. CO. (1866), 1 Ry. & Can. Tr. Cas. 252.—**SCOT.**

c. —— —— ——.]—F., a carrier, delivered to a ry. co. at their station goods for conveyance addressed to the consignees. With such goods a consignment note was handed to the ry. co., containing in addition to the names & addresses of the consignees the words "to the care of F." The ry. co. refused to recognise these words, & delivered the goods to the consignees by their own agents or other carriers :—*Held :* (1) the words "to the care of F." imported that the goods on their arrival at the terminal stations were to be given to F. or his agents for delivery to the consignees; (2) as between the ry. co. & F. the latter was the consignee, & the ry. co. accepted the goods upon the terms stated in the consignment note; (3) the ry. co. were precluded by the consignment note from being at liberty to employ their own or other carriers to deliver the goods from their railway to the consignees, & should have delivered same to F. or his agents. —FISHBOURNE *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND (1875), 2 Ry. & Can. Tr. Cas. 224.—**IR.**

1120 i. *Cartage allowances.*]—A ry. co. employed W. under a contract, to deliver all goods carried by the ry. co. to D., at cartage rates, & paid them 1*s.* 7*d.* per ton for the cartage of collected & delivered traffic in D., but allowed P., a carrier, who was employed by traders to collect inward traffic consigned to them only 1*s.* 3*d.* per ton for similar services. The ry. co. alleged that the payments were really the same, *viz.* 1*s.* 3*d.* for cartage; & that the 4*d.* extra which W. got was paid for special services, such as providing office & receiving house accommodation, to canvassing for the co. & being "at their call" as agent for the ry. co. :—*Held :* 4*d.* per ton was an excessive allowance for the special services, & the payment thereof constituted an undue preference by the ry. co. of W. to the prejudice of P. —WALLIS & SONS *v.* GREAT NORTHERN RY. CO. OF IRELAND (1903), 12 Ry. & Can. Tr. Cas. 38.—**IR.**

PART X. SECT. 3, SUB-SECT. 3.—C.

d. *Parcel rates—Varying allowances.*]—For a ry. co. to allow one carrier 1*d.* on all parcels irrespective of weight & to allow another carrier 1*d.* as to parcels under 7 lbs. & 2*d.*

enjoining the co. to unload the trucks containing C.'s goods, & to deliver such goods to C. by placing them in or adjacent to his waggons, must be refused, the demand being too large.

Semble: if C.'s complaint had been confined to the co.'s giving an advantage to P. in the unloading of his goods, which they withheld from C., he might have been entitled to relief under the Act.—*Re* COOPER *v.* LONDON & SOUTH WESTERN RY. CO. (1858), 4 C. B. N. S. 738; 1 Ry. & Can. Tr. Cas. 185; 27 L. J. C. P. 324; 22 J. P. 740; 4 Jur. N. S. 762; 6 W. R. 625; 140 E. R. 1282.

1123. Allowances for dock services—Wharfowners.]—Defts. had allowed to a dock co. a sum per ton for dues, & for services rendered by them between the dock entrance, & the ship's side, in respect of merchandise carried by defts. for shipment from the docks, at a collected & delivered rate which included, as between the consignee & defts., delivery at the ship's side; they refused to make any allowance to appcts., wharfowners, for similar services rendered by them in respect of similar merchandise carried by defts. at the same rate for shipment from the wharf:—*Held:* (1) appcts. had sufficient interest as competing wharfowners to entitle them to apply to the ct. for relief under 1854 Act; (2) defts. had unduly preferred the dock co. in granting to them an allowance which they refused to appcts. for similar services; (3) appcts.' traffic being worked at a greater cost to defts. than that of the dock co., an allowance of 1*s.* 9*d.* per ton was, in the appcts.' case, a fair proportion of the 25*s.* rate for the services performed at their wharf.

(4) Where an enactment imposes on a railway co. in general terms the duty of giving similar treatment to all similar traffic, any person who is directly prejudiced by the breach of the duty has a right to complain.—FORWOOD BROTHERS & CO. *v.* GREAT NORTHERN RY. CO. (1904), 12 Ry. & Can. Tr. Cas. 89; 20 T. L. R. 320.

D. Of Cab and Omnibus Proprietors.

1124. Exclusion of vehicles—Right of action for.]—An omnibus proprietor who carries passengers & their luggage, for hire, to & from a railway station, cannot maintain an action against the co. for refusing to allow him to drive his vehicle into the station yard.—BARKER *v.* MIDLAND RY. CO. (1856), 18 C. B. 46; 25 L. J. C. P. 184; 20 J. P. 582; 139 E. R. 1281; *sub nom.* PARKER *v.* MIDLAND RY. CO., 27 L. T. O. S. 107.

Annotations:—**Consd.** Perth General Station Committee *v.* Ross, [1897] A. C. 479. **Refd.** *Re* Beadell *v.* Eastern Counties Ry. (1857), 2 C. B. N. S. 509; Case *v.* Storey (1869), 17 W. R. 802; Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254.

1125. —— Permission granted to limited number—Whether restriction reasonable.]—A railway co. made arrangements, at one of their stations, with A., the proprietor of an omnibus running between the station & K., to provide omnibus accommodation for all passengers by any of their trains to & from K., & allowed A. the exclusive privilege of driving his vehicle into the station yard for the purpose of taking up & setting down passengers at the door of the booking-office:—*Held:* in the absence of special circumstances showing it to be reasonable, the granting of such exclusive privilege to one proprietor, & refusing to grant the like facilities to another who also brought passengers from K. as well as from other places beyond, was an undue & unreasonable preference within 1854 Act, s. 2.—*Re* MARRIOTT *v.* LONDON & SOUTH WESTERN RY. CO. (1857), 1 C. B. N. S. 499; 1 Ry. & Can. Tr. Cas. 47; 26 L. J. C. P. 154; 28 L. T. O. S. 305; 3 Jur. N. S. 493; 5 W. R. 312; 140 E. R. 205.

Annotations:—**Distd.** *Re* Beadell *v.* Eastern Counties Ry. (1857), 2 C. B. N. S. 509. **Consd.** Ilfracombe Public Conveyance Co. *v.* L. & S. W. Ry. (1868), 1 Ry. & Can. Tr. Cas. 61. **Distd.** West *v.* L. & N. W. Ry. (1870), L. R. 5 C. P. 622. **Refd.** Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254.

1126. —— —— Whether inconvenience to public.]—A railway co., for a consideration of £600 a year, gave the exclusive right to C. of plying for hire with his cabs within their station yard, & though all cabs were allowed to set down fares, they were immediately after ordered out. B. applied under 1854 Act to restrain the co. from preventing him from plying within the yard:—*Held:* as B. showed no inconvenience to the public from the arrangement the ct. would not interfere.—*Re* BEADELL *v.* EASTERN COUNTIES RY. CO. (1857), 2 C. B. N. S. 509; 1 Ry. & Can. Tr. Cas. 56; 22 J. P. 161; 5 W. R. 650; 140 E. R. 515.

Annotations:—**Consd.** Case *v.* Storey (1869), L. R. 4 Exch. 319. **Refd.** *Re* Painter *v.* L. B. & S. C. Ry. (1857), 2 C. B. N. S. 702; Ilfracombe Public Conveyance Co. *v.* L. & S. W. Ry. (1868), 1 Ry. & Can. Tr. Cas. 61; West *v.* L. & N. W. Ry. (1870), L. R. 5 C. P. 622.

1127. —— —— ——.]—A railway co. granted exclusive permission to a limited number of fly-proprietors to ply for hire within their station. A fly-proprietor who was excluded from participation in this advantage applied for a writ of injunction against the co., under 1854 Act:—*Held:* the injunction should be refused, although it was sworn by complainant & by several other fly-proprietors who were likewise excluded, that occasional delay & inconvenience resulted to the public from the course pursued.—*Re* PAINTER *v.* LONDON BRIGHTON & SOUTH COAST RY. CO. (1857), 2 C. B. N. S. 702; 1 Ry. & Can. Tr. Cas. 58; 140 E. R. 592.

1128. —— —— ——.]—Applt. co. was established for the conveyance of passengers & goods between I. & B. station on defts.' line, by means of flys & other public vehicles. P., who carried on a similar business, by arrangement with

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over 7 lbs., is undue preference.—ROBERTSON *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND (1876), 2 Ry. & Can. Tr. Cas. 374.—**IR.**

e. —— *Stamped & unstamped parcels—Special agreement as to.*]—The M. G. W. R. Co. adopted two scales of charges for carriage of parcels by their line. One of the scales varied in amount according to the weight of the parcels carried & according to the distance; the other scale, though it varied according to the weight, made no reference to distance. The parcels to be carried by latter scale were not to exceed particular dimensions & a certain value. They were required to be prepaid by having adhesive stamps affixed to them. The parcels were carried from the receiving offices of the co. at D. to the terminus, then by W., the co.'s agent, who was paid in common with all other carriers employed in D. by the co., 1*d.* per parcel for cartage of unstamped parcels. This arrangement was due to an agreement by which W. undertook to carry all stamped parcels gratuitously in consideration of receiving 1*d.* for every unstamped parcel; for other towns stamped parcels were charged 2*d.* for collection or delivery:—*Held:* the co. were not guilty of undue preference.—ROBERTSON *v.* MIDLAND GREAT WESTERN CO. OF IRELAND (1876), 35 L. T. 636.—**IR.**

f. *Express companies—Effect of new rates.*]—*Re* CANADIAN NORTHERN EXPRESS CO. (1913), 24 W. L. R. 583. —**CAN.**

PART X. SECT. 3, SUB-SECT. 3.—D.

g. *Exclusion of vehicles—Access granted to one company only—Carriage of passengers to & from stations—Rights of owners of vehicles plying for hire—Discrimination—Dominion Railway Act*, 1903, *s.* 317.]—PURCELL *v.* GRAND TRUNK PACIFIC RY. CO. (1911), 21 W. L. R. 638; 13 Can. Ry. Cas. 194. —**CAN.**

h. —— —— —— —— ——.]—*Re* TWIN CITY TRANSFER CO. OF EDMONTON & CANADIAN PACIFIC RY. CO. (1913), 24 W. L. R. 208; 11 D. L. R. 744.—**CAN.**

i. —— *Access to particular points only.*]—*Re* PURCELL & GRAND TRUNK PACIFIC RY. CO. (1914), 28 W. L. R. 689.—**CAN.**

Sect. 3.—Undue preference: Sub-sect. 3, D., E. & F. (a) & (b).

defts., was permitted to drive his carriages into the station yard to take up passengers from every train which arrived; applts. were compelled to keep their carriages outside the gates, 300 yards from the station, but were subsequently allowed to enter the station yard to meet only two of the five daily trains. On three occasions passengers had engaged applts.' conveyances to meet them, but finding no such conveyances within the station yard, had been obliged to avail themselves of P.'s carriages. No demand had been made upon defts. to grant the extended accommodation sought:—*Held:* an injunction for the removal of the restriction should be refused.

Semble: it is much for the convenience of the public that railway cos. should make arrangements for the attendance of a sufficient number of carriages for the conveyance of passengers arriving at their stations, whether in town or country; if anyone indiscriminately might bring his carriages for that purpose, it would give rise to great confusion and obstruction; in all such cases, therefore, it must be clearly shown that the course complained of occasions inconvenience to the public; & regard must be had to the general convenience of the public rather than to the wishes or interests of individual job-masters.—ILFRACOMBE PUBLIC CONVEYANCE CO. *v.* LONDON & SOUTH WESTERN RY. CO. (1868), 1 Ry. & Can. Tr. Cas. 61.

E. Of Passengers.

Acts amounting to breach of "equality clause."]—*See* No. 1102, *ante*.

1129. Same fares for same journeys—Distinction in fares on different lines.]—CATERHAM RY. CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO., & SOUTH EASTERN RY. CO., No. 988, *ante*.

1130. —— ——.]—INNES *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & LONDON & SOUTH WESTERN RY. CO., No. 989, *ante*.

1131. Season tickets—Geographical preference.]—The ct. refused to grant a rule for an injunction against the E. Ry. Co., under 1854 Act, to compel them to issue season-tickets between C. & L. on the same terms as they issued them between H. & L., upon a mere suggestion that the granting the latter, the distance being considerably greater, at a much lower rate than the former, was an undue & unreasonable preference of the inhabitants of H. over those of C.—*Re* JONES & EASTERN COUNTIES RY. CO. (1858), 3 C. B. N. S. 718; 1 Ry. & Can. Tr. Cas. 45; 140 E. R. 923.

Annotations:—**Folld.** Strick *v.* Swansea Canal Co. (1864), 16 C. B. N. S. 245. **Distd.** Budd *v.* L. & N. W. Ry. (1877), 36 L. T. 802.

F. Of Traders.

(a) Charges Varying with Locality.

See 1921 Act, ss. 36–39.

1132. Natural advantages of geographical position destroyed—Reduced expense of carriage.]—(1) The mere fact that the state of a person's trade, who requires goods in the way of his trade to be carried by a railway co., is such that it happens not to accommodate itself to a scale & system of rates adopted by the co., which scale & system of rates does not appear to be disadvantageous to the public at large or objectionable in other respects, is no ground for a writ of injunction under 1854 Act.

(2) Where the effect of a scale of charges adopted by a railway co. is such as to diminish the natural advantage which the local position of certain dealers in articles, required by such dealers to be carried in the way of their trade by the railway, gives them over certain other dealers from the greater proximity of the local position of the first mentioned dealers to certain districts in respect of the traffic at those districts, by annihilating in point of expense of carriage a certain portion of the distance between the local position of the last mentioned dealers & these districts, this is an undue preference, & the subject for an injunction under 1854 Act.—*Re* RANSOME *v.* EASTERN COUNTIES RY. CO. (1858), 4 C. B. N. S. 135; 1 Ry. & Can. Tr. Cas. 109; 27 L. J. C. P. 166; 31 L. T. O. S. 72; 4 Jur. N. S. 282; 6 W. R. 395; 140 E. R. 1034; *subsequent proceedings*, (1860), 8 C. B. N. S. 709.

Annotations:—*As to* (2) **Refd.** *Re* Nicholson *v.* G. W. Ry. (1858), 5 C. B. N. S. 366; G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226; Liverpool Corn Trade Assocn. *v.* L. & N. W. Ry. [1891] 1 Q. B. 120.

1133. —— Constructional or working costs—Whether similar conditions — Equal terms.]—(1) Where there is a competition of interests, & the circumstances in other respects are not dissimilar, the traffic of two localities, both on the same system of railways, although at a distance from each other, is as much within 1854 Act, as regards equality of rates as the traffic of two or more individuals in the same locality.

(2) A railway co. carried beer from B. at lower rates than from N., which was forty miles distant from B. The co. charged all brewers at B. a uniform rate per ton per mile, station to station, with an abatement for loading or unloading, & for haulage when the brewers did those services

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PART X. SECT. 3, SUB-SECT. 3.—E.

k. *Same fares for same journeys—Higher rates for intermediate journeys—Competition of interests—Personal disadvantage.*]—A ry. co. fixed the rates for passengers travelling between the termini of the line according to a much lower scale than the rates exigible from passengers travelling between intermediate stations:—*Held:* no one has a title to complain of such proportional rating unless there be a competition of interest, or unless the complainer set forth personal disadvantages to himself.—HOZIER *v.* CALEDONIAN RY. CO. (1855), 1 Ry. & Can. Tr. Cas. 27.—**SCOT.**

1131 i. *Season tickets—Geographical preference.*]—A.-G. FOR BRITISH COLUMBIA *v.* CANADIAN PACIFIC RY. CO. (1909), 8 Can. Ry. Cas. 346.—**CAN.**

1131 ii. —— —— *Trip tickets.*]—WEGANAST *v.* GRAND TRUNK RY. CO. (1908), 8 Can. Ry. Cas. 42, 168.—**CAN.**

l. —— *Reduced rates to traders—Business considerations.*]—A ry. co. issued season tickets to traders who sent or received traffic yielding annually £250 or over at a cheaper rate than to ordinary passengers, the cost of such traders' season tickets being about one-third of the cost of an ordinary season ticket. To traders whose traffic yielded over £1,000 the ry. co. gave a still greater reduction on the season ticket rate. Upon a complaint that the ry. co. were unduly preferring traders who sent or received large quantities of traffic to those sending or receiving small amounts of traffic:—*Held:* it was entirely a matter of fact whether the preference given was undue; & where such preference was given to all persons alike upon purely business considerations, there was a strong presumption that the preference was not undue.—INVERNESS CHAMBER OF COMMERCE *v.* HIGHLAND RY. CO. (1901), 11 Ry. & Can. Tr. Cas. 218; 38 So. L. R. 842.—**SCOT.**

m. —— *Noncompliance with condition—Refusal of renewal.*]—A ry. co. issued monthly subscription tickets on conditions that no subscriber should be entitled to carry free of charge any merchandise or articles of any kind for hire or profit, or for the use of any person or persons other than the subscriber; that the directors reserved to themselves the right of declining to renew the subscription ticket of any person who refused to comply with any of the regulations therein set forth:—*Held:* (1) such conditions were fair & reasonable; (2) the ry. co. were entitled to decline to renew the subscription ticket of a subscriber who refused to abide by the former of such conditions.—MORRISON *v.* BELFAST & COUNTY DOWN RY. (1904), 12 Ry. & Can. Tr. Cas. 99.—**IR.**

PART X. SECT. 3, SUB-SECT. 3.—F. (a).

1133 i. *Natural advantages of geographical position destroyed—Constructional or working costs.*]—Upon complaint that a ry. co. did not give the traders of N. the benefit of the geographical position of the town with

themselves instead of employing the co. to do them:—*Held:* the lower charges for carrying beer from B. were justified by the special advantages the co. received in dealing with such traffic as compared with appcts.' traffic.

(3) The railway co. carried beer for brewers at B., at one rate per cwt. regardless of the weight of the consignment; at N. they had one tariff for consignments over 500 lbs., another on a higher scale, & higher than their tonnage rates at B., for consignments of 500 lbs. or under in weight:—*Held:* an undue & unreasonable preference to the brewers at B. over the brewers at N.

(4) The co. carried beer sent from B. in cask by their railway to any place thereon where B. brewers had an agency, & thence, in bottle, to any station on their railway, at a lower rate than that charged for beer in bottle not brewed at B., & also lower than that for beer in bottle from N.:—*Held:* an undue & unreasonable preference.

(5) The co. carried to B. from other places on their line malt, hops & barley, at lower rates than they carried similar traffic to N.:—*Held:* they must carry malt, hops & barley to N. on equal terms with the terms on which similar traffic was carried to B., with due regard to any circumstances, which might render the cost of carrying such traffic to N. greater than the cost of carrying to B.—RICHARDSON *v.* MIDLAND RY. CO. (1881), 4 Ry. & Can. Tr. Cas. 1.

Annotations:—As to (1) **Refd.** Girardot, Flinn *v.* Mid. Ry. (1884), 4 Ry. & Can. Tr. Cas. 291. *As to* (2) **Refd.** Girardot, Flinn *v.* Mid. Ry., Beeston Brewery Co. *v.* Mid. Ry. (1885), 5 Ry. & Can. Tr. Cas. 60.

1134. —— Through & local charges—1888 Act, s. 30.]—PLYMOUTH INCORPORATED CHAMBER OF COMMERCE *v.* GREAT WESTERN RY. CO., & LONDON & SOUTH WESTERN RY. CO., BURNARD & ALGER *v.* SAME, No. 1059, *ante*.

1135. —— Similar charges for similar services—Cartage rebates.]—(1) Railway cos. charged for certain traffic the same rates from G. & H. to various inland towns, although there was a saving of about one-fifth of the total distance to them from H. in respect of G. The cos. failed to prove that if the same mileage rate per ton were applied to G. as was applied to H. any injustice would follow, or that the maintenance of the existing G. rate was necessary to the maintenance of the H. traffic:—*Held:* they had given an undue preference to the traders at H.

(2) Where no reason is shown to the contrary the ct. will act on the principle that similar charges should be made for similar services.

(3) The cos. collected in H., free of charge, goods consigned by their railways, or allowed rebates when the cartage was performed by the consignors, but refused to collect the traffic of appcts. at G. free of charge, or to allow them similar rebates:—*Held:* an undue prejudice & disadvantage to appcts.—TIMM & SON *v.* NORTH EASTERN RY. CO. & LANCASHIRE & YORKSHIRE RY. CO. (1901), 11 Ry. & Can. Tr. Cas. 214.

Annotations:—As to (3) **Consd.** Olympia Oil & Cake Co. *v.* N. E. Ry. (1913), 30 T. L. R. 236. **Refd.** Rishworth, Ingleby & Lofthouse *v.* N. E. Ry. (1903), 12 Ry. & Can. Tr. Cas. 34.

(b) Lower Charges for Larger Customers.

Acts amounting to breach of "equality clause."]—*See* No. 1098, *ante*.

1136. Guarantee of volume—At regular periods—Special agreement—Adequate consideration.]—It is competent to a railway co. to enter into special agreements whereby advantages may be secured to individuals in the carriage of goods upon the railway, where it is made clearly to appear, that, in entering into such agreements, the co. have only the interests of the proprietors & the legitimate increase of the profits of the railway in view, & the consideration given to the co. in return for the advantages afforded by them be adequate, & the co. are willing to afford the same facilities to all others upon the same terms.

1854 Act, s. 2 is not contravened by a railway co. carrying at a lower rate, in consideration of a guarantee of large quantities & full train-loads at regular periods, provided the real object of the co. be to obtain thereby a greater remunerative profit, by the diminished cost of carriage, although the effect may be to exclude from the lower rate those persons who cannot give such a guarantee.—*Re* NICHOLSON *v.* GREAT WESTERN RY. CO. (1858), 5 C. B. N. S. 366; 1 Ry. & Can. Tr. Cas. 121; 28 L. J. C. P. 89; 4 Jur. N. S. 1187; 7 W. R. 49; 141 E. R. 146; *subsequent proceedings* (1860), 7 C. B. N. S. 755.

Annotations:—**Distd.** Baxendale *v.* G. W. Ry. (1858), 4 Jur. N. S. 1241. **Expld. & Distd.** *Re* Garton *v.* Bristol & Exeter Ry. (1859), 6 C. B. N. S. 639. **Foll.** Strick *v.* Swansea Canal Co. (1864), 16 C. B. N. S. 245. **Consd.** Broughton & Plas Power Coal Co. *v.* G. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 191; Daldy *v.* Mid. Ry., G. E. Ry., & L. T. & S. Ry. (1900), 10 Ry. & Can. Tr. Cas. 303. **Refd.** Harrison *v.* L. B. & S. C. Ry. (1862), 2 B. & S. 152; Peck *v.* North Staffordshire Ry. (1863), 10 H. L. Cas. 473; G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226; Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254; Rhymney Iron Co. *v.* Rhymney Ry. (1888), 6 Ry. & Can. Tr. Cas. 60.

1137. —— —— —— ——.]—(1) By an agreement between the S. E. Ry. Co. & F., the latter guaranteed to send by the co.'s steamers & railway 850 tons of goods each calendar month, & the co. allowed F. certain rebates:—*Held:* as there were circumstances which enhanced the value to the co. of the guarantee of quantity, & compelled F. to incur considerable expense & labour to earn the allowance, & as the co. had always been ready to make a proportionate allowance for a smaller amount of traffic to any one giving a guarantee similar, except as to amount, no injunction should be granted.

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regard to B. & the several towns lying west & north-west of N., & that the ry. co. gave a preference to the traders of those towns to send or bring their goods to & from B. at much lower rates than they did for the traders of N., although N. was much nearer them than B.:—*Held:* the rates complained of did not sufficiently take into account the difference of distance in favour of N. & amounted to an undue preference of B. over N.—NEWRY TOWN COMRS. *v.* GREAT NORTHERN RY. CO. OF IRELAND (1891), 7 Ry. & Can. Tr. Cas. 184.—**IR.**

n. —— *Group rates—Mileage advantages.*]—Upon complaint that a ry. co. did not in respect of coal traffic give appcts. or the traders of C. the benefit of the geographical position of the port & harbour of C. as compared with the ports of L. & B. in relation to the towns on the railway lying west & north-west of C., it appeared that the ry. co. had established uniform rates from the 3 ports of L., B. & C. to inland towns, & that the effect of such group rates was that C. sustained a loss of mileage advantage amounting to 14 miles as against L. in respect of D. & similar traffic:—*Held:* the rates charged by the ry. co. for the conveyance of coal from L. & C. respectively subjected the C. traffic in coal to an undue disadvantage.—CARRICKFERGUS HARBOUR COMRS. *v.* BELFAST & NORTHERN COUNTIES RY. CO. (1897), 10 Ry. & Can. Tr. Cas. 74.—**IR.**

o. *Equal rates for equal services.*]—The rates charged by ry. cos. for traffic to ports, where such traffic is to be carried from such ports to others, must be relatively to the service equal.—AYR HARBOUR TRUSTEES & BARR (P.) & CO. *v.* GLASGOW & SOUTH WESTERN RY. CO., CALEDONIAN RY. CO., NORTH BRITISH RY. CO., & NORTH EASTERN RY. CO., (No. 2) (1882), 4 Ry. & Can. Tr. Cas. 90.—**SCOT.**

p. *Export & local tolls.*]—*Proportional tolls.*]—COX & CO. *v.* CANADIAN PACIFIC RY. CO. (1911), 10 E. L. R. 379.—**CAN.**

q. —— *Restoration of former tariffs — Reduced rates.*]—WINNIPEG JOBBERS' ASSOCN. *v.* CANADIAN PACIFIC RY. CO., CANADIAN NORTHERN RY. CO., & GRAND TRUNK PACIFIC RY. CO. (1908), 8 Can. Ry. Cas. 175.—**CAN.**

Sect. 3.—*Undue preference: Sub-sect.* 3, *F.* (*b*) & (*c*).]

(2) The co. carried goods at agreed through rates between L. & P., & undertook, for the fixed amount paid, every kind of service & charge incidental to the transit, including clearing the goods in the custom house, which was done only by the co.'s servants; if done by custom house agents no rebate was allowed by the co.:—*Held:* the fixed sum for the entire service, free of any intermediate charges, was a great convenience to the public, & did not infringe 1854 Act.

(3) *Semble:* if a trader engages to supply traffic with regularity & in certain quantities for the accommodation of a railway co., so that a lower rate in his case is as remunerative to the co. as a higher rate on similar traffic in the case of others, such an arrangement is not an inequality within 1854 Act.—GREENOP *v.* SOUTH EASTERN RY. CO. (1876), 2 Ry. & Can. Tr. Cas. 319.

1138. —— Total traffic—For fixed number of years.]—DIPHWYS CASSON SLATE CO., LTD. *v.* FESTINIOG RY. CO., No. 1149, *post.*

1139. —— —— ——.]—(1) A railway co. agreed with certain quarry owners, for a term of fourteen years, to carry slates for them over the railway at 2*s.* 6*d.* per ton, the quarry owners on their part agreeing to send their slates by no other mode of transit during that term; subsequently a fresh agreement was entered into with one of the quarry owners for a term of thirty years, reducing the rate to 2*s.* 1½*d.*:—*Held:* there was nothing which would justify the difference in rate, & such difference was an undue preference & prejudice.

(2) The railway co. alleged that appcts., being obliged to use smaller waggons for their slates than those used by the favoured quarry owner, & sending slates of a lighter description occasioned the co. greater cost for carriage:—*Held:* 1*d.* per ton would be a reasonable allowance for such increased cost.—HOLLAND *v.* FESTINIOG RY. CO. (1876), 2 Ry. & Can. Tr. Cas. 278.

Annotation:—*As to* (1) **Refd.** Rhymney Iron Co. *v.* Rhymney Ry. (1888), 6 Ry. & Can. Tr. Cas. 60.

1140. —— Percentage of traffic.]—(1) An agreement between one trader & a railway co. which secures to the trader rates unequal when compared with those of another trader having similar traffic which is carried by the railway co. to the same place is *primâ facie* an undue preference, & the circumstance that the railway co. have offered the same agreement as to rates & rebates to the competing trader will not necessarily justify the inequality.

(2) Large & regular traffic not being secured by a railway co. under the agreement, the rates & rebates were not justified by the circumstance that a certain percentage of the preferred trader's traffic was agreed to be sent by the railway co.'s line.

(3) If A.'s traffic can be worked more cheaply than B.'s traffic, rates or rebates in proportion to that difference in cost would be justified.—RHYMNEY IRON CO., LTD. *v.* RHYMNEY RY. CO. (1888), 6 Ry. & Can. Tr. Cas. 60; 4 T. L. R. 717; 5 T. L. R. 28, 102.

Annotation:—*As to* (1) **Consd.** Daldy *v.* Mid. Ry., G. E. Ry. & L. T. & S. Ry. (1900), 10 Ry. & Can. Tr. Cas. 303.

1141. —— Large & constant supply — Coal for shipment — Like terms available for all.]—(1) Appcts. sent 60,000 tons of coal yearly by defts.' line to A. Dock, & were charged 2*s.* 7*d.* per ton. D. Co., guaranteeing 200,000 tons & actually sending 500,000 tons yearly by defts.' line to A. Dock over a slightly longer distance were charged 2*d.* per ton less up to 200,000 tons & less for quantities in excess of that figure. In the case of shipment coal a large & constant supply was necessary so that the railway co. could make their shipment arrangements with certainty & regularity. The railway co. were willing to carry appcts.' coal at the lower rate if they would give a like guarantee as D. Co. as to quantity:—*Held:* the difference in the rate was justified.

(2) *Semble:* such a difference of charge would not be justified if appcts. sent quantities of coal comparable to those which the D. Co. sent, & promised from month to month, without any guarantee, a sufficient continuance of supply to enable the railway co. to make all necessary arrangements for shipment.

(3) Under 1888 Act, s. 27, the ct. will take into consideration any circumstances which makes it better worth the while of the railway co. to carry the traffic of one trader rather than the traffic of another.—HICKLETON MAIN COLLIERY CO., LTD. *v.* HULL, BARNSLEY & WEST RIDING JUNCTION RY. & DOCK CO. (1903), 12 Ry. & Can. Tr. Cas. 63.

1142. Consignment of minimum quantities—Reduced rate for—Convenience of carriage.]—A railway co. published a reduced rate for the carriage of coals in quantities of not less than 35 trucks, consigned to certain specified districts. In carrying coal to one of such districts, the co. for their own convenience, in consequence of steep gradients, detached some of the trucks at C., & sent them on afterwards by other trains to which they might be advantageously attached. All the coals were carried to the district to which they had been so consigned:—*Held:* (1) not an undue preference to the consignors; (2) to have left part of the coals for consumption at C., & carried the residue on at the lower rate of charge, would have been an infringement of the tariff.—*Re* RANSOME *v.* EASTERN COUNTIES RY. CO. (1860), 8 C. B. N. S. 709; 1 Ry. & Can. Tr. Cas. 155; 29 L. J. C. P. 329; 2 L. T. 376; 7 Jur. N. S. 99; 8 W. R. 527; 141 E. R. 1344.

1143. —— Rebate in consideration of—Services rendered by consignee.]—(1) The M. Ry. Co. granted a rebate to traders who agreed to send a certain amount of coal traffic to G. E. stations in a year & pay for the carriage of the same punctually every month. In the rate books at various stations on the M. Ry. Co.'s line was inserted on the fly-leaf at the beginning of the book a printed slip stating that "rebates are allowed to coal merchants from certain rates to stations in the Eastern Counties & upon certain conditions, the particulars of which may be obtained on application to the general manager":—*Held:* not a sufficient publication to relieve the railway co. from liability under 1888 Act, s. 13.

(2) Midland Ry. Co. allowed to certain coal merchants having coal depots on the system of the G. E. Ry. Co. in respect of coal coming from collieries on the system of the M. Ry. Co., a rebate of 3*d.* per ton off the rate charged for the carriage of coal, but alleged that this was done only on condition that the coal merchants to whom such rebate was allowed sent in the course of a year from such collieries over the line of the M. Ry. Co. not less than a specified number of tons of coal, & also rendered the co. certain services in paying carriage for such traffic:—*Held:* the circumstances justified a difference of 1*d.* per ton only.—DALDY & CO. *v.* MIDLAND RY. CO., GREAT EASTERN RY. CO., & LONDON, TILBURY & SOUTHEND RY. CO. (1900), 10 Ry. & Can. Tr. Cas. 303.

Annotations:—*As to* (1) **Consd.** Charrington, Sells, Dale *v.* Mid. Ry. (1901), 11 Ry. & Can. Tr. Cas. 222. **Refd.** British Portland Cement Manufacturers *v.* G. E. Ry., Thomas *v.* Mid. Ry. (1914), 111 L. T. 536.

1144. Customer employing carrier—For traffic other than that preferred.]—A preference was given by a railway co. to a customer who engaged to employ other lines of the co. for traffic distinct from & unconnected with that in respect of which such preference was given:—*Held:* this was an undue preference within 1854 Act, s. 2.—*Re* BAXENDALE *v.* GREAT WESTERN RY. CO. (1858), 5 C. B. N. S. 309; 1 Ry. & Can. Tr. Cas. 191; 28 L. J. C. P. 69; 32 L. T. O. S. 160; 23 J. P. 150; 4 Jur. N. S. 1241; 7 W. R. 54; 141 E. R. 123.

Annotations:—**Refd.** Garton *v.* Bristol & Exeter Ry. (1861), 1 B. & S. 112; Rhymney Iron Co. *v.* Rhymney Ry. (1888), 6 Ry. & Can. Tr. Cas. 60; A.-G. *v.* Long Eaton U. D. C., [1914] 2 Ch. 251.

(c) Difference in Cost of Carriage.

Acts amounting to breach of "equality clause."] —*See* Nos. 1075, *ante*, 1191, *post*.

1145. Special circumstances affecting cost.]—*Re* OXLADE *v.* NORTH EASTERN RY. CO., No. 974, *ante*.

1146. ——.]—GIRARDOT, FLINN & CO. *v.* MIDLAND RY. CO., No. 1155, *post*.

1147. ——.]—RHYMNEY IRON CO., LTD. *v.* RHYMNEY RY. CO., No. 1140, *ante*.

1148. Fair interests of company—Purpose of preference—Allowance for trucks.]—(1) In determining, under 1854 Act, s. 2, whether a railway co. have given an undue & unreasonable preference to a particular person, co. or traffic, or subjected a particular person, co. or traffic to an undue or unreasonable prejudice or disadvantage, the ct. may take into consideration the fair interests of the railway itself, & entertain such questions as whether the co. might not carry larger quantities, or for longer distances, at lower rates per ton per mile, than smaller quantities, or for shorter distances, so as to derive equal profits to itself.

(2) Defts. entered into an agreement with P. to convey his inland-borne coals over their line at certain rates, to various places. Pltf., a coal merchant, bringing sea-borne coals to a point on defts.' line, sent such coals over defts.' railway to various places, but was charged a much larger sum per ton per mile, in proportion to the distance the coal was carried, than was charged to P., the manifest object of this differential charge being to enable railway-borne to compete with sea-borne coals:—*Held:* defts. by their agreement with P., gave him an undue preference & advantage over pltf., within 1854 Act, s. 2; & an injunction should issue restraining defts. from giving P. such preference, & enjoining them to carry coals for pltf. & P. on equal terms, having due regard to the circumstances, if any, which render the cost in carrying for the one party less than that of carrying for the other.—*Re* RANSOME *v.* EASTERN COUNTIES RY. CO. (1857), 1 C. B. N. S. 437; 1 Ry. & Can. Tr. Cas. 63; 26 L. J. C. P. 91; 28 L. T. O. S. 339; 3 Jur. N. S. 217; 140 E. R. 179; *subsequent proceedings* (1858), 4 C. B. N. S. 135; (1860), 8 C. B. N. S. 709.

Annotations:—*As to* (1) **Consd.** *Re* Nicholson *v.* G. W. Ry. (1858), 5 C. B. N. S. 366; Budd *v.* L. & N. W. Ry. (1877), 36 L. T. 802. **Refd.** *Re* Harris & Cockermouth & Workington Ry. (1858), 3 C. B. N. S. 693; *Re* Garton *v.* Bristol & Exeter Ry. (1859), 6 C. B. N. S. 639; Liverpool Corn Traders' Assocn. *v.* G. W. Ry. (1892), 8 Ry. & Can. Tr. Cas. 114. *As to* (2) **Apld.** Oxlade *v.* N. E. Ry. (1857), 1 C. B. N. S. 454. **Consd.** Richardson *v.* Mid. Ry. (1881), 4 Ry. & Can. Tr. Cas. 1; Broughton & Plas Power Coal Co. *v.* G. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 191; Denaby Main Colliery Co. *v.* M. S. & L. Ry. (1885), 11 App. Cas. 97. *Generally*, **Consd.** Skinningrove Iron Co. *v.* N. E. Ry. (1887), 6 Ry. & Can. Tr. Cas. 244. **Refd.** Toomer *v.* L. C. & D. Ry. (1877), 2 Ex. D. 450; L. & N. W. Ry. *v.* Evershead (1878), 26 W. R. 863; Rhymney Iron Co. *v.* Rhymney Ry. (1888), 5 T. L. R. 102; Phipps *v.* L. & N. W. Ry., [1892] 2 Q. B. 229. **Mentd.** Marriott *v.* L. & S. W. Ry. (1857), 1 C. B. N. S. 499; R. *v.* Ry. Comrs. & Distington Iron Co. (1889), 22 Q. B. D. 642.

1149. —— **Whether interests too remote.**]—(1) A railway co., in consideration of their customers signing an agreement, one of the conditions of which was that the customers would not send their produce by any other railway than that of the contracting co., agreed to convey their produce at a reduced rate per ton:—*Held:* the granting of the lower charges in the circumstances created inequalities which contravened the provisions of 1854 Act, & an injunction would be granted to prevent a railway creating such inequalities in the future, for a railway co. cannot compel the public to purchase equality of treatment by imposing conditions of that character.

(2) Equal treatment does not consist in all being offered a similar agreement; for if the agreement is not for the public benefit, or if it goes beyond the fair regard which a company may pay to its own interests, it leaves untouched the right of all under the Act to be upon equal terms. Although a co. may consult its own fair interests, this does not extend to interests remote from present transactions, & from any profits to be made out of them.

(3) Deft. co. charged appcts. for the use of their waggons off the line, & demurrage if they detained them more than twenty hours; quarry owners who entered into the above-mentioned agreement were charged nothing for use of waggons & were not charged demurrage until after the expiration of thirty hours:—*Held:* the service off the line was incidental to the forwarding, etc. of the traffic, & the circumstance of the favour shown being in respect of something done off the line did not take the case out of 1854 Act, s. 2.

(4) Defts. charged appcts. for shunting goods on to a siding the property of appcts., but did not charge other quarry owners for shunting on sidings, the property of defts., connecting their quarries with defts.' line. The service was not more onerous to defts. in one case than the other:—*Held:* an undue preference within 1854 Act, s. 2.

(5) What amounts to undue preference is, in general, a question of fact, & not one of law.—DIPHWYS CASSON SLATE CO., LTD. *v.* FESTINIOG RY. CO. (1874), 2 Ry. & Can. Tr. Cas. 73; 32 L. T. 271.

Annotations:—*As to* (1) **Refd.** Rhymney Iron Co. *v.* Rhymney Ry. (1888), 6 Ry. & Can. Tr. Cas. 60. *As to* (2) **Refd.** Daldy *v.* Mid. Ry., G. E. Ry. & L. T. & S. Ry. (1900), 10 Ry.

PART X. SECT. 3, SUB-SECT. 3. —F. (c).

r. *Special circumstances affecting cost—Lumber—Lengthy poles.*]—RIDEAU LUMBER CO. *v.* GRAND TRUNK RY. CO., & CANADIAN PACIFIC RY. CO. (1909), 3 Can. Ry. Cas. 339.—**CAN.**

s. *Fair interests of company—Charges proportionate to cost & labour—Incidence of special service.*]—A ry. co. agreed with colliery owners to carry their coal at rates lower than those charged to other colliery owners, with whom they had no agreement. The co. attempted to justify the preference on the ground that the traffic not covered by the agreement was more costly to carry in consequence of a steep descending incline from the collieries to the main line. The higher rate was imposed whichever direction the coal traffic took, while it passed down the incline in going in one direction only:—*Held:* a charge purporting to be in respect of a special service, such as in respect of the incline, should not have its incidence extended to traffic for which that service was not performed, & payment in respect of such incline should take the form of a fixed reasonable toll payable only for the traffic using the incline. A ry. co. pay no more than a due regard to their own interests if they charge for their services in proportion to their necessary cost, & have only such variation in their rates as there is in the circumstances of their customers affecting the cost & labour of conveyance.—BELLSDYKE COAL CO. *v.* NORTH BRITISH RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 105.—**SCOT.**

t. *Gradients—Milcage rate.*]—A ry. co. carried coal to G. for shipment, from collieries situate on different branches of their line. On one branch

Sect. 3.—Undue preference: Sub-sect. 3, F. (c), (d), (e) & (f).]

& Can. Tr. Cas. 303. *As to* (5) **Follo.** Holland *v.* Festiniog Ry. (1876), 2 Ry. & Can. Tr. Cas. 278.

—— **Competition.**]—*See* Sub-sect. 3, *J., post.*

1150. Economic arrangement—Rebate in excess of saving.]—When the rebate allowed to one customer for haulage represents, in addition to the actual locomotive expenses, the value to the cos. of being able to discharge their loaded trucks outside their station, & in the goods yards of other persons, such rebate is not an undue preference, but a part of a traffic arrangement of general convenience and economy.

Where, on the other hand, a rebate allowed to a customer is clearly in excess of the value of the service of which he relieves a railway co., such rebate is an undue preference, & will not be allowed by the ct.—BELL *v.* LONDON & NORTH WESTERN RY. CO., BELL *v.* MIDLAND RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 185; 33 L. T. 539.

Annotation :—**Refd.** Richardson *v.* Mid. Ry. (1881), 4 Ry. & Can. Tr. Cas. 1.

1151. Reasonable allowance—What is.]—HOLLAND *v.* FESTINIOG RY. CO., No. 1139, *ante.*

1152. —— ——.]—FORWOOD BROTHERS & CO. *v.* GREAT NORTHERN RY. CO., No. 1123, *ante.*

1153. Canal traffic—Less cost & trouble.]—The D. Colliery Co. sent coal from their colliery by canal to K., & were charged 13*d.* Other colliery proprietors whose collieries were also situated on or near the same canal, several miles further from K. than D. Colliery, were charged 13½*d.*; the coal traffic on the canal between D. Colliery & K. was worked with less expense & trouble to the canal owners than the traffic between the other collieries & K. :—*Held :* the D. Colliery Co. were subjected to an undue & unreasonable prejudice & disadvantage by being charged a toll only one half-penny less than the other colliery proprietors.—DENABY MAIN COLLIERY CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1881), 4 Ry. & Can. Tr. Cas. 28.

1154. Junction charge—No statutory authority.]—Charges which a railway co. have no statutory power to make, & which are intended or calculated to prevent, & do in fact prevent the conveyance of traffic on the railway, are a violation of 1854 Act, s. 2.

Deft. co. alleged that 2*d.*, part of a rate charged to appct. was justified as a junction charge to cover a special cost of working, in that, at the junction, traffic passed from one line to another by a steep incline. The incline was not, in fact, as steep as another incline in respect of which no special charge was made & the co. had no statutory authority for making a special charge in respect of the incline :—*Held :* the charge was unjustified & subjected appct. to an unreasonable disadvantage.—YOUNG *v.* GWENDRAETH VALLEYS RY. CO. (1883), 4 Ry. & Can. Tr. Cas. 247.

1155. Average weight of loads—Certainty of return loads—Higher cost of station staff.]—A railway co. sought to justify an inequality in the rates for barley carried to D. & B. respectively on the grounds that (*a*) the traffic of the two places differed greatly in amount, the total traffic of B. being 600,000 tons per annum, of which 55,000 tons were barley, & that of D. 220,000 tons, of which 6,900 tons were barley; (*b*) the truck loads conveyed to D. did not weigh as much per truck as to B., the earnings on the extra weight being all clear profit; (*c*) a considerable proportion of the trucks sent to D. came away empty on the outward journey, whereas loaded waggons into B. were practically certain of a back load; (*d*) the cost of the goods station staff at D. was higher than at B. :—*Held :* (1) a difference of charge could not be sustained on the general ground that the aggregate traffic of the one place exceeded that of the other; (2) some difference might be allowed in respect of the average weight of truck loads; (3) some difference might be allowed in respect of the certainty of back loads from B.; (4) as barley was not a part of the merchandise handled in the goods station either at B. or at D., the cost of the goods staff was no part of the working charges in carrying it; (5) subject to the above allowances & to any other circumstances which might render the one traffic more costly to the co. than the other, the co. must carry on equally favourable terms to B. & D.—GIRARDOT, FLINN & CO. *v.* MIDLAND RY. CO. (1884), 4 Ry. & Can. Tr. Cas. 291.

Annotation :—*Generally,* **Consd.** Greenwood *v.* L. & Y. Ry. (1888), 6 Ry. & Can. Tr. Cas. 39.

1156. Mode of packing—Unfair competition.]—Tomatoes were carried by defts. from D. *viâ* N. to B. & from G. *viâ* N. to B. at through rates. There was a considerable difference in the rates in favour of D. which was explained by the D. traffic being packed in crates & the G. traffic being packed in baskets, with the result that nearly twice the quantity of tomatoes could be carried in a railway truck if packed in crates :—*Held :* (1) the difference in the mode of packing justified the preference given to the D. traffic; (2) the fact that the steamers carrying between D. & N. & belonging to a French railway co., although one of deft. railway cos. was also interested in them, were carrying at too low & probably at an unremunerative freight afforded appcts. no ground for relief.—GUERNSEY MUTUAL TRANSPORT CO., LTD. & ENTWISTLE *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. & LONDON & NORTH WESTERN RY. CO. (1908), 13 Ry. & Can. Tr. Cas. 153; 24 T. L. R. 318.

(d) Competitive Products.

1157. What are—Proof of preference.]—GREENWOOD & SONS *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 1336, *post.*

1158. —— **Ultimate competition.**]—A railway co. carried shipment coal to certain sidings on a ship canal at a lower rate than they carried coal to a trader at the same sidings, such coal, which was in the form of slack, being then manufactured by the trader into patent fuel for shipment :—*Held :* (1) no competition existed between the coal carried for shipment & that carried for the trader; (2) the fact that the trader manufactured the coal carried for him by the railway co. into an article which might ultimately compete with the coal carried by the railway co. for shipment was not the co. charged different rates per ton per mile for the carriage of different descriptions of coal—a gas coal rate & a common coal rate. No such classification was made on the other branch :—*Held :* if by reason of the gradients or otherwise the cost of conveyance of the coal to the ry. co. on the one branch was different from the cost on the other, a proportionate difference might be made by the ry. co. in the mileage rate.—NITSHILL & LESMAHAGOW COAL CO. *v.* CALEDONIAN RY. CO. (1874), 2 Ry. & Can. Tr. Cas. 39.—**SCOT.**

PART X. SECT. 3, SUB-SECT. 3.—F. (d).

1157 i. *What are.*]—A coal co. which raised cannel coal only, a kind of coal that fetched a higher price than ordinary house coal or splint, was charged a higher rate for carriage than was charged for the conveyance of the other kind of coal :—*Held :* so far as regarded the distinction between cannel & splint, this was an undue preference, as splint & cannel coal must be regarded as competitive.—NITSHILL & LESMAHAGOW COAL CO. *v.* CALEDONIAN RY. CO. (1875) 32 L. T. 270.—**SCOT.**

1157 ii. ——]—Manures & city dung & compost are competitive articles.—ABERDEEN COMMERCIAL CO. & ABERDEEN LIME CO. *v.* GREAT NORTH OF SCOTLAND RY. CO. (1878), 39 L. T. 480.—**SCOT.**

bound to be taken into consideration by the railway co. in regulating their charges.—LANCASHIRE PATENT FUEL CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO., GREAT CENTRAL RY. CO., CHESHIRE LINES COMMITTEE & MANCHESTER SHIP CANAL CO. (1904), 12 Ry. & Can. Tr. Cas. 77.

(e) Grouping.

Acts amounting to breach of "equality clause."] —*See* No. 1075, *ante*.

1159. Whether places unreasonably distant—Long route—Practically in same district.]—(1) A trader was charged the same through rates to certain places, for traffic from his siding, as was charged for traffic from a siding situated two or three miles farther from them. Both sidings were situated in the same district, & had been grouped together by the railway co. for through rate purposes:—*Held:* as a through rate was a gross sum of a small amount for conveyance over a long route, it was enough if places that were practically in the same district had the same rate, & no undue prejudice was caused to appct. by the same rate being applicable to both the sidings.

(2) Upon proof that a railway co. had charged more than they were entitled to take under the maximum clause of their special Act, the Comrs. made an order under 1854 Act, s. 2, enjoining the co. to desist in future from exceeding the limit prescribed by their special Act.—LLOYD *v.* NORTHAMPTON & BANBURY JUNCTION RY. CO. (1878), 3 Ry. & Can. Tr. Cas. 259.

1160. 1888 Act, s. 29—Measure of preference.]—(1) Where there is a group rate which is justified on the grounds of commercial convenience, the measure of what amount of preference amounts to an "undue" preference is different from that applicable where no such rate exists.

(2) Appcts.' works were situated at a point on the line of the F. Ry. Co. 18 miles from the junction of the line of that co. with the line of the L. Ry. Co.; other works in the district were situated on the F. Ry. at distances of 27, 28, & 38 miles respectively from that junction. All these works obtained iron ore & coke from the same sources, made the same description of pig iron & sent it to the same markets. The railway cos. grouped all these works together, & charged them a uniform rate of carriage, except that appcts. were charged 6*d.* a ton less than the owners of the other works in respect of the coke:—*Held:* so far as the rate for coke was concerned the railway cos. had made sufficient allowance for the difference in distance between the works; but as regards the pig-iron rates, some of the places grouped together were at such distances as to create an undue preference.—NORTH LONSDALE IRON & STEEL CO., LTD. *v.* FURNESS RY. CO., LONDON & NORTH WESTERN RY. CO., MIDLAND RY. CO., & NORTH EASTERN RY. CO. (1891), 7 Ry. & Can. Tr. Cas. 146; 60 L. J. Q. B. 419; 64 L. T. 122.

1161. —— Application for group rates—What evidence necessary—Public advantage.]—The M. colliery was equidistant from the main line of the T. Ry. Co., appcts., & that of the R. Ry. Co. Both cos. charged uniform mileage rates over their systems, but, owing to the T. Co.'s rate being the higher, traffic sent to C. by that line, though the shorter, cost ½*d.* per ton more. T. Ry. Act, 1879, s. 24, incorporated 1845 Act, s. 90, with a proviso that appcts. should not give any undue advantages to the traffic of any one of the valleys traversed by the co.'s system. Appcts. proposed to reduce their rates from M. colliery to C. to the same sum as charged by the R. Ry. Co., on the ground that while the geographical position of the colliery entitled the colliery owners to a competitive service by the two routes, & appcts. to a share of the traffic, the other collieries on appcts.' line would not be thereby affected in any way:—*Held:* (1) there was not sufficient evidence to break in upon the uniform mileage system established over appcts.' & neighbouring railways, taking into consideration T. Ry. Act, 1879, s. 24, as well as Railway & Canal Traffic Acts.

Semble: (2) no public advantage would be served by the proposed lowering of rate, as the coal would come to C. in any event; (3) no public interest would be served by a particular colliery having an improved train service.

(4) In the exercise of jurisdiction under 1888 Act, s. 29 (3), no order should be made unless the Comrs. are of opinion that all the interests are before the ct., & then only on the fullest possible evidence.—*Re* TAFF VALE RY. CO. (1900), 11 Ry. & Can. Tr. Cas. 89.

Annotation:—As to (4) **Refd.** Chance & Hunt *v.* L. & N. W. Ry., [1909] 1 K. B. 550.

1162. —— Dissolution & regrouping.]—(1) A railway co. carried coke to certain ironworks & grouped them, & the grouping had been held by the Comrs. to be reasonable. Subsequently the railway co. took one of the ironworks out of the group:—*Held:* 1888 Act, s. 29, does not prevent a railway co. from grouping *de novo*, or dissolving a group, or taking one place out of it in the sense of leaving the others in, & not putting that one in.

(2) *Qu.:* whether under 1894 Act, s. 1, a railway co. can be called upon to justify the increase of rates which have been lowered since Dec. 31, 1892, but re-raised to a point not exceeding the level of 1892.—MILLOM & ASKAM HEMATITE IRON CO., LTD. *v.* FURNESS RY. CO., NORTH EASTERN RY. CO., & LONDON & NORTH WESTERN RY. CO. (1903), 12 Ry. & Can. Tr. Cas. 1.

(f) Foreign Goods.

1163. On same footing as home goods—1888 Act, s. 27.]—All inequalities in rates as between home & foreign merchandise are not prohibited; but if the railway co. can justify the admitted differences had the goods in both cases been home goods, the co. are not debarred from relying on those facts as an answer merely because the goods in question are of foreign origin.—MANSION HOUSE ASSOCN. ON RY. TRAFFIC *v.* LONDON & SOUTH WESTERN RY. CO., [1895] 1 Q. B. 927; 9 Ry. & Can. Tr. Cas. 20; 64 L. J. Q. B. 529; 72 L. T. 507; 11 T. L. R. 360; 39 Sol. Jo. 29.

1164. Importation of flour—Allowances to dock company—Consequential charges.]—A dock co. had agreed with defts. to haul empty trucks for imported goods from the point of junction of the dock co.'s line with defts.' line to the point of loading at warehouse, shed, or quay & there to load & cover & rehaul to the point of junction for the sum of 1*s.* 5*d.* per ton. Appcts. had flour mills on the dock premises connected by private siding with the dock co.'s line, whence they sent flour & grain over defts.' line. Defts. paid the

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PART X. SECT. 3, SUB-SECT. 3. —F. (e).

u. Tests used as criteria of discrimination.]—MALKIN & SONS *v.* GRAND TRUNK RY. CO. (1908), 8 Can. Ry. Cas. 183.—CAN.

PART X. SECT. 3, SUB-SECT. 3. —F. (f).

v. On same footing as home goods—Competition with Post Office parcel post.] — EXPRESS TRAFFIC ASSOCN. *v.* CANADIAN MANUFACTURERS ASSOCN. & BOARDS OF TRADE OF TORONTO, MONTREAL & WINNIPEG (1911), 22 O. W. R. 262; 13 Can. Ry. Cas. 169.—CAN.

Sect. 3.—*Undue preference: Sub-sect.* 3, *F.* (*f*) *&* (*g*) *&* *G.*]

dock co. 1*s.* 5*d.* per ton on appcts.' traffic & in consideration of this payment charged appcts. a rate of 1*s.* per ton above the station to station rates. To importers of grain or flour who did not grind it within the dock area defts. charged only station to station rates although they paid the 1*s.* 5*d.* to the dock co. in respect of this traffic under the agreement above mentioned. The dock co. allowed appcts. 8*d.* per ton for loading & covering. Upon appcts. refusing to pay the extra 1*s.* per ton to defts., defts. refused to pay the dock co. 1*s.* 5*d.* on appcts.' traffic & the dock co. withdrew their allowance of 8*d* per ton to appcts. & charged them the sum of 9*d.* per ton for the haulage to the exchange sidings:—*Held:* defts. were unduly preferring the foreign flour & grain over that of appcts.—RANK (JOSEPH) LTD. *v.* GREAT EASTERN RY. CO. (1907), 13 Ry. & Can. Tr. Cas. 131.

(*g*) *Other Cases.*

1165. Grant of facilities—As to storage.]—WEST *v.* LONDON & NORTH WESTERN RY. CO., No. 977, *ante.*

1166. —— As to sidings.]—BEESTON BREWERY CO. *v.* MIDLAND RY. CO. (No. 1), No. 971, *ante.*

1167. Coal storage cells—Higher charges where cells not rented.]—(1) The N. E. Railway Co. carried coals to certain stations on their line for colliery owners only, and at such stations there were cells for the receipt and sale of the coal let to colliery owners for their separate use, at rents averaging less than 3*d.* per ton on the coal sold, & also unappropriated cells for the receipt of coal sent by colliery owners not renting cells. The latter were charged a higher rate of carriage than the colliery owners renting cells, & in addition a charge of 3*d.* per ton in lieu of rent. The rent & charge respectively covered all terminal services, but the services rendered the colliery owners renting cells exceeded those rendered at the unappropriated cells:—*Held:* the extra charge for carriage, & the charge of 3*d.* per ton in lieu of rent, occasioned an undue prejudice to the colliery owners not renting cells.

(2) *Semble:* a railway co. cannot make any terminal charge for merely unloading into a depot where they have no sidings for delivery.—LOCKE *v.* NORTH EASTERN RY. CO. (1877), 3 Ry. & Can. Tr. Cas. 44.

1168. Considerations of distance.]—A difference in the distance the traffic is carried is not of itself a valid answer to a complaint of undue preference under 1854 Act, s. 2, & no conclusive inference is to be drawn either on the one hand from a railway co. not carrying at an equal mileage rate, or not making an equal mileage rate, or not making an equal profit per mile, nor, on the other hand, from the rate for the longer distance, though less per mile, amounting to more for the whole distance, or leaving a larger sum as profit after payment of expenses; & in determining the question whether the lower mileage rate is or is not an undue advantage, it is necessary to consider whether either traffic is able to be carried at a less cost to the railway co. than the other, or whether either traffic is under different conditions as regards competition of routes or other special circumstances.—BROUGHTON & PLAS POWER COAL CO. LTD. *v.* GREAT WESTERN RY. CO. (1883), 4 Ry. & Can. Tr. Cas. 191.

1169. ——.]—(1) Where relatively to distance the rates as between traders are fairly adjusted, but the maximum applicable to the line over which the traffic of one of these is carried is higher than the maximum under other Acts of Parliament applicable to the line over which the traffic of the other is carried, but in both cases the rates charged are below the maximum, the fact that there is not a ratable reduction of the authorised rates below the maximum does not constitute an undue preference of the trader whose traffic is carried on the line to which the higher statutory maximum is applicable, under 1854 Act, s. 2.

(2) The difference in the rates charged to two ironworks situate at different distances from the market to which the traffic of each was sent was a sum insufficient to pay the cost of earning the difference in the two rates; the only reason was that a low rate was necessary to enable the further works to compete with the works nearer to the market:—*Held:* an undue preference to the owners of the further works.

(3) Appcts., except those coming within 1873 Act, s. 13, must show that they are damaged by the undue preference complained of.

(4) If a customer to whom credit has been allowed retains a balance due to a railway co. as a set-off against a balance in dispute on another account, the co. are justified in refusing such customer a further ledger account, without contravening 1854 Act, s. 2.—SKINNINGROVE IRON CO. *v.* NORTH EASTERN RY. CO. (1887), 5 Ry. & Can. Tr. Cas. 244; 3 T. L. R. 785.

Annotation:—As to (1) **Consd.** Spillers & Bakers *v.* Taff Vale Ry. (1903), 90 L. T. 713. I am not at all sure that 1888 Act s. 27 was not passed for the purpose of dealing with the *Skinningrove* case (WRIGHT, J.).

1170. Manipulation of charges.]—BARRY RY. CO. *v.* TAFF VALE RY. CO. (1897), 14 T. L. R. 48, C. A.

1171. Weights of consignments computed by different methods—Absence of competition.]—The rates for the carriage of soap consigned by appcts. from S. to various places by the C. Ry. were calculated upon the gross weight of the consignment, including packing material. Defts. did not serve S. but received from the C. Ry. goods consigned from S. by appcts. for carriage over their line at through rates based on the actual gross weight as ascertained at S. Defts. also themselves accepted at L. for carriage soap consigned by W. & similarly packed at rates calculated on a computed basis of weight, less per package than the gross weight of appcts.' packages. No evidence was given as to the charges made by defts. to W. nor as to the proportion of the through rate received by the defts. from the

PART X. SECT. 3, SUB-SECT. 3, —F. (g).

1168 i. *Considerations of distance.*]—A ry. co., having a right, under their special Act, to charge for 6 miles where the traffic was carried for less than 6 miles, agreed with B. for a varying scale of charges for traffic for distances between 3 & 6 miles, under which they charged 7*d.* per ton for a distance of 5 miles 54 chains, & refused to apply the like scale to A.'s traffic, which they charged 6*d.* per ton for a distance of 3 miles 57 chains:—*Held:* the disproportion was not an undue preference, having regard to the short distance clause of the special Act.—MERRY & CUNNINGHAME *v.* GLASGOW & SOUTH WESTERN RY. CO. (1884), 4 Ry. & Can. Tr. Cas. 383.—SCOT.

a. *Delay in giving benefit of reduced rates.*]—A ry. co. had at different times reduced particular rates for traffic from G. to L., but had not given applct.'s traffic the benefit of such reductions till long after the authorised dates for their coming into operation, & after the dates when they took effect for similar traffic from other traders in G., carrying on the same business as applct.:—*Held:* the applct. had been subjected to an undue prejudice & disadvantage in & about the sale & disposal of his goods in competition with the other traders in G., carrying on a similar business with himself.—MACFARLANE & CO. *v.* NORTH BRITISH RY. CO. (No. 2) (1884), 4 Ry. & Can. Tr. Cas. 269.—SCOT.

C. Ry. in respect of appcts.' traffic. Defts. dealt directly both with the appcts. & W. at some of their stations other than L. but there was no evidence to show that they did not treat both firms on the same terms at such other stations. Soap consigned to B. by W. from L. & by appcts. from S. passed over for a part of the respective transits the same portion of the defts.' line :—*Held :* in the absence of evidence as to the charges made to appcts. & W. respectively no *primâ facie* case of undue preference had been made out merely by proving that the weights of the respective consignments were computed by different methods.—LEVER BROTHERS LTD. *v.* MIDLAND RY. Co. (1909), 13 Ry. & Can. Tr. Cas. 301 ; 101 L. T. 438 ; 25 T. L. R. 768, C. A.

Annotation :—Refd. Olympia Oil & Cake Co. *v.* N. E. Ry. (1913), 30 T. L. R. 236.

G. As regards Competing Routes.

See 1921 Act, ss. 52, 75 (3).

1172. Company controlling two routes—Railway & canal.]—Upon a reference to the Railway Comrs. by the Board of Trade under Board of Trade Arbns. etc., Act, 1874 (c. 40), s. 6, they reduced the tolls charged by the G. W. R. Co. upon the K. & A. Canal upon the complaint of traders using the canal under the provisions of the Great Western Act, 1852, on the ground that in consequence of the tolls being too high in proportion to competitive railway rates, the traffic of the canal had greatly decreased.—WILTS, SOMERSET & BERKS CANAL TRADERS' ASSOCN. *v.* GREAT WESTERN RY. Co. (1877), 3 Ry. & Can. Tr. Cas. 20.

1173. —— Railway & steamers.]—(1) Steamers were provided & worked for the conveyance of mails & passengers between H. & K. by D. Steamboat Co., under statutory powers & agreements obtained & made between that co. & N. W. Ry. Co. The charges for the conveyance of passenger traffic by such route (called the mail route) between K. & L. etc., were fixed as regards the through rates by N. W. Ry. Co. The N. W. Ry. Co. subsequently established a service of steamers for passengers between H. & D. called the N. route. The effect of the statutory agreement between the two cos. was to give N. W. Ry. Co. a complete control over the fares of both routes, as if they were sole owners of both, & the provisions of the 1854 Act (which were made expressly applicable to both those lines of steamers) applied to both routes as if they had been parts of the same system. The N. W. Ry. Co's. service of steamers was almost equal to the mail service in point of speed & accommodation, & its fares were much lower. The services between H. & D., the mileages, adding that from K. to D., the accommodation by, & the working costs of the vessels of the two cos. were all substantially the same :—*Held :* on the facts, the amounts by which the fares by the mail route were more than those by the N. route, whether in regard, to the fares charged for the entire service to D. or the portions due to the land journey only, were excessive & an undue prejudice to the traffic by the former route.

(2) The D. Steam Packet Co. applied for through rates for passengers between K. & L., *viâ* the co's. steamers & N. W. Co's. railway :—*Held :* the D. Steam Packet Co. having agreed, under statutory powers, that the charges for the conveyance of passengers traffic between L. & K. were to be fixed from time to time, as regards the through rates, by the railway co., the application must be refused.

(3) A passenger desiring to use an ordinary train for part of a journey, for which he has taken a through ticket entitling him to travel by express is not entitled to any deduction from the through fare on account of the difference of the service.—CITY OF DUBLIN STEAM PACKET CO. *v.* LONDON & NORTH WESTERN RY. Co. (1881), 4 Ry. & Can. Tr. Cas. 10.

1174. —— Consignor's right of choice—Consignor's directions.]—A railway co. who had two routes by which they could carry appct.'s traffic, disregarded the consignor's orders by carrying by a different route from that by which the traffic was consigned. This change of the route did not affect the rate which the co. charged for the conveyance of the traffic, & appct. was not in any worse position than he would have been put in if the co. had carried the traffic over the desired route :—*Held :* the co. had not contravened 1854 Act, s. 2.—DONALD *v.* NORTH EASTERN RY. Co. (1888), 6 Ry. & Can. Tr. Cas. 53.

1175. Alternative forwarding routes—Indirect compulsion.]—Appcts.' line & the G. N. line each formed with defts.' line a continuous line of railway from certain collieries to stations on defts.' line, & were in competition with each other. The through rates by each were equal but the apportionment as to the traffic coming over the G. N. line was the more favourable to defts. The G. N. Co. handled traffic in as convenient a manner as did appcts. Defts. let land at the above stations for use as coal wharves, imposing & enforcing on each of their tenants, as part of the terms of letting, a condition that, the rates being equal, traffic consigned to these wharves should travel over the G. N. route :—*Held :* this did not constitute an undue & unreasonable preference of or advantage to the G. N. Co., & did not deprive appcts. of reasonable facilities for conveying their traffic within 1854 Act, s. 2.—LONDON & NORTH WESTERN

PART X. SECT. 3, SUB-SECT. 3.—G.

b. *Company controlling two routes—Equality of facilities.*]—A ry. co. having the control of 2 competing routes ought to afford equal facilities to the public by both routes.—LONDONDERRY PORT & HARBOUR COMRS. *v.* GREAT NORTHERN RY. CO. OF IRELAND, LONDON & NORTH WESTERN RY. CO., & DUNDALK, NEWRY, & GREENORE RY. Co. (1887), 5 Ry. & Can. Tr. Cas. 282.—IR.

c. —— —— *Through booking—Timing of trains—Advertisement of routes.*]—Under a working agreement the working co. was to work the railway of the worked co. as part of their system of railways, & "convey traffic thereo in a proper & convenient manner, so as fairly to develop the traffic of the district" :—*Held :* (1) the trains on the worked line must be timed, so as to correspond with the trains on the lines of the working co. rather than with the trains of another co. with which they might be made to connect ; (2) the working co. must as fully advertise a competitive route over the line of the worked co. as they did the route on their own line which competed with it ; (3) the working co. must give equal facilities as to through booking *viâ* the worked line, as *viâ* their own, must not prefer their own route in the matter of rates, & must not fix the rates on the worked line too high in proportion to the rates on their own line.—CLONMEL TRADERS (DWYER, HAYES, & MCCARTHY) & SOUTHERN RY. Co. *v.* WATERFORD & LIMERICK RY. Co. (1881), 4 Ry. & Can. Tr. Cas. 92.—IR.

d. —— —— *Arrangement of services.*]—Where a ry. co. are owners of 2 or more lines forming parts of alternative routes between the same places it is their duty to see that the service is as good one way as it is the other, subject to what may be required for the general purposes of their traffic. They are at perfect liberty to send all the traffic they have the control of in whichever direction they like, & to canvass as much as they please for consignments in the direction which suits themselves best. But so far as & to whatever extent, they, without sufficient excuse, give a worse service in one direction, than they supply in the other, they are guilty under 1854 Act, s. 2, of an undue prejudice to the traffic desirous of using the route in which the service is worse.—AYRSHIRE & WIGTOWNSHIRE RY. Co. *v.* GLASGOW & SOUTH WESTERN RY. Co., & PORTPATRICK & WIGTOWNSHIRE JOINT COMMITTEE (1888), 6 Ry. & Can. Tr. Cas. 26.—SCOT.

Sect. 3.—Undue preference: Sub-sect. 3, G., H., I. & J.]

RY. CO. *v.* SOUTH EASTERN RY. CO., LONDON CHATHAM & DOVER RY. CO. & SOUTH EASTERN & CHATHAM RY. CO'S., MANAGING COMMITTEE, [1911] 1 K. B. 534; 14 Ry. & Can. Tr. Cas. 165; 80 L. J. K. B. 484; 104 L. T. 349; 27 T. L. R. 172.

Competing companies.]—*See* Nos. 1193 *et seq., post.*

Sea competition.]—*See* Nos. 1186 *et seq., post.*

H. As regards Steamers.

Acts amounting to breach of "equality clause."]—*See* No. 1073, *ante.*

1176. Contract with steamboat owner—To detriment of other owners.]—(1) The S. Co. & the R. Co. respectively owned passenger steamboats plying between S. & R.; & the B. Ry. Co. carried passengers by their own line to S., & entered into a traffic arrangement with the R. Co. that their vessels should run between S. & R. in connection with the line of the railway co., & issued through tickets to passengers from places on their line to R., available by the boats of the R. Co., to the exclusion of the boats of the S. Co.:—*Held:* in the circumstances this arrangement did not amount to an undue preference of the R. Co.

(2) The S. Co. alleged that the fares charged by the railway co. in respect of the part of the journey performed on the boats of the R. Co. were unreasonably high:—*Held:* this was a question which could not be raised by the S. Co. against the railway co.—SOUTHSEA & ISLE OF WIGHT STEAM FERRY CO. *v.* LONDON & SOUTH WESTERN RY. CO. & LONDON BRIGHTON & SOUTH COAST RY. CO. (1876), 2 Ry. & Can. Tr. Cas. 341.

I. Interests of Public.

1845 Act, s. 90.]—*See* No. 1075, *ante.*

1177. 1854 Act, s. 2—Alleged preference not per se detrimental to complainant.]—The test of the character of an act which is alleged to be undue preference under 1854 Act, s. 2 is, where the alleged preference is not, *per se*, detrimental to complainant, its tendency in respect of public benefit & convenience.—LEES *v.* LANCASHIRE & YORKSHIRE RY. CO. (1874), 1 Ry. & Can. Tr. Cas. 352; 31 L. T. 769.

1178. 1888 Act, s. 27 — "The public."] — (1) *Semble:* the effect of 1888 Act, s. 27 is not to limit the ct. in dealing with questions of alleged undue preference to the consideration whether the lower charge is necessary for the interests of the public.

(2) An association of traders in grain & flour at L. complained against deft. co. for undue preference by charging lower rates from C. to B. in comparison with those charged from L. to B., a shorter distance. The lower rates had been fixed with reference to competition with other lines for traffic from C. to B.:—*Held:* on the facts of the traffic, there was undue preference.

(3) However difficult it may be in any particular case to say what is or what is not in the interests of the public, the public must be a wider one than that of one of the two localities concerned (WILLS, J.)

(4) It is enough to warrant an application under 1888 Act, s. 7, calling upon the ct. to interfere, if the practices complained of, whether their present effect be serious or trivial, are in themselves objectionable, & if they may lead to consequences legally injurious to the interests of those represented by appcts.—LIVERPOOL CORN TRADE ASSOCN. *v.* LONDON & NORTH WESTERN RY. CO., [1891] 1 Q. B. 120; 7 Ry. & Can. Tr. Cas. 125; 60 L. J. Q. B. 76; 63 L. T. 564; *subsequent proceedings, sub nom.* LIVERPOOL CORN TRADERS' ASSOCN. *v.* GREAT WESTERN RY. CO. (1892), 8 Ry. & Can. Tr. Cas. 114, C. A.

1179. —— —— In district affected.] — The public referred to in 1888 Act, s. 27 is the public of the locality or district affected, & any considerable proportion of the population in general, as opposed to an individual or association of individuals, will satisfy the description. Appcts. complained that the rates charged by the defts. for the carriage of grain and flour from the neighbouring ports to B. were lower than those charged for similar merchandise from K. to B., a shorter distance, & amounted to an undue preference. It was proved (*a*) that traders using K. were able notwithstanding the difference of rates to compete effectively at B. with traders who sent grain traffic from C.; (*b*) that the rates from C. to B. had been fixed with reference to an effective competition, & that without them defts. would lose the traffic from C. altogether; (*c*) that the existing inequality in rates must be maintained if B. was to have the benefit of both sources of supply:—*Held:* (1) the preference was justified; (2) the proper construction of s. 27 was that the Comrs. could take the matters mentioned therein into consideration only so far as they thought reasonable; they could therefore decline to take them into consideration at all, or take them into consideration wholly, or take part of them into consideration, & to take a thing into consideration did not bind them to apply it; they might think whether they would apply them or not, but they might come to the conclusion that they could not apply them: (3) it would be contrary to the benefit of the public to raise the rates complained of; (4) the inequality which existed in the case was not an inequality, but was such that it should be maintained.—LIVERPOOL CORN TRADERS' ASSOCN. *v.* GREAT WESTERN RY. CO. (1892), 8 Ry. & Can. Tr. Cas. 114; 8 T. L. R. 783, C. A.

Annotations:—As to (1) **Refd.** Manchester Ship Canal Co. *v.* Mid. Ry. (1897), 10 Ry. & Can. Tr. Cas. 54. *As to* (3) **Refd.** Anglo-American Oil Co. *v.* Cale. Ry. & N. B. Ry. (1916), 16 Ry. & Can. Tr. Cas. 133.

1180. —— —— —— Any considerable portion of population.]—CASTLE STEAM TRAWLERS, LTD. *v.* GREAT WESTERN RY. CO., No. 1183, *post.*

1181. —— Agreement with municipality—Avoiding loss of trade.]—Appcts., corn millers & merchants at Y., in the course of their business brought cargoes of wheat up the river O. to Y. They complained that resps., as trustees for

PART X. SECT. 3, SUB-SECT. 3.—H.

1176 i. *Contract with steamboat owner—To detriment of other owners.*]—Where N. did not allege that a ry. co. had refused to carry his person on the same terms as those exacted for carrying other persons, nor that the co. had refused to carry goods in which he was concerned as owner, consignee, or otherwise, on the same terms as those on which the goods of others were carried; but only that he was the owner of a ship & that the co. would not enter into a contract with him to carry goods by his vessel similar to a contract they had made for that purpose with the owner of another ship:—*Held:* N. was not entitled to found upon 1854 Act, s. 2.—NAPIER *v.* GLASGOW & SOUTH WESTERN RY. CO. (1865), 1 Ry. & Can. Tr. Cas. 292.—**SCOT.**

e. Refusal of through rates—Granted to other owners at other ports.]—The granting of through rates to steamboat owners at other ports, & the refusal of such rates to a steamboat owner at a particular port, is not an undue preference of which either the steamboat owner or the Harbour Board at the latter port can complain under 1854 Act, s. 2.—AYR HARBOUR TRUSTEES & BARR (P.) & CO. *v.* GLASGOW & SOUTH WESTERN RY. CO., CALEDONIAN RY. CO., NORTH BRITISH RY. CO., & NORTH EASTERN RY. CO. (No. 1) (1881), 4 Ry. & Can. Tr. Cas. 81.—**SCOT.**

improving the navigation of the river O., charged L., a competitor in trade with appcts., a less sum by way of toll for the use of the river O. navigation than they charged appcts.

Resps. had agreed to accept a maximum annual payment of £600 from L. in place of the tolls which would otherwise have been payable, & sought to justify the agreement on the ground that at the date it was entered into L. contemplated transferring his business to H., which would have seriously diminished the tolls & would even have imperilled the maintenance of the navigation, & that such a removal would also have caused a serious loss to the ratepayers of the city, &, moreover, that L.'s business had increased to a far greater extent than was contemplated when the agreement was entered into. Resps. got no benefit of any increase of traffic produced by the lowering of the traffic rate; if the traffic increased they were not to get any benefit beyond the £600; if the traffic fell off the payment was to be reduced below £600 unless there was sufficient traffic to make up that sum:—*Held:* the difference in the charge was an undue preference.—FAIRWEATHER & Co. *v.* YORK CORPN. (1900), 11 Ry. & Can. Tr. Cas. 201; *sub nom.* MILLS, FAIRWEATHER & Co. *v.* YORK CORPN., 17 T. L. R. 19.

Annotations:—**Consd.** Holwell Iron Co. *v.* Mid. Ry., [1909] 1 K. B. 486. **Refd.** Holwell Iron Co. *v.* Mid. Ry., [1910] 1 K. B. 296.

1182. —— Securing competition—Of collieries.]—(1) A railway co., under an agreement, allowed a certain rebate upon the total annual carriage accounts paid by R. in respect of the carriage of coal from collieries situated on the railway co.'s system to all stations or places in the United Kingdom, other than stations on the G. E. Ry. outside L., but did not allow the same rebate on similar traffic of appcts. who were trade competitors of R.:—*Held:* the terms & conditions contained in the agreement with R. did not afford a justification for the railway co. making a difference between R. & appcts. as regards rebate to the extent complained of.

(2) The words "Rebates are allowed to coal merchants off their coal traffic accounts in certain cases & upon certain conditions, where the annual tonnage carried exceeds 25,000 tons. Particulars of the conditions qualifying merchants to this allowance may be obtained on application to the general manager," inserted in the rate-books were not sufficient to disclose the existence of the rebate in accordance with 1873 Act, s. 14.—CHARRINGTON, SELLS, DALE & Co. *v.* MIDLAND RY. Co. (1901), 11 Ry. & Can. Tr. Cas. 222; 17 T. L. R. 761

Annotation:—*As to* (2) **Refd.** British Portland Cement Manufacturers & Nelson *v.* G. E. Ry., Mid. Ry. & L. & N. W. Ry. (1914), 15 Ry. & Can. Tr. Cas. 213.

1183. —— —— Of fishing markets—Prosperity of local industry.]—Appcts., fish trawlers at S., complained of the railway rates for fish by passenger train from S. to L., alleging that those rates in relation to those charged for the same class of traffic from M. to L. constituted an undue preference to the M. traders. M. is 69 miles farther from L. than S. but the rates charged for the conveyance of fish by passenger train from M. were the same as charged for the like traffic from S. The rates from M. were fixed having regard to competition with the other fishing ports in the British Isles. The railway co. ran a fast goods train from S. by which fish could be sent at lower rates than from M. whence all the fish must be sent by passenger train. From M. to S. there was competition by sea with the railway transit by land:—*Held:* (1) the existing M. rates were justified inasmuch as it was in the public interest that as many avenues of approach as possible should be kept open to L. for fishing markets & also inasmuch as it was in the interest of a considerable community at & around M. that its fish industry should be enabled to continue to thrive; (2) there was no evidence to show that the existing S. rates were in relation to those from M. unreasonable or excessive.

(3) The ct. has no general power to reduce rates, & can make an order only where they are so high in relation to other rates as to amount to an undue prejudice.

(4) The expression "the public" in 1888 Act, s. 27 (2), includes any considerable portion of the population not being the parties or their servants, & therefore includes the inhabitants of any district dependent for its prosperity on any given industry or trade.—CASTLE STEAM TRAWLERS, LTD. *v.* GREAT WESTERN RY. Co. (1908), 13 Ry. & Can. Tr. Cas. 145; 24 T. L. R. 317.

1184. —— Difference in shipment & works rate.]—(1) The mere fact that a railway co. carrying coal from a colliery charge a higher rate for carriage of coal over the same length of line to traders' works, all traders being charged an equal rate, than they do for coal for shipment, is not of itself sufficient to give a trader a right to apply to the court for reduction of the works rate, & such difference between the works rate & the shipment rate does not necessarily show an undue preference or an undue prejudice within Railway & Canal Traffic Acts.

(2) *Semble:* in such case, the fact that the rates are charged by the railway co. to & paid by the colliery co., & not directly charged to or paid by a trader himself in the first instance, does not prevent the trader from applying to the ct. under the Railway & Canal Traffic Acts, if in substance the charge is made so as to affect the trader's interest.—SPILLERS, BAKER & Co. *v.* TAFF VALE RY. Co. (1903), 12 Ry. & Can. Tr. Cas. 70; 90 L. T. 713; 20 T. L. R. 101.

1185. —— Development of new industry.]—A complaint was made that railway rates constituted an undue preference in favour of certain cos.:—*Held:* (1) it was no defence that the rates were originally fixed with a view to the development of a new industry, or that the traffic of appcts., who were merchants, was not comparable with that of the cos., who were manufacturers; (2) the rates complained of could not be justified, & consituted an undue preference; (3) the proviso in 1888 Act, s. 12, applied to a claim for damages in respect of undue preference.—ANGLO-AMERICAN OIL Co., LTD. *v.* CALEDONIAN RY. Co. & NORTH BRITISH RY. Co. (1916), 16 Ry. & Can. Tr. Cas. 133.

J. Interests of Carrier.

1186. Effect of competition—Sea competition.]—*Re* RANSOME *v.* EASTERN COUNTIES RY. Co., No. 1148, *ante.*

1187. —— ——.]—(1) A railway co. charged for the conveyance of coal to various places on their line, commencing a minimum charge for a distance not exceeding six miles; succeeding

PART X. SECT. 3, SUB-SECT. 3.—J.

1. Development of traffic—Rebate to shipowning trader.]—Appcts., millers & corn merchants at L., complained that while the rate charged to the public on grain carried from D. to L. was 9*s.* a ton, the ry. co. allowed G., a miller at K., on grain they carried for him from D. to L. a rebate of 6*s.* G. was a shipowner as well as a miller, & a contract entered into with him by the ry. co. provided that he should be their agent for the S. district, & should use every effort to develop a goods

Sect. 3.—Undue preference: Sub-sect. 3, J.; sub-sect. 4.]

miles were charged, up to twenty 1*d.*, up to sixty, about ½*d.*, over sixty, about ¼*d.*, per mile, with a difference of not less than 1*d.* between two consecutive rates. The rates of the scale were lower than the local coal rates of the co. It did not appear that there was a greater disproportion in relation to distance in the charges than in the cost of carriage to the co. or than was justified by sea competition, but it did appear that in some instances the scale was not equally applied:—*Held:* if the principle on which the scale was graduated was a fair consideration of the cost to the co. of carrying coals for the different distances, or was justified by sea competition, it was not a valid objection to the scale that it was better adapted to the business of some merchants than of others, & that its low rates for long distances were useless to those who dealt in the seaborne coal.

(2) 1854 Act does not prevent a railway co. from having special rates of charge to a terminus to which traffic can be carried by other modes of carriage with which theirs is in competition.—FOREMAN *v.* GREAT EASTERN RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 202.

1188. —— ——.]—Pltf. was a registered officer of a co., the proprietors of iron & tinplate works, situate near defts.' railway, & 12 miles distant from the port of S. on defts.' railway to L. Defts. charged the co. for the carriage of iron & tin plates over their line from the co.'s works to L. more than they charged other manufacturers of iron & tin plates, whose works were situate within a radius of six miles of S., & further, therefore, from L. than pltf.'s co.'s works. The lower rate was fixed by defts. as the charge for the carriage of the goods of these manufacturers within the six miles' radius in order to enable defts. to compete with the sea carriage between S. & L.; by reason of the lesser charge these manufacturers who were thus favoured were enabled to sell their plates at a lower price than pltf.'s co.:—*Held:* the lower rate for a longer distance was an undue & unreasonable preference & contravened 1854 Act, s. 2; & (2) pltf. was entitled to maintain an action to recover the amounts paid by his co. to defts. in excess of the lower rate.—BUDD *v.* LONDON & NORTH WESTERN RY. CO. (1877), 4 Ry. & Can. Tr. Cas. 393; 36 L. T. 802; 25 W. R. 752.

Annotations:—As to (1) **Consd.** Liverpool Corn Trade Assocn. *v.* L. & N. W. Ry., [1891] 1 Q. B. 120. **Dtd.** Phipps *v.* L. & N. W. Ry., [1892] 2 Q. B. 229. *Budd v. L. & N. W. Ry. Co.* is as a decision unquestionably no longer law (LORD HERSCHELL). **Refd.** Merry & Cunninghame *v.* G. & S. W. Ry. (1884), 4 Ry. & Can. Tr. Cas. 383; Londonderry Port & Harbour Com. *v.* G. N. Ry. (Ireland), & L. & N. W. Ry. & Dundalk, Newry & Greenore Ry. (1887), 5 Ry. & Can. Tr. Cas. 282. *As to* (2) **Consd.** Murray *v.* G. & S. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 456.

1189. —— ——.]—MUNTZ'S METAL CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO., No. 1345, *post.*

1190. —— **Agreement to carry for fixed period—At reduced rates.**]—DIPHWYS CASSON SLATE CO., LTD. *v.* FESTINIOG RY. CO., No. 1149, *ante.*

1191. —— **Adequate consideration.**]—(1) The N. W. Ry. Co. carried goods by their railway for complainants, brewers at B., & charged them & the public generally for cartage & terminal services there. T. & C., who were also brewers at B., had breweries connected with the M. R. Co.'s station at that place by continuous railway communication; the goods which they sent or received by the M. line were loaded & unloaded on their own premises by their servants, & they were consequently not charged by the M. R. Co. any rate for cartage or terminal services.

The N. W. Ry. Co., in order to compete with the M. Ry. Co. for the carriage of the goods of T. & C., carted & loaded their goods gratuitously. There was nothing to show that there was a saving of cost to the co. by reason of the quantity of goods carried for T. & C. to compensate for the loss of the cartage & terminal charges, & T. & C. were the only firms not charged:—*Held:* there was no sufficient ground for the arrangements made in their favour.

(2) To justify a difference made by a railway co. in favour of one or more individual members of their general class of customers there must be an adequate consideration to the co. lessening the costs to them of the services rendered to such individual members of the general class; it is not sufficient that the co. merely desire to attract the traffic from another line to themselves, especially where the favour thus shown to a few is prejudicial to many others in the same trade as the favoured persons.—THOMPSON *v.* LONDON & NORTH WESTERN RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 115; 33 L. T. 32.

Annotation:—As to (1) **Apprvd.** Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254.

1192. —— **Cartage rebates.**]—(1) 1845 Act, s. 90, requires equality of tolls for similar services rendered by railway cos. to all persons, & 1854 Act, s. 2, forbids the giving of any undue or unreasonable preference or advantage to any particular person or co. A charge made by a railway against A. for services rendered by that co. to him must not, therefore, be greater than the charge made by the same co. against B. for rendering him services of the like nature.

E. was a brewer at B., where three railways had their stations. With one of these railways, M., certain brewers in the town had direct communication by sidings, which enabled the goods to be sent to the trains, & taken from the trains of railway M. with greater ease & less loss of time than by the way of ordinary cartage. M. charged them nothing for cartage, & made a rebate in the charge for station to station conveyance. These brewers had no such communication with Railway N. W., but it was often convenient for them to send by that railway; & the directors of that railway, in order to compete with railway M., allowed these particular brewers the same advantages as to cartage rebate as railway M. did. As to all others in the same trade, the directors of the railway N. W. made the ordinary charge for cartage, & allowed no rebate on the charge for conveyance on the line:—*Held:* this was an inequality & an undue preference.

(2) E., one of the persons thus paying the higher rate, had for some time paid it in ignorance of the facts, but afterwards, on finding that he was subject to the higher charge, paid it under protest:—*Held:* he was entitled to recover back in an action for money had & received the difference he had so paid under protest.—LONDON & NORTH WESTERN RY. CO. *v.* EVERSHED (1878), 3 App. Cas. 1029; 39 L. T. 306; 26 W. R. 863; *sub nom.* EVERSHED *v.* LONDON & NORTH WESTERN RY. CO., 48 L. J. Q. B. 22; *affg.* S. C. *sub nom.* EVERSHED

traffic from & to that district & to & from L. & N.-W. stations *viâ* D. & H., & should receive from the ry. co. on all such traffic carried partly by his steamers & partly by their railway a commission of 6*s.* per ton:—*Held:* the differential charge on the railway amounted to an undue preference of G. —BANNATYNE & SONS, LTD. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND (1904), 12 Ry. & Can. Tr. Cas. 105.—SCOT.

v. LONDON & NORTH WESTERN RY. CO. (1877), 3 Q. B. D. 134, C. A.

Annotations :—As to (1) **Folld.** Budd *v.* L. & N. W. Ry. (1877), 36 L. T. 802. **Consd.** Murray *v.* G. & S. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 456 ; Denaby Main Colliery Co. *v.* M. S. & L. Ry. (1885), 11 App. Cas. 97. **Dbtd.** Phipps *v.* L. & N. W. Ry., [1892] 2 Q. B. 229. **Consd.** Charrington, Sells, Dale *v.* Mid. Ry. (1901), 11 Ry. & Can. Tr. Cas. 222 ; A.-G. *v.* Long Eaton U. D. C., [1914] 2 Ch. 251 ; Chance & Hunt *v.* G. W. Ry., L. & N. W. Ry., Mid. Ry. & North Staffordshire Ry. (1914), 15 Ry. & Can. Tr. Cas. 241. **Refd.** Stone *v.* Mid. Ry. (1903), 72 L. J. K. B. 377 ; North Staffordshire Ry. *v.* Edge, [1920] A. C. 254. *As to* (2) **Consd.** Denaby Main Colliery Co. *v.* M. S. & L. Ry. (1885), 11 App. Cas. 97.

1193. ——.]—(1) The fact that a trader has access to a competing route for the carriage of his goods may be taken into consideration by the Railway Comrs. or the ct. in deciding whether lower tolls or rates charged to such trader by a railway co. constitute an undue preference within 1854 & 1888 Acts.

(2) *Held :* in respect of past breaches of an obligation to give no undue preference, there was but one way of redressing the inequality, & that was by reducing the past charges which had been paid by appcts. to what their rivals in trade had paid. Appct. was therefore entitled to recover from defts. as damages the amount he had been overcharged.—PHIPPS *v.* LONDON & NORTH WESTERN RY CO., [1892] 2 Q. B. 229 ; 8 Ry. & Can. Tr. Cas. 831 ; 61 L. J. Q. B. 379 ; 66 L. T. 721 ; 8 T. L. R. 419, C. A.

Annotations :—As to (1) **Consd.** Daldy *v.* Mid. Ry., G. E. Ry. & L. T. & S. Ry. (1900), 10 Ry. & Can. Tr. Cas. 303 ; Holwell Iron Co. *v.* Mid. Ry., [1910] 1 K. B. 296 ; A.-G. *v.* Long Eaton U. D. C., [1914] 2 Ch. 251. **Refd.** Liverpool Corn Trade Assocn. *v.* G. W. Ry. (1892), 8 T. L. R. 519 ; Fairweather *v.* York Corpn. (1900), 11 Ry. & Can. Tr. Cas. 201 ; *Re* Taff Vale Ry. (1900), 11 Ry. & Can. Tr. Cas. 89 ; Charrington, Sells, Dale *v.* Mid. Ry. (1901), 17 T. L. R. 761 ; Stone *v.* Mid. Ry. (1903), 72 L. J. K. B. 377 ; Abram Coal Co. *v.* G. C. Ry. (1905), 12 Ry. & Can. Tr. Cas. 125 ; Dublin & Manchester S.S. Co. *v.* L. & N. W. Ry., [1914] 2 K. B. 192 ; North Staffordshire Ry. *v.* Edge, [1919] 1 K. B. 367.

1194. —— **Shorter competing route.**]—(1) Appcts. consigned coal from their collieries by way of defts.' railway to W., a distance of 31 miles. E. also consigned coal from his collieries by way of defts.' railway to W., a distance of 33 miles. Defts. charged the appcts. for the conveyance of the coal traffic between the two points 2*s.* 1*d.* a ton, & E. 1*s.* 9*d.* a ton. Both appcts. & E. had an alternative route to W. by the line of another co. By the alternative route the distance between E.'s collieries was 20 miles, & between appcts.' colliery & W., 27 miles, & the rate of 1*s.* 9*d.* per ton was also the rate charged by the other co. to E. by such shorter route. Defts. contended that the existence of that shorter alternative route gave E. a geographical competitive position which justified the lower rate, & that to apply the mileage principle, where competitive routes exist, would shut up the longer route, which was not in the interests of the public :—*Held :* the difference of 4*d.* per ton in favour of E. was an undue preference, there not being sufficient public interest to justify so great a difference.

(2) Subsequently defts. reduced the rate charged to appcts. to 2*s.* per ton :—*Held :* the preference of 3*d.* per ton given to E. was neither undue nor reasonable.—ABRAM COAL CO. *v.* GREAT CENTRAL RY. CO. (1905), 12 Ry. & Can. Tr. Cas. 125 ; 21 T. L. R. 264.

1195. —— ——.]—(1) The practice of a railway co. of computing the weight of bricks, by weighing a certain limited number of bricks as they come from the kiln & then from such ascertained weight computing the weight per 1000 cannot be objected to provided the computations are made fairly & at reasonably short intervals.

(2) A railway co. carried to L. competitors' bricks under similar conditions from a point M., 7 miles further down the line than W. S., whence they carried appcts. bricks to L. but they charged appcts. a higher rate, alleging competition by another railway to L. who served by means of a shorter route neighbouring works also belonging to appcts.' competitors at E., where all bricks required for L. might be manufactured. In that case all the bricks required at L. from appcts.' competitors would be carried by the other railway co. from E. :—*Held :* the preference was not justified.—EASTWOOD & CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO. (1907), 13 Ry. & Can. Tr. Cas. 137.

Competing routes owned by same company.]—*See* Sub-sect. 3, G., *ante.*

1196. Threatened loss of traffic—Tramway connection constructed by favoured party.]—A railway co. agreed with the lessees of certain collieries to carry their coals at a somewhat lower rate of tonnage than they carried for others, in consideration of the owner of the collieries having laid out a large sum in constructing tramways to connect them with the railway : they also made a further reduction, under the influence of a threat, that, unless they acceded to the terms proposed by the lessees, the owner would construct another line of railway direct from the collieries to the place of shipment, for the use of his tenants, & so would divert from the co. a very considerable & essential portion of their traffic :—*Held :* neither of these was a justifiable reason for the undue preference thus given.—*Re* HARRIS & COCKERMOUTH & WORKINGTON RY. CO. (1858), 3 C. B. N. S. 693 ; 1 Ry. & Can. Tr. Cas. 97 ; 27 L. J. C. P. 162 ; 30 L. T. O. S. 273 ; 4 Jur. N. S. 239 ; 6 W. R. 209 ; 140 E. R. 914.

Annotations :—**Consd.** Budd *v.* L. & N. W. Ry. (1877), 36 L. T. 802 ; Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254 ; Distington Iron Co. *v.* L. & N. W. Ry., Furness Ry., & Cleator & Workington Ry. (1889), 6 Ry. & Can. Tr. Cas. 108 ; Liverpool Corn Trade Assocn. *v.* L. & N. W. Ry., [1891] 1 Q. B. 120. **Expld.** Phipps *v.* L. & N. W. Ry., [1892] 2 Q. B. 229. **Refd.** *Re* Jones & Eastern Counties Ry. (1858), 3 C. B. N. S. 718 ; Diphwys Casson Slate Co. *v.* Festiniog Ry. (1874), 2 Ry. & Can. Tr. Cas. 73 ; Rhymney Iron Co. *v.* Rhymney Ry. (1888), 6 Ry. & Can. Tr. Cas. 60. **Mentd.** *Re* Nicholson *v.* G. W. Ry. (1860), 7 C. B. N. S. 755 ; R. *v.* Ry. Comrs. & Distington Iron Co. (1889), 22 Q. B. D. 642.

1197. ——.]—FAIRWEATHER & CO. *v.* YORK CORPN., No. 1181, *ante.*

See, also, Nos. 1059, 1123, 1141, 1142, 1148, 1169, *ante.*

SUB-SECT. 4.—EFFECT OF AGREEMENT.

See 1921 Act, s. 44 (3).

1198. With complainant—Authority of agent—Effect of subsequent statute.]—A contract was made between the agents of a railway co. & the owners of a coal mine, to carry the coals at a stated tonnage for twenty-one years, & it was agreed that the contract should be reduced into a more formal instrument, & should contain all the terms stated in the "correspondence," which was one that had taken place between the parties & their agents respecting the same. The coals were so carried, & after a time the co.'s business passed to, & the co. was consolidated with, a new co., formed under an Act of Parliament, who continued the carriage of the coals at the same rate. They then alleged, that the agents for the old co. had exceeded their authority in making the contract for twenty-one years, & demanded an increased rate of tonnage, which was paid, under protest, by the owners of the coal mine :—*Held :* whether at the date of agreement there was authority in the agent to accede

Sect. 3.—Undue preference: Sub-sects. 4 & 5.]

to such a term as twenty-one years or not, looking at the acts of the parties, the co. were bound for that time while they subsisted as a co., & before the Act of Parliament passed, even if they were not bound by it at the date of the agreement.—SOWERBY *v.* PONTOP & SOUTH SHIELDS RY. CO. (1846), 8 L. T. O. S. 114; 10 Jur. 942.

1199. —— Construction of.]—A railway co. agreed with A. & B., coalowners, that they would carry their coal, subject to clause 11, at certain charges given in the schedule; & they also agreed (clause 9) that in the event of their charging any other trader for the same description of traffic lower rates than those stipulated to any station, A. & B. were to have a corresponding reduction in the rates payable by them to such station. Clause 11 was to the effect that notwithstanding the rates or charges before specified, they were entitled to charge A. & B. rates or charges similar to those charged & paid by the E. Co.; & in the event of any consideration being given to the E. Co. for raising them, a similar consideration should be given to A. & B. The railway co. charged D., another coalowner, not a party to the agreement, a lower rate per ton, taking into account the greater distance the coal was carried. The agreement with the E. Co. was not in evidence. It was alleged the rate charged A. & B. was not higher than that charged to the E. Co.:—*Held:* there was nothing in clause 11 to supersede the effect of clause 9, & upon the true construction of the latter clause, A. & B. were entitled to a corresponding reduction with D., & repayment of over-charges; "lower rates" meaning proportionately lower rates per ton per mile, & not a less sum per ton irrespective of the distance carried.—GLASGOW & SOUTH WESTERN RY. CO. *v.* MACKINNON (1886), 11 App. Cas. 386, H. L.

Annotation:—**Refd.** I. R. Comrs. *v.* Angus, I. R. Comrs. *v.* Lewis (1889), 38 W. R. 3.

1200. —— 1854 Act, s. 2—Station to station services.]—A private siding, connecting appcts.' premises at D. with the goods-station of the railway co. in that town, was constructed under an agreement which contained a clause giving the railway co. the right, which they had duly exercised, to terminate it at any time on three months' notice, & at the expiry of such notice, to take up the rails. It was alleged that the sole object of the railway co. in taking up the siding was to compel appcts. to pay the D. station to station rates, & that if appcts. would consent to pay such rates for the traffic delivered over their siding, they might have the siding restored at any moment. Appcts. alleged that by the refusal of the railway co. to continue the accommodation of the siding, they failed to afford all reasonable facilities for the receiving, forwarding, & delivery of appcts.' traffic:—*Held:* appcts. were entitled to be given siding accommodation as before, but, in the circumstances, the railway co. might require that before they gave it there should be an agreement which, besides having such terms as are the common form of their siding agreements, should provide that appcts. should pay the D. station to station rates for the time being, without rebate or deduction, assuming those rates to be in themselves unobjectionable.—GIRARDOT, FLINN & CO. *v.* MIDLAND RY. CO. (No. 2), BEESTON BREWERY CO. *v.* MIDLAND RY. CO. (No. 2) (1885), 5 Ry. & Can. Tr. Cas. 60.

1201. —— 1888 Act, s. 27—Previous practice of railway—Known to complainant at time of agreement.]—Resps., a railway co., in accordance with a practice of long standing, performed certain services gratuitously for traders at H. Appcts., who were traders at S. & were competitors of the H. traders, made an agreement with resps. by which they obtained from resps. a siding, & the rates of traffic to & from the siding were ascertained. At the time of the agreement appcts. knew of the practice at H. On an application for an order that resps. should desist from giving an undue preference to the H. traders:—*Held:* in view of the agreement, the complaint was not as to rates but as to treatment &, on the facts, there was no undue preference.—OLYMPIA OIL & CAKE CO., LTD. *v.* NORTH EASTERN RY. CO. (1913), 15 Ry. & Can. Tr. Cas. 166; 30 T. L. R. 236.

1202. With other persons—Lease of railway—Payment to lessor—Regulation of tolls.]—The G. Co. were authorised by statute to lease the K. line, & to impose a toll on minerals not exceeding 3½*d.* per mile per ton. By the lease afterwards executed the G. Co. agreed to pay the K. Co. 1½*d.* per ton on all minerals raised from lands on the line of K.; & the G. Co. & the K. Co. were to fix in concert the tolls to be charged. The K. Co. afterwards agreed to take 1½*d.* per ton, whereon F., one of the mineowners on the line of K. applied for an injunction to restrain the G. Co. from charging him more than 1½*d.* on the ground that they had fixed this toll in concert:—*Held:* the agreement was not to reduce the toll as such, but merely the rent payable from the G. Co. to the K. Co., & that F. had no right to interfere by injunction or otherwise in respect of this private arrangement.—FINNIE *v.* GLASGOW & SOUTH WESTERN RY. CO. (1857), 3 Macq. 75; 30 L. T. O. S. 26, H. L.

Annotations:—**Refd.** *Re* Baker, Collins *v.* Rhodes, *Re* Seaman, Rhodes *v.* Wish (1881), 44 L. T. 414; Davis *v.* Taff Vale Ry., [1895] A. C. 542.

—— 1845 Act, s. 90.]—*See* Sub-sect. 2, A., *ante*.

1203. —— 1854 Act, s. 2—Sale of land to railway—Concurrent restrictions.]—(1) A railway co. refused to carry on their railway coal or coke to or from their station at R. except coal or coke which had been raised from collieries or manufactured at coke ovens situate at P. A former owner of P. would not sell the land to the railway co. on which the R. station was subsequently erected, except on condition that the railway co. should not allow any coal or coke to be received or deposited at or sent from the intended station, either by railway or otherwise, which had not been raised from or manufactured at the collieries or coke ovens at P.:—*Held:* such an agreement was a breach of 1854 Act, s. 2.

(2) *Semble:* 1888 Act, s. 11, was passed for the purpose of removing any doubt as to the jurisdiction of the Railway & Canal Commission Ct. to interfere with private arrangements of such a kind

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PART X. SECT. 3, SUB-SECT. 4.

1199 i. *With complainant—Construction of.*]—A ry. co. agreed with an iron co. to carry upon their railway system the whole mineral & other traffic which the iron co. might send, of the description & at rates & charges specified in the agreement. In the agreement the traffic was divided into 2 classes, of which class A. included "pig iron, coke, hewing-stone, bricks, & tiles," & class B. included "rubble-stone, iron ore, coal," etc. The ry. co. further undertook not to carry traffic for any other trader at lower proportionate rates than those charged to the iron co., & to place the latter on the same footing as that enjoyed by the most favoured traders on the line. In an action by the iron co.:—*Held:* (1) the agreement imposed an obligation on the ry. co. not to carry traffic, inwards or outwards, for any other traders at lower proportionate rates per ton per mile than those charged to the iron co., irrespective of the terminus from or to which the traffic was carried; (2) in the case of lower rates being charged to other traders, for pig iron, the iron

when public considerations & the public interest require it.

(3) The words "according to their respective powers" in 1854 Act, s. 2, do not refer to powers restricted by any private agreements with individuals.—RISHTON LOCAL BOARD *v.* LANCASHIRE & YORKSHIRE RY. CO. (1893), 8 Ry. & Can. Tr. Cas. 74.

Annotation :—As to (1) **Distd.** Holwell Iron Co. *v.* Mid. Ry., [1909] 1 K. B. 486.

1204. —— 1884 Act, s. 27—To secure competition.]—CHARRINGTON, SELLS, DALE & CO. *v.* MIDLAND RY. CO., No. 1182, *ante*.

1205. —— —— Purchase of railway—Consideration partly in lower charge for services.]—(1) In order to establish a case of undue preference against a railway co. appcts. must satisfy the ct. that there is something undue, unreasonable, or unfair in the railway co.'s treatment of the parties under investigation relatively to one another. A mere inequality in charge raises a presumption that this is so; but that presumption may be rebutted. When the inequality is the result of a fair & honest bargain, the consideration for which has been duly executed & enjoyed by the railway co., it is not an undue preference. Such bargains, however, must be looked upon with suspicion, &, in case of such an agreement of modern date, with great suspicion.

(2) Appcts. complained that certain traders, the S. Co., whose works were situate at S. on defts.' main line, & who were rivals in trade of appcts., were unduly preferred by defts. in the following respects: (*a*) that defts. did all the terminal services & provided all the terminal accommodation at the S. Co.'s works free of charge; (*b*) that they hauled all the inward traffic from their main line to the S. Co.'s works & did the internal shunting at a low fixed charge of 1½*d.* per ton, & carried the outward traffic from the works to the main line at a fixed charge of 1*d.* per ton, which charges were lower than those laid upon appcts. in respect of their traffic; (*c*) that for coal & coke brought to the S. Co.'s works from certain named collieries a lower mileage rate per ton was charged than in case of coal brought to appcts.' works. As a justification defts. pleaded that, being empowered by statute to acquire by compulsion or agreement certain private railways & sidings of the S. Co., they had agreed to purchase the same for a fixed sum of money; that as part of the consideration of the agreement the S. Co. agreed to pay at the rate of 1½*d.* per ton for the carriage of all minerals & other goods traffic from the purchased railways to the S. Co.'s sidings, & to pay 1*d.* per ton & no more for the working of coal traffic from a certain colliery to defts.' main line at S.; that all castings & manufactured goods & all materials sent from the S. Co.'s works were to be carried by defts. to their main line at S. at the same rate; & that all goods & materials carried by defts. for the S. Co. were to be delivered into the S. Co.'s works without any material charge for the delivery thereof :—*Held :* as the agreement was *bonâ fide*, the consideration above stated, being good & adequate, justified the charges made, & there was no undue preference.

(3) Appcts. also complained of certain rebates allowed by defts. to rival traders whose works were situate at various stations on defts.' railway. In these cases the traders performed services in hauling their traffic over their intervening sidings to & from defts.' railway. They were served by other railway cos., in competition with defts., & having in each case better access to the works of the traders than defts. had. In order to secure a share of the traffic defts. were compelled to make the rebates complained of, which were not in excess of a reasonable remuneration for the services performed by the traders :—*Held :* in view of the competition of the other railway cos. these rebates were justified.

(4) At other places on defts.' railway rebates had been allowed to traders in competition with appcts. in respect of services performed by them at their private sidings. Defts. alleged, but failed to prove, that the rates charged to these traders were station to station & not merely station to siding rates. For over two years appcts. had with full knowledge of the facts paid the rate charged to them without claiming any rebate, but stating at the time of payment in every case that payment was made without prejudice to their right to a similar rebate. In an action to recover as damages the amount which they might have claimed as rebate :—*Held :* 1888 Act, s. 12, precluded appcts. from recovering.—HOLWELL IRON CO., LTD. *v.* MIDLAND RY. CO., [1910] 1 K. B. 296; 14 Ry. & Can. Tr. Cas. 1; 79 L. J. K. B. 460; 101 L. T. 695; 26 T. L. R. 110, C. A.

SUB-SECT. 5.—REMEDIES OF PERSONS OVERCHARGED OR PREJUDICED BY UNDUE PREFERENCE.

1206. Breach of "equality clause"—Private Act—Money had & received.]—PARKER *v.* GREAT WESTERN RY. CO., No. 1085, *ante*.

1207. —— —— —— Notice of action.]—A railway co.'s private Act provided that no action should be brought for anything done in pursuance of the Act or in execution of the powers thereby given unless twenty days' previous notice in writing were given to deft. The co. charged tolls in excess of the amounts allowed by the Act :—*Held :* twenty days' notice in writing must be given of an action to recover the excess.—KENT *v.* GREAT WESTERN RY. CO. (1846), 3 C. B. 714; 4 Dow. & L. 481; 1 New Pract. Cas. 593; 4 Ry. & Can. Cas. 699; 16 L. J. C. P. 72; 8 L. T. O. S. 188; 136 E. R. 286.

Annotation :—**Consd.** Garton *v.* G. W. Ry. (1859), E. B. & E. 846.

1208. —— —— —— Carriage over several systems—Which carrier liable.]—The B. Ry. & the G. Ry. are continuous lines, but are worked by independent cos., & by their Acts of Parliament are bound to charge all persons equally under the same circumstances for the carriage of goods, etc. By the scale bills issued by each of the cos., certain sums were specified as the charges for the carriage of goods, where the goods were to be collected & delivered by the cos., & a smaller sum was specified as chargeable where the goods were to be collected

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co. was entitled to a reduction only on pig iron, & not on the other specific kinds of traffic comprised in the general class to which pig iron belonged.—DALMELLINGTON IRON CO. *v.* GLASGOW & SOUTH WESTERN RY. CO. (1889), 16 R. (Ct. of Sess.) 523; 26 Sc. L. R. 373. —**SCOT.**

g. —— *Enforcement of agreement —Consideration—Unreasonable preference.*]—CROW'S NEST PASS COAL CO. *v.* CANADIAN PACIFIC RY. CO. (1908), 8 Can. Ry. Cas. 33.—**CAN.**

PART X. SECT. 3, SUB-SECT. 5.

h. Under 1854 *Act, s.* 3—*Whether action maintainable—Time for complaint.*]—A trader complained that a ry. co. had for many years charged higher rates for the carriage of his goods than for that of a neighbour's goods, the distance being 8 miles in the former case & in the latter 12, starting from the same point. In an action for repetition of the alleged overcharges, raised some years after he had retired from business :—*Held :* the only remedy open in the circumstances was by application, to the Railway Comrs. under 1854 Act, s. 3, & under 1873 Act for interdict, at the

Sect. 3.—Undue preference: Sub-sect. 5. Sect. 4: Sub-sect. 1.]

& delivered by the parties themselves. Pltf., a carrier, sent certain goods which he had undertaken to collect & deliver on his own account by the B. Ry. Co., to be carried upon both lines of railway, but he objected to the charges as being excessive, & paid the whole amount claimed under protest:—*Held:* (1) he was entitled to recover back the amount so paid in excess of what was a fair & reasonable charge in an action of money had & received, although he had not made any tender of any specific sum as a fair & reasonable charge; (2) the whole sum so paid in excess was recoverable from the B. Ry. Co., although they had received a portion of it as agents only of the G. Ry. Co.—PARKER *v.* BRISTOL & EXETER RY. CO. (1851), 6 Exch. 702; 6 Ry. & Can. Cas. 776; 20 L. J. Ex. 442; 17 L. T. O. S. 202; 155 E. R. 726.

Annotation:—As to (2) **Consd.** Taylor *v.* Met. Ry. (1906), 95 L. T. 149.

See, also, Nos. 55, 56, 68, 69, 175, *ante.*

1209. —— —— ——.]—BAXENDALE *v.* GREAT WESTERN RY. CO., No. 1090, *ante.*

1210. —— —— ——.]—GREAT WESTERN RY. CO. *v.* SUTTON, No. 1088, *ante.*

1211. —— —— **Damages for loss of trade.**]—CROUCH *v.* GREAT NORTHERN RY. CO., No. 1086, *ante.*

1212. —— **1845 Act, s. 90—Money had & received.**]—LONDON & NORTH WESTERN RY. CO. *v.* EVERSHED, No. 1192, *ante.*

1213. —— —— —— **Ascertainment of amount.**]—DENABY MAIN COLLIERY CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO., No. 1075, *ante.*

1214. —— —— **Action by shareholder—Against company & preferred trader.**]—An undue preference in the carriage of goods given by a railway co. to a customer, though contrary to law, is not *ultra vires*, & no action in respect thereof lies against the co. or the customer at the instance of a shareholder.—ANDERSON *v.* MIDLAND RY. CO., [1902] 1 Ch. 369; 71 L. J. Ch. 89; 85 L. T. 408; 50 W. R. 40; 18 T. L. R. 5; 46 Sol. Jo. 14.

1215. —— —— **Liability of collecting agent.**]—Pltf., a coal merchant, entered into an agreement with the M. Ry. for the conveyance by them of certain coke breeze from B. to a station on the defts.' railway at a certain through rate. From time to time coke breeze was delivered to pltf. at the station in question, & payments at the agreed rate were made by him to defts. as collecting agents for the M. Ry. The money so paid was paid over by defts. to that co. or settled for in account. Pltf. subsequently discovered that in the M. Ry.'s book of rates there was a lower through rate between the same stations for coke breeze for fuel purposes, & he thereupon brought an action against defts. to recover the amount of the over-charges, on the ground that the coke breeze delivered to him was used for fuel. The coke breeze was not, in fact, used for fuel:—*Held:* (1) in the circumstances, there had been no breach of 1845 Act, s. 90, as, in order to establish a contravention of that sect., it would have been necessary for pltf. to show that some other persons had in fact been charged at the lower rate; (2) in any case the action was not maintainable against defts., who had received the money merely as agents for the M. Ry., & had paid it over to them, or settled for it in account, without notice of any over-charge; (3) it made no difference that, under the arrangement between the two cos., defts. were entitled to retain a portion of the money for their own use.—TAYLOR *v.* METROPOLITAN RY. CO., [1906] 2 K. B. 55; 75 L. J. K. B. 735; 95 L. T. 149; 22 T. L. R. 479.

Annotation:—As to (2) **Refd.** Baylis *v.* London, [1913] 1 Ch. 127.

1216. Under 1854 Act, s. 2—Whether action for breach maintainable.]—BUDD *v.* LONDON & NORTH WESTERN RY. CO., No. 1188, *ante.*

1217. —— ——.]—DENABY MAIN COLLIERY CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO., No. 1075, *ante.*

1218. —— —— **Set-off or counterclaim.**]—It is no defence to an action by a railway co. to recover charges for the carriage of goods that the charges sued for are unreasonable so as to give an undue preference to other persons, or to subject deft. to undue prejudice or disadvantage, within 1854 Act, s. 2, nor can deft. in such an action set off, or recover by counterclaim, overpayments in respect of previous charges which were unreasonable within that sect.—LANCASHIRE & YORKSHIRE RY. CO. *v.* GREENWOOD (1888), 21 Q. B. D. 215; 58 L. J. Q. B. 16; 59 L. T. 930.

*Annotations:—***Refd.** Rhymney Ry. *v.* Rhymney Iron Co. (1890), 63 L. T. 407; Liverpool Corn Trade Assocn. *v.* L. & N. W. Ry., [1891] 1 Q. B. 120; L. & N. W. Ry. *v.* Donellan, L. & N. W. Ry. *v.* Billington (1898), 78 L. T. 575.

1219. —— —— ——.]—The Railway Comrs. having decided, under 1854 Act, ss. 2, 3, that pltfs., a railway co., were giving an undue preference over defts.' co. to another co., by charging such other co. lower rates for the carriage of coal to certain docks than they charged defts. for similar traffic, defts. sought, in an action brought against them by pltfs., to set off or counterclaim, as being overcharges, amounts by which charges paid by them to pltfs. under protest for such carriage of coal, previously to the decision of the Comrs., exceeded the rates paid by the other co.:—*Held:* no action will lie in respect of a breach of 1854 Act, s. 2, & the set-off or counter-claim failed.—RHYMNEY RY. CO. *v.* RHYMNEY IRON CO., LTD. (1890), 25 Q. B. D. 146; 59 L. J. Q. B. 414; 63 L. T. 407; 38 W. R. 764; 6 T. L. R. 342, C. A.

*Annotations:—***Mentd.** Ryley *v.* Master, Sheba Gold Mining Co. *v.* Trubshawe, [1892] 1 Q. B. 674; Stearns *v.* Village Main Reef Gold Mining Co. (1904), 48 Sol. Jo. 700.

1220. Under 1888 Act, ss. 12, 13—Damages.]—PHIPPS *v.* LONDON & NORTH WESTERN RY. CO., No. 1193, *ante.*

1221. —— —— **Measure of.**]—Where appcts. have proved a case of undue preference the damages they are entitled to recover from the railway co. are such damages as they have actually sustained. *Primâ facie* these are the excess charges which appcts. have actually paid, but the railway co. may show that these do not represent the actual damage arising directly from the wrong

time when the charges complained of were being enforced, & the action was not competent.—MURRAY *v.* GLASGOW & SOUTH WESTERN RY. CO. (1883), 11 R. (Ct. of Sess.) 205; 21 Sc. L. R. 147. — **SCOT.**

i. —— *Whether action for breach maintainable.*]—In 1888 a ry. co. sued a firm for sums due in respect of the carriage of their goods over the co.'s line. Defenders pleaded that the rates sued for were illegal, & averred in their defences, as originally lodged, that the co. had conceded to other traders mileage rates for the carriage of their goods which they refused to concede to defenders, although the goods were of the same description. Subsequently they added an averment that the co. had charged them with higher rates than other traders for the carriage of the same class of goods over precisely the same journey:—*Held:* the preference set forth in defenders' original averment was only struck at by 1854 Act, & interdict was the only remedy provided by that statute.—CALEDONIAN RY. CO. *v.* CROSS (A.) & SONS (1889), 16 R. (Ct. of Sess.) 584; 26 Sc. L. R. 447.—**SCOT.**

k. *By action — Application for refund—Jurisdiction of Board of Railway Commissioners.*]—CURRIE *v.* CANADIAN PACIFIC RY. CO. (1911), 20 W. L. R. 638.—**CAN.**

done.—CHANCE & HUNT, LTD. *v.* GREAT WESTERN RY. CO., LONDON & NORTH WESTERN RY. CO., MIDLAND RY. CO. & NORTH STAFFORDSHIRE RY. CO. (1914), 15 Ry. & Can. Tr. Can. 241; 29 T. L. R. 483.

1222. —— —— Written notice to abstain from or remedy matter of complaint—What amounts to.]—Appcts. sent a letter to the L. Ry. Co. in the following terms: "When I saw you in L., on July 18, you said you would speak to the M. Ry. Co. on the following Monday about the B. rate from here, & that you would let me hear from you, but I have heard nothing. I am bound to say that I am not content to pay the present quoted rate": —*Held:* a sufficient written notice within 1888 Act, s. 13, & the right to damages arose from the date of the letter.—SHEFFIELD COAL CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO., MIDLAND RY. CO. & MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1897), 10 Ry. & Can. Tr. Cas. 230.

1223. —— —— Publication of rates—What amounts to.]—DALDY & CO. *v.* MIDLAND RY. CO., GREAT EASTERN RY. CO., & LONDON, TILBURY & SOUTHEND RY. CO., No. 1143, *ante*.

1224. —— —— Time for complaint.]—ANGLO-AMERICAN OIL CO., LTD. *v.* CALEDONIAN RY. CO. & NORTH BRITISH RY. CO., No. 1185, *ante*.

SECT. 4.—MAXIMUM RATES.

See 1921 Act, ss. 30–35, 55, Sched. V. 1, 2, 8, 12.

SUB-SECT. 1.—IN GENERAL.

1225. Application of—To whole system—Or junction & branch lines only.]—The words "the railway" found in an Act passed to amend previous railway Acts of the same co., & to authorise the making of a junction railway co., were construed to mean the original line, its branches & the new junction railway, & were not confined to the junction railway alone.—BRISTOL & EXETER RY. CO. *v.* GARTON (1860), 8 H. L. Cas. 477; 30 L. J. Ex. 241; 3 L. T. 251; 7 Jur. N. S. 173; 11 E. R. 515, H. L.

1226. —— —— Effect of amalgamation of companies.]—By their original Act a railway co. had a scale of authorised charges for passengers according to distance. By a subsequent Act the co. were empowered to make a short extension line, & charge a lump sum for passengers over that extension. A still later Act allowed the co. to amalgamate with another existing co., on condition of their reducing their charges to the same scale as that of the other co. That scale was 1*d.* a mile for each third-class passenger. Pltf. travelled over the co.'s line, including the short extension, & was charged a sum which was at the rate of more than 1*d.* per mile calculated over the whole distance travelled, but of not more than 1*d.* per mile over the distance exclusive of the extension, assuming that the co. could also charge the lump sum for the latter piece. To this fare the co. added five per cent for. Govt. duty:—*Held:* (1) the effect of the later Act was to restrict the charge of the co. as carriers to the same charges over the whole line as the amalgamated co. could make, & pltf. was entitled to recover the excess above 1*d.* per mile over the whole distance; (2) the co. were entitled to add the Government duty.

(3) By the original Act authorising the construction of a railway the co. were empowered to demand certain tolls for the carriage of passengers & goods, & upon payment of the tolls demandable all persons should be entitled to use the railway. The co. were required to set up mile posts along the whole line at the distance of one quarter of a mile from each other, & it was enacted that no tolls should be demanded or taken by the co. during any time at which the mile posts should not be set up & maintained. Pltf., having travelled in one of the co.'s trains along their line at a time when two of the mile posts had been removed, sued to recover the fare which he had been compelled to pay for his journeys, on the ground that it was not, for that reason, demandable:—*Held:* he could not recover, because the provisions as to mile posts applied to tolls strictly so called, & not to passenger rates.—BROWN *v.* GREAT WESTERN RY. CO. (1882), 9 Q. B. D. 744; 51 L. J. Q. B. 529; 47 L. T. 216; 46 J. P. 803; 30 W. R. 671, C. A.

1227. —— —— System constructed in sections—Extended to Admiralty pier—Railway company not entitled to make extra charge for conveying passengers along pier & for transferring luggage to steamer.]—NICHOLSON *v.* LONDON, CHATHAM & DOVER RY. CO. (1895), 11 T. L. R. 410; 1 Com. Cas. 27.

1228. —— To railway worked by horse power.]—Appcts.' private incorporating Act authorised them to make a railway to be worked by horse power only & also a railway to be worked in the ordinary way by locomotive steam engines, & provided that the maximum rate of charge for conveyance on the railway, including the toll for the use thereof & of carriages, & for locomotive power & every other expense incidental to such conveyance, should not exceed certain amounts:—*Held:* the railway to be worked by horse power was subject to this enactment, although higher rates might be reasonable having regard to the increased expense of working the railway by horse power.—BUCKFASTLEIGH, TOTNES & SOUTH DEVON RY. CO. *v.* SOUTH DEVON RY. CO. (1874), 1 Ry. & Can. Tr. Cas. 321.

1229. —— Special Act—Parcels exceeding 500 lbs.]—GARTON *v.* BRISTOL & EXETER RY. CO., No. 56, *ante*.

See, further, Nos. 1079, 1085–1090, 1093, *ante*.

1230. —— —— Parcels exceeding 112 lbs.]—A railway co. by s. 149 of their special Act, were empowered to demand rates & tolls for the tonnage of all articles, matters & things carried on their line not exceeding certain sums; by s. 155 they might fix the sums to be charged or taken in respect of small parcels (not exceeding 500 lbs. in weight); provided that the provisions thereinbefore contained as to parcels should not extend to goods, articles, matters, & things sent in large aggregate quantities, although made up of separate & distinct parcels, but only to single & undivided parcels. The co. had two systems of charging. For packages exceeding 112 lbs. in weight they charged a tonnage rate, & for packages under 112 lbs., known as small parcels, they charged a higher rate. In both cases the goods were divided into classes, & the charge varied according to the class. Pltf. sent goods, consisting partly of packages exceeding 112 lbs., & partly of packages under 112 lbs., both belonging to the same class:—*Held:* defts., were only bound to aggregate the small parcels, & charge tonnage rates for them, if, when aggregated, they exceeded 112 lbs. in weight.—SUTTON *v.* LONDON & SOUTH WESTERN RY. CO. (1877), 37 L. T. 158.

1231. —— —— Authorising special agreements.]—A railway co., by its Act, was empowered to "demand . . . for the use of the railway any tolls not exceeding . . . [for] the conveyance of . . . coals . . . per ton per mile, three farthings." A subsequent sect. of the same Act provided that,

Sect. 4.—Maximum rates: Sub-sects. 1, 2, 3 & 4.]

nothing in the Act contained should prevent the co. from taking any increased charges, over and above the charges limited by the Act, for the conveyance of goods of any descriptions by agreement with the owners of, or persons in charge of, the goods either with the respect to the conveyance thereof, except small parcels by passenger trains, or by reason of any other special service performed by the co. in relation thereto:—*Held:* the latter sect. empowered the co. to agree with any persons to carry coals at a higher rate than three farthings per ton per mile, notwithstanding that there were no special services involved in the conveyance of the coal.—WREXHAM RY. CO. *v.* LITTLE MOUNTAIN, ETC. CO. (1877), 38 L. T. 290.

1232. —— —— **Toll clauses controlled—By general clause limiting maximum charges.**]—CHATTERLEY IRON CO. *v.* NORTH STAFFORDSHIRE RY. CO., No. 1261, *post.*

1233. —— —— **Limiting rates between two companies—Enforceable by public.**]—(1) A clause in a railway co.'s special Act limiting the rates for certain traffic, the result of a parliamentary contest between two railway cos., has the effect, not merely of a contract between the two cos., but of a statutory obligation which may be enforced by any person chargeable with the rates for such traffic.

The B. Co. promoted a bill in Parliament to give them (*inter alia*) running powers over part of the T. Co.'s system with which the B. Co.'s line formed junctions. The bill was passed into an Act without the running powers but with a clause enacting that the T. Co. should forward traffic destined for or coming from the B. Co.'s line, at rates per mile not greater than the lowest rate which should for the time being be charged by the T. Co. for like traffic between certain places. The T. Co. forwarded coal for applts. destined for the B. Co.'s line, charging rates in excess of the limit imposed by that clause in the B. Co.'s Act, but within the maximum allowed by the T. Co.'s special Acts, & sued the applts. for the amount:—*Held:* the obligations imposed by that clause were not merely contractual as between the two co.'s, but were statutory obligations for the benefit of & enforceable by consignors of traffic, & applts. could set up the clause as a defence to that part of the claim which exceeded the limit.

(2) The power conferred by 1888 Act, s. 29, to fix group rates "notwithstanding any provision in any general or special Act," cannot affect the rate chargeable, under express statutory provisions, for the conveyance of traffic to any terminus which is not included in the group.—DAVIS & SONS *v.* TAFF VALE RY. CO., [1895] A. C. 542; 64 L. J. Q. B. 488; 72 L. T. 632; 44 W. R. 172; 11 T. L. R. 400; 11 R. 189, H. L.

Annotations:—As to (1) **Apld.** A.-G. *v.* N. E. Ry., [1915] 1 Ch. 905. **Refd.** Crosfield *v.* Manchester Ship Canal Co., [1904] 2 Ch. 123; Corbett *v* S. E. & C. Ry., [1906] 2 Ch. 12. *Generally,* **Mentd.** Barry Ry. *v.* Taff Vale Ry., [1895] 1 Ch. 128; Ward *v.* Mid. Ry. (1917), 16 Ry. & Can. Tr. Cas. 173.

Calculation of weight.]—*See* 1921 Act, s. 55, Sched. V. 15.

1234. **Calculation of mileage—By most direct route.**]—By pltfs.' private Act (9 & 10 Vict. c. cxxxi.), s. 13, the maximum charge for carriage is limited to a certain sum per mile:—*Held:* the mileage is not necessarily to be counted by the most direct & shortest route; if the route adopted by the co. in the carriage of the goods entrusted to them, as common carriers be a reasonable one in the circumstances, they are entitled to charge the maximum rate for the number of miles over which they actually carry the goods.—MYERS *v.* LONDON & SOUTH WESTERN RY. CO. (1869), L. R. 5 C. P. 1; *sub nom.* LONDON & SOUTH WESTERN RY. CO. *v.* MYERS, 39 L. J. C. P. 57; 21 L. T. 460; 18 W. R. 69.

1235. —— **Fractions of miles.**]—PRYCE *v.* MONMOUTHSHIRE CANAL & RY. COS., No. 1254, *post.*

See, now, 1921 Act, s. 55, Sched. V. 16.

—— **To non-perishable goods carried by passenger trains.**]—*See* No. 1077, *ante.*

1236. **Deduction from—Trucks provided by trader.**]—Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891, provides (*inter alia*) that where for the conveyance of merchandise, other than merchandise specified in class A of the classification, the co. do not provide trucks, the rate authorised for conveyance shall be reduced by a sum, which, for distances not exceeding fifty miles, shall, in case of difference between the co. & the person liable to pay the charge, be determined by an arbitrator to be appointed by the Board of Trade:—*Held:* the "rate authorised for conveyance" means the actual rate in force for the time being as shown in the co.'s rate-book & not the maximum rate which the co. are by the schedule to the Act authorised to charge, & the deduction to be determined by the arbn. must be from such actual rate.—SPILLERS & BAKERS, LTD. *v.* GREAT WESTERN RY. CO., [1909] 1 K. B. 604; 14 Ry. & Can. Tr. Cas. 52; 78 L. J. K. B. 444; 100 L. T. 773; 25 T. L. R. 315; 53 Sol. Jo. 285, C. A.; *subsequent proceedings,* [1911] 1 K. B. 386, C. A.

See, now, 1921 Act, s. 55, Sched. V. 6 (2).

1237. **Special contract—Goods sent after notice of.**]—A railway co., who carried certain bulky commodities at a certain rate per ton, gave notice to defts. that they would only carry such commodities on certain terms, that is, at a certain minimum rate per truck, capable of carrying three tons, whether filled or not, the rate per ton being far less than the ordinary rate. Defts., although objecting to these terms, yet without any departure by the co. therefrom, continued to send such commodities, sometimes in quantities of less than three tons, & claimed to be charged at the minimum rate per ton,

PART X. SECT. 4, SUB-SECT. 1.

1232 i. *Application of—Toll charges controlled—By general clause limiting maximum charges.*]—A co., by its special Act, was bound not to charge for goods conveyed any greater sum, including the charges for use of carriages, waggons, or trucks, & for locomotive power, & all other charges incidental to such conveyance, than certain rates. By the "toll clauses" the co. were empowered to charge other rates per ton of merchandise, with additional rates if the co.'s carriages were used, & for the use of engines. The co. gave notice that they would not act as carriers of manure, but on special order for such carriage of manure provided waggons, which they attached to their ordinary goods trains, making charges for the use of the waggons & locomotive power, & in name of toll for use of the railway:—*Held:* the ry. co. were acting as carriers, & were not entitled to charge rates higher than those allowed to them as carriers, though the rates which they proposed to charge were within the amount allowed by the toll clauses for conveyance & use of carriages & engines.—ABERDEEN COMMERCIAL CO. *v.* GREAT NORTH OF SCOTLAND RY. CO. (1878), 6 R. (Ct. of Sess.) 67; 16 Sc. L. R. 28.—**SCOT.**

l. *Fixing — Application for reduction.*]—WELLAND *v.* CANADIAN FREIGHT ASSOCN. (1911), 22 O. W. R. 260; 13 Can. Ry. Cas 140.—**CAN.**

m. *Express companies — Different rates for same commodities—Correction of rates.*]—*Re* DOMINION & CANADIAN NORTHERN EXPRESS COS. (1912), 22 W. L. R. 36.—**CAN.**

n. —— *Function of Dominion Railway Board.*]—*Re* BRITISH COLUMBIA NEWS CO. (1912), 21 W. L. R. 5.—**CAN.**

o. —— ——.]—*Re* BOYES & DOMINION EXPRESS CO. (1912), 21 W. L. R. 339.—**CAN.**

p. *Rates of one company not conclusive measure of charges of another company.*]—*Re* HUDSON BAY MINING CO. & GREAT NORTHERN RY. CO. (1913), 24 W. L. R. 932.—**CAN.**

for the quantities actually carried :—*Held :* they were not entitled to claim to be so charged, & were bound to pay at the rate charged per truck ; there was nothing unreasonable therein, & even if there were their remedy was under 1854 Act.—GREAT WESTERN RY. CO. *v.* TOORNER (1863), 11 W. R. 464.

See, now, 1921 Act, s. 55, Sched. V. 18.

SUB-SECT. 2.—CLASSIFICATION OF GOODS.

See 1921 Act, ss. 28 (1) (a), 29, 54.

1238. Goods "for purpose of exportation"—Coal shipped from Stockton-upon-Tees to London.]—STOCKTON & DARLINGTON RY. CO. *v.* BARRETT (1844), 11 Cl. & Fin. 590 ; 7 Man. & G. 870 ; 8 Scott, N. R. 641 ; 8 E. R. 1225, H. L.

Annotations :—**Refd.** Pryce *v.* Monmouthshire Canal & Ry. (1879), 4 App. Cas. 197. **Mentd.** Gulliver *v.* Cosens (1845), 1 C. B. 788 ; Newmarket Ry. *v.* Foster (1854), 2 C. L. R. 1017 ; Medway Navigation *v.* Brook (1876), 33 L. T. 843 ; McDougall & Bonthron *v.* London & India Docks Co., Page, Son & East *v.* London & India Docks Co., [1908] 2 K. B. 175 ; Bristol Grdns. *v.* Bristol Waterworks Co., [1912] 1 Ch. 846.

1239. "Manufactured goods"—Includes shoes, ironmongery, glass & drapery—But not stationery.]—*Held :* "manufactured goods" must be understood in a popular sense & meant goods such as were ordinarily produced in manufactories, & excluded stationery & included shoes, ironmongery, glass & drapery.—PARKER *v.* GREAT WESTERN RY. CO., No. 1093, *ante.*

1240. "Corn & grain"—Does not include agricultural seeds.]—SOWERBY & CO. *v.* GREAT NORTHERN RY. CO., No. 1268, *post.*

1241. "Fruit" — Does not include unripe bananas.]—*Ex p.* LONDON & NORTH WESTERN RY. CO. (1909), 100 L. T. 998 ; 25 T. L. R. 507, D. C.

Annotation :—**Refd.** N. E. Ry. *v.* Reckitt (1913), 109 L. T. 327.

1242. "Carriage"—Includes motor chassis—If usable on road.]—LONDON & NORTH WESTERN RY. CO. & OTHER RY. COS., RY. CLEARING HOUSE MEMBERS *v.* SOCIETY OF MOTOR MANUFACTURERS & TRADERS, LTD. (1911), 14 Ry. & Can. Tr. Cas. 294 ; 27 T. L. R. 518.

Annotation :—**Consd.** Ward *v.* Mid. Ry., [1917] 2 K. B. 278.

1243. "Scrap steel"—Worn steel files—Old propeller shafts.]—Appcts. bought as scrap steel old worn files which had been discarded by engineering firms, & they were conveyed to appcts.' works over defts.' railway. Appcts. sorted them out, & sold a portion for export to the East to be used as files. Defts., who had formerly charged for their carriage as scrap steel, claimed to be entitled to charge a higher rate for their carriage as coming within the description "old files." Appcts. also bought & broke up old ships, & they consigned by defts.' railway old propeller shafts to customers, described as scrap steel. Sometimes the propeller shafts were cut down & used as portions of new hydraulic machinery, but they were never used as propeller shafts. The railway co. eventually claimed that the shafts were not scrap steel, & that they were entitled to charge for the carriage of the shafts a higher rate than the rate for the carriage of scrap steel :—*Held :* on the facts, both the old files & the disused propeller shafts were scrap steel, & must be carried at the rates for scrap steel.—WARD (THOS. W.), LTD. *v.* MIDLAND RY. CO., [1917] 2 K. B. 278 ; 16 Ry. & Can. Tr. Cas. 178 ; 86 L. J. K. B. 752 ; 117 L. T. 1 ; 33 T. L. R. 283, C. A.

1244. "Fresh fish"—Does not include frozen salmon—But "preserves (fish, fruit, meat & provisions) in casks, boxes, or cases" does.]—Canadian salmon, frozen hard as soon as caught, then packed in grease-proof paper & additional paper wrappings, & finally put into boxes adapted for cold storage, was shipped to L. & then conveyed by train to R. In an action by the Midland Ry. Co. against the consignees for payment of the carriage the question was raised whether the frozen salmon was to be charged for under Midland Railway Co. (Rates & Charges) Order Confirmation Act, 1891, as "fresh fish," or as "preserves (fish, fruit, meat & provisions) in casks, boxes or cases," or as unclassified merchandise :—*Held :* the salmon fell under the head of "preserves."—WARNER'S (WILLIAM) SONS & CO. *v.* MIDLAND RY. CO., [1918] A. C. 616 ; 87 L. J. K. B. 810 ; 119 L. T. 263 ; 34 T. L. R. 472 ; 16 L. G. R. 561, H. L.

1245. "Dangerous goods"—Whether goods within—Finality of railway's decision as to.]—Where the statutory classification of goods for the purpose of railway charges contains a class entitled "dangerous goods," the question whether any particular goods are "dangerous" within the meaning of the classification is for the railway co., & their decision cannot be called in question by any ct. if there is reasonable ground to support it.—MIDLAND RY. CO., GREAT WESTERN RY. CO., & LANCASHIRE & YORKSHIRE RY. CO. *v.* BROTHERTON & CO., LTD. & BUTLER & CO. (BRISTOL), LTD. (1920), 16 Ry. & Can. Tr. Cas. 402 ; 36 T. L. R. 679.

See, now, 1921 Act, s. 50 (3).

SUB-SECT. 3.—WHAT SERVICES INCLUDED IN MAXIMUM RATES.

See 1921 Act, s. 55, Sched. V. 1.

1246. Charge for warehousing—Improper ingredient in rate.]—GREENWOOD & SONS *v.* LANCASHIRE & YORKSHIRE RY. CO., No. 1336, *post.*

Terminal charges.]—*See* Sub-sect. 4, *post.*

Additional charges.]—*See* Sub-sect. 5, *post.*

Charge for exceptional services.]—*See* Sub-sect. 6, *post.*

SUB-SECT. 4.—TERMINAL CHARGES.

See 1921 Act, ss. 55, 61, Sched. V. 1, 3 (2), 13, 19.

1247. Whether entitled to make—Under special Acts.]—Defts., a railway co., were by their special Acts required to carry, as common carriers for hire, passengers, animals, goods, etc., for which they were by their Acts entitled to demand tolls & certain rates therein specified. Defts. having, as common carriers, received, carried on their railway, & delivered to plff. certain goods consigned

PART X. SECT. 4, SUB-SECT. 2.

q. "*Pig iron, coke, hewing stones, bricks, & tiles*"—"*Rubble stone, calcined ironstones hematite, coal, lime, sand & fireclay*"—*Whether hematite & limestone included.*]—MERRY & CUNNINGHAME *v.* GLASGOW & SOUTH WESTERN RY. CO. (1884), 4 Ry. & Can. Tr. Cas. 383.—SCOT.

r. "*Colonial*" — *Includes produce of any colony.*]—By the merchandise rates for the railways of a colony, issued under the sanction of the Govt., "colonial" wine was to be carried at a lower rate than other wine :—*Held :* the word "colonial" could not be restricted to the produce of the colony in which the regulations were in force, but included the produce of any colony.—RAILWAYS COMRS. *v.* HYLAND (1887), 56 L. T. 896.—AUS.

s. *Lumber* — "*Common cedar rustic*"—*Included as* "*not otherwise specified.*"]—*Re* FULLERTON LUMBER & SHINGLE CO. & GREAT NORTHERN RY. CO. (1912), 23 W. L. R. 115.—CAN.

PART X. SECT. 4, SUB-SECT. 3.

t. *Collection & delivery service*—*Reduction of rates in lieu of.*]—*Re* EDMONTON CITY DAIRY CO., & DOMINION EXPRESS CO. (1914), 28 W. L. R. 697.—CAN.

Sect. 4.—Maximum rates: Sub-sect. 4.]

to him, charged him, without any previous agreement, in addition to a toll charge at the rate of 3*d.* per ton per mile, the rate at which they were by their Acts authorised to charge for tolls, a sum of 12*s.* 6*d.* as a "terminal charge" for the following services, conveniences & expenses, namely, the receiving the goods by their porters & servants when brought to their station; weighing & invoicing them & loading on their trucks; the use of their station, yards, sheds, & platforms; the gaslight & other conveniences necessarily connected with such stations, sheds, & platforms for the purposes of receiving, loading & unloading goods; the making of proper entries of the receiving & delivering the goods by defts.' clerks & agents in books kept for that purpose; & also for the risk incidental to the loading, carrying, & unloading:—*Held:* defts. were not entitled to charge any sum as a "terminal charge" over & above the charges authorised to be taken as tolls by their special Acts.

Semble: for some of the services, conveniences & facilities afforded by defts. beyond the mere carriage of the goods, they might, by previous agreement, be entitled to make some charge.—PEGLER *v.* MONMOUTHSHIRE RY. & CANAL CO. (1861), 6 H. & N. 644; 30 L. J. Ex. 249; 4 L. T. 331; 25 J. P. 486; 9 W. R. 597; 158 E. R. 266.

Annotations:—Consd. Bailey *v.* L. C. & D. Ry. (1875), 2 Ry. & Can. Tr. Cas. 99. Refd. A.-G. *v.* Mersey Ry., [1907] 1 Ch. 81 (*see* [1907] A. C. 415).

1248. For what services.]—MANCHESTER, SHEFFIELD, & LINCOLNSHIRE RY. CO. *v.* PIDCOCK & CO., No. 1279, *post.*

1249. —— Loading & unloading—At request of person supplying his own trucks.]—The Act of incorporation (5 & 6 W. 4, c. cvii.) of the G. W. Ry. Co., s. 163, provided that all persons should have free liberty to use the railway, with carriages properly constructed, upon payment of such rates & tolls as the co. should demand, not exceeding the rates or tolls by that Act authorised. S. 164 empowered the co. to demand & receive for the tonnage of goods conveyed upon the railway certain rates or tolls, the highest rate being 3*d.* per ton per mile. S. 166 authorised the co. to provide locomotive or other power for drawing goods, etc., upon the railway, & to receive for the use of such engines or other power such sums as they should think proper, in addition to the rates or tolls authorised to be taken by the Act. S. 167 empowered the co. to employ engines & carriages for the conveyance of goods, etc., on the railway, & to make such reasonable charges for such conveyance as they might determine upon in addition to the rates or tolls authorised by the Act. By 1 Vict. c. xcii., s. 44, the co. were empowered to demand & receive a reasonable charge for the loading, unloading, or weighing any articles, matters, or things which they might be required to load, unload or weigh:—*Held:* the last-mentioned provision did not apply where the co., as carriers, undertook the conveyance of goods of other persons, but only where the duty of loading, unloading, etc., was performed by them at the request of persons supplying their own trucks; &, consequently, they were not entitled to make a charge for loading, unloading, etc. in addition to the rates charged for carriage, where they acted as carriers under 5 & 6 W. 4, c. cvii., s. 167; & a party intrusting goods to them to be carried, & paying this charge in order to obtain the carriage & delivery of them, might recover back the amount in an action for money had & received.

(2) Assuming, as the arbitrator by whom the case was stated had found, that the co. were entitled, under 7 & 8 Vict. c. iii., s. 50, in addition to the rate of 3*d.* per ton per mile which they were authorised to charge by 5 & 6 W. 4, c. cvii., s. 164, to charge for locomotive or steam power, & for carriages, such sum as they thought expedient:—*Held:* the co. were not bound in their charge specifically to demand so much per ton under 5 & 6 W. 4, c. cvii., s. 164, & so much per mile for the use of the locomotive power & carriages under 7 & 8 Vict. c. iii., s. 50, but were entitled to charge, as carriers, for the conveyance, including loading, unloading, etc., of the goods, under 5 & 6 W. 4, c. cvii., s. 167, a reasonable sum beyond such tonnage & mileage.—PARKER *v.* GREAT WESTERN RY. CO. (1851), 11 C. B. 545; 21 L. J. C. P. 57; 138 E. R. 585.

Annotations:—*Generally*, Mentd. Crouch *v.* G. N. Ry. (1854), 9 Exch. 556; Crouch *v.* G. N. Ry. (1856), 11 Exch. 742; Branley *v.* S. E. Ry. (1862), 12 C. B. N. S. 63; G. W. Ry. *v.* Sutton (1869), L. R. 4 H. L. 226.

1250. —— —— At depot with no sidings for delivery.]—LOCKE *v.* NORTH EASTERN RY. CO., No. 1167, *ante.*

1251. —— —— Meaning of.]—(1) The withdrawal of rates by a railway co., after an application has been made to the Railway Comrs., will not disentitle an appct. to an order under 1873 Act, s. 14, calling on the co. to distinguish how the rate is made up.

A railway co. were authorised by their special Act to charge a maximum rate for hops to include conveyance and any other expenses incidental to such conveyance, except a reasonable charge for loading & unloading, when performed by the co.

The co. charged considerably more than the mileage rate, the excess being alleged to be for delivery & cartage in L., for loading & assistance in & supervision of loading, for unloading, & as part of the expense of loading & unloading, for weighing, checking, clerkage, & watching; for sheeting; for use of siding & station accommodation:—*Held:* (2) cartage & delivery & loading & unloading were matters for additional charges; (3) loading & unloading did not comprehend more than the labour of packing & unpacking a goods train or a goods truck whether done by hand or by machinery; (4) the services claimed to be part of loading & unloading were services incidental to conveyance, & were not chargeable.—BERRY *v.* LONDON, CHATHAM & DOVER RY. CO. (1884), 4 Ry. & Can. Tr. Cas. 310.

1252. —— —— ——.]—The special Acts of a railway co. authorised them to demand, in addition to the maximum mileage rates for conveyance a reasonable sum for loading, unloading, & covering, & the delivery & collection of goods, & other services incidental to the business of a carrier, when performed by the co., & warehousing, wharfage, & any other extraordinary services reasonably & properly performed by the co. The co. charged in addition for (*a*) loading & unloading; (*b*) station accommodation; (*c*) shunting & placing waggons in position for loading & unloading, including use of & expense of working junctions, & also haulage of the loaded waggons to where they were picked up by the train; (*d*) advising appcts. of the receipt of each consignment at the sending stations to appcts.' order, & asking for their instructions, with incidental clerkage, stationery & stamps; (*e*) weighing, checking, clerkage,

u. *For what services. Switching charges—Transferring cars to another carrier.*]—GRAND TRUNK RY. CO. *v.* LAIDLAW LUMBER CO. (1911), 18 O. W. R. 340; 2 O. W. N. 548.—CAN.

watching & labelling at sending station; (*f*) advising appcts. at their request of the arrival of their goods at the receiving station, consigned there to their order, with clerkage, stationery & stamps; (*g*) clerkage, checking, & watching at receiving stations:—*Held:* (1) services (*b*), (*c*), (*e*), (*f*), & (*g*), were services incidental to conveyance, & were not chargeable; (2) the legal meaning in the special Acts of railway cos. of the words "load" & "unload" is no other than the sense in which they are used in ordinary English, & the words are not applicable to things which have their own proper words to describe them; (3) in the passage "services incidental to the business of a carrier," the words "a carrier" did not mean a carrier by railway, but a carrier who collected & delivered goods, & carted from door to door; & (4) the word "incidental" did not refer to the terminal services above set out, which are performed by a railway co., but rather to such subsidiary services as would, according to the nature of a carrier's employment, ordinarily attach to it; (5) where the loading & unloading of certain goods was done partly by the senders & receivers of the goods but the co.'s porters performed the larger share of the work, at a cost to the co., at the sending station of 4½*d.* a ton, & at the receiving station of 4*d.* a ton, a reasonable charge for such assistance was 5*d.* a ton; (6) service (*e*), checking, was a service not properly embraced in the term loading, & should not be reckoned as part of the expense of loading; (7) service (*d*) was proved to be a service only occasionally requiring to be rendered, & ought not to be taken into account in fixing the amount of a general rate, & only those for whom things have to be done out of the usual course should bear the reasonable charge that may be made for the doing of them.

(8) The co. carried appcts.' goods at a carted rate of so much a ton, including delivery in B. in a district, within a fixed radius, without regard to distance within that radius. Appcts., who were nearer to the station than were some points in the district, claimed a rebate:—*Held:* a uniformity of charge for this service was for the benefit of the public.

(9) *Semble:* in some circumstances the charge made by a railway co. for cartage may properly be of a higher amount than the sum they allow as a rebate to their customers who cart for themselves.—KEMPSON *v.* GREAT WESTERN RY. CO. (1885), 4 Ry. & Can. Tr. Cas. 426; 1 T. L. R. 218.

Annotation:—*As to* (8) **Consd.** Pickfords *v.* L. & N. W. Ry. (1907), 98 L. T. 170.

See, now, 1921 Act, s. 55, Sched. V. 11 (5), 14.

1253. —— Stopping.]—By 8 & 9 Vict. c. clxix. ss. 104, 105, the M. Ry. Co. were empowered to demand maximum rates for the carriage of coals &, in addition, for articles conveyed for a less distance than four miles, a reasonable charge for the expense of stopping, loading, & unloading.

24 & 25 Vict. c. ccxvii. s. 26, provided for a maximum rate for the conveyance of all things, to include every expense incidental to conveyance, except a reasonable sum for loading, covering, & unloading of goods at any terminal station of such goods, & for delivery & collection, & any other services incidental to the business or duty of a carrier.

Defts., colliery owners, sent their loaded trucks by the B. & M. T. Ry. to a terminal junction on pltfs.' line, whereupon pltfs. sent an engine to fetch the train of trucks thence, & to draw it along their own line to its destination. Pltfs.' engine had to stop at the junction & occasionally wait there during a period of about half an hour, for the arrival of defts.' trucks:—*Held:* (1) this was a "stopping" for which a reasonable charge might be legally made by pltfs., under s. 105, in addition to the tolls for conveyance; (2) it was not a service incidental to the conveyance of the goods within 24 & 25 Vict. c. ccxxiii. s. 26.—MONMOUTHSHIRE RY. & CANAL CO. *v.* WILLIAMS (1872), 27 L. T. 134, Ex. Ch.

1254. —— ——.]—(1) A co. obtained an Act (8 & 9 Vict. c. clxix.), authorising it to construct a railway & to demand tolls for the conveyance of passengers & goods thereon. The charge for the conveyance of goods was generally thus expressed, "per ton per mile not exceeding," &c. One clause provided that "for articles or persons conveyed on the railway for a less distance than four miles" there might be, "in addition to the prescribed tolls for conveyance, a reasonable charge for the expense of stopping, loading, & unloading." No publication of this charge in the form of a "toll" had been made upon the toll-board:—*Held:* this "charge" for stopping was not properly a "toll," & the non-publication of it on the toll-board in the form required by 1845 Act, ss. 93, 95, did not prevent the co. from demanding it.

(2) The 105th clause granted tolls for "a fraction of a mile beyond four miles," &c.; the co. claimed such tolls when the whole distance traversed was less than four miles:—*Held:* (1) (LORD CAIRNS, C., & LORD SELBORNE) the charge was, on the whole, warranted by the words of the Act; (2) (LORD PENZANCE & LORD O'HAGAN) applying the principle that no charge could be imposed on the public but by the clearly expressed intention of the Legislature, in this case the Legislature had not clearly expressed an intention, nor had intended, to authorise such a charge.—PRYCE *v.* MONMOUTHSHIRE CANAL & RY. COS. (1879), 4 App. Cas. 197; 49 L. J. Q. B. 130; 40 L. T. 630; 43 J. P. 524; 27 W. R. 666, H. L.

Annotations:—*As to* (1) **Consd.** R. *v.* Ry. Comrs. & Distington Iron Co. (1889), 22 Q. B. D. 642. **Reid.** Tennant *v.* Swansea Harbour Trustees (1886), 3 T. L. R. 128; McDougall & Bonthron *v.* London & India Docks Co., Page, Son & East *v.* London & India Docks Co., [1908] 2 K. B. 175. *Generally,* **Consd.** G. W. Ry. *v.* Ry. Comrs. (1881), 7 Q. B. D. 182.

1255. —— Shunting & marshalling trucks—Between trader's sidings & railway.]—LANCASHIRE & YORKSHIRE RY. CO. *v.* GIDLOW, No. 978, *ante.*

1256. —— ——.]—The M. Ry. Co. were authorised by their Act to charge in addition to a maximum rate for coal carried in owner's waggons loading, covering & unloading of goods, delivery & collection, & any other services incidental to the business or duty of a carrier, when performed by the co., & warehousing & wharfage of goods, or any other extraordinary services performed by the co.:—*Held:* (1) haulage & shunting in marshalling the traffic from collieries were services incidental to conveyance; (2) back haulage of empty waggons was not a service for which a charge could be made under the clause; (3) providing, maintaining & working signalling & interlocking apparatus at a junction with a colliery siding was an extraordinary service because it was a service from which the general public using the railway derived no benefit, but was performed for the benefit of the colliery proprietors alone, & 3*d.* per ton was a reasonable charge in respect of such service; (4) providing coal-shoots for unloading coal waggons was a service within the clause, for which 2*d.* per ton was a reasonable charge.—DUNKIRK COLLIERY CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1876), 2 Ry. & Can. Tr. Cas. 402.

Annotations:—*As to* (1) **Reid.** Foster *v.* G. E. Ry. (1920), 37 T. L. R. 268. *As to* (3) **Distd.** Neston Colliery Co. *v.* L. & N. W. Ry. & G. W. Ry. (1883), 4 Ry. & Can. Tr. Cas. 257.

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1257. —— ——.]—WATKINSON *v.* WREXHAM, MOLD & CONNAH'S QUAY RY. CO. (No. 1), No. 982, *ante.*

1258. —— ——.]—ISLE OF WIGHT (NEWPORT JUNCTION) RY. CO. *v.* ISLE OF WIGHT RY. CO., No. 1038, *ante.*

1259. —— ——.]—A railway co. were authorised by their Act to charge for coal a maximum rate for conveyance & for everything incidental to conveyance except loading & unloading, & also "a reasonable sum for the loading, unloading, & covering, & for the delivery & collection of goods & other services incidental to the business of a carrier, when performed by the co., & a further reasonable sum for warehousing & wharfage, & for other extraordinary services, reasonably & properly performed by the co.:—*Held:* (1) providing, maintaining & working, signalling, & interlocking apparatus at a junction with a branch line to the colliery, was not an extraordinary service within that clause, because such branch line was not a private one, but a line or siding belonging to the railway co., & constructed & maintained at their cost, & to some extent used for general traffic as well as for coal from the colliery; (2) any charge the co. might be entitled to make for the use of the signals in getting the coal trains down from the colliery on to the station siding was included in & covered by the sum of 1*s.* per waggon which they were paid for working this traffic on the branch line & into their station; (3) the use of the signals afterwards in working the trains out of that siding on to the main line of the railway, & so forward to their destination was only part of the ordinary course of working their line, & not a service for which any terminal charge could be made; (4) a customer who pays for the use of a railway acquires a right to use a junction between one part of it & another, & the cost of working the junction is an item of the cost of conveyance, the remuneration for which is included in the mileage rate; (5) marshalling the trucks of a coal train by a railway co. in their railway station, & on their own siding is not a service for which they can make a terminal charge, being incidental to conveyance & paid for in the mileage rate; (6) the expense of invoicing the traffic & clerkage was one which a railway co. must necessarily incur for the purpose of conducting their own business, & an expense incidental to conveyance, & not a service for which a charge could be made; (7) advising a consignee of the arrival of traffic, obtaining his signature, acknowledging the receipt & clerkage were services incidental to conveyance, & not extraordinary ones, it being ordinarily the duty of a carrier to give notice to persons to whom goods are directed, of the arrival of goods, at all events when delivery is to be taken at the office of the carrier, for the time that they ought to call for the goods is when the carrier is ready to deliver, & he alone is in a position to notify when that is; (8) providing & maintaining siding accommodation at the receiving station for full & empty waggons, taking empty waggons out of & placing full ones in the sidings, were services incidental to conveyance & not extraordinary ones, the undertaking to carry involving the duty of delivering safely, & providing sidings & depositing waggons in them being essential acts by which such duty is to be performed.—NESTON COLLIERY CO. *v.* LONDON & NORTH WESTERN RY. CO. & GREAT WESTERN RY. CO. (1883), 4 Ry. & Can. Tr. Cas. 257.

1260. —— ——.]—KEMPSON *v.* GREAT WESTERN RY. CO., No. 1252, *ante.*

1261. —— **Use of sidings—In shunting or unloading—No delay in unloading.**]—(1) Where a railway co. makes illegal or excessive charges for the conveyance of traffic, it does not afford all reasonable facilities within 1854 Act, s. 2.

(2) Although a railway co. give public notice that they are not common carriers of mineral traffic, & that they only undertake to convey such traffic under special rates & provisions, such special rates must not exceed the maximum authorised to be charged for mineral traffic by their Act. In construction of a special Act:—*Held:* toll clauses were controlled by a general clause limiting maximum charges.

(3) A co.'s Act fixed the maximum rates of charge to be made by the co., including tolls, for the use of the railway, & of waggons or trucks & locomotive power, & every expense incidental to such conveyance, except loading & unloading:—*Held:* no extra charge could properly be made under a sect. giving the co. power "to charge for terminal services" for mere use of sidings in shunting or unloading, so long as there was no delay in unloading.—CHATTERLEY IRON CO. *v.* NORTH STAFFORDSHIRE RY. CO. (1878), 3 Ry. & Can. Tr. Cas. 238.

Annotations:—As to (1) **Refd.** G. W. Ry. *v.* Ry. Comrs. (1881), 7 Q. B. D. 182. *As to* (3) **Expld.** Hall *v.* L. B. & S. C. Ry. (1885), 4 Ry. & Can. Tr. Cas. 398.

1262. —— ——.]—By L. B. & S. C. Ry. Act, 1863 (26 & 27 Vict. c. ccxviii.), s. 51, the maximum rates of charges to be made by the co. for the conveyance of animals & goods, including the tolls for the use of their railways & waggons or trucks & for locomotive power, & every other expense incidental to such conveyance (except a reasonable sum for loading, covering, & unloading the goods at any terminal station of such goods, & for delivery & collection, & any other services incidental to the duty or business of a carrier, where such services or any of them are or is performed by the co.) shall not exceed certain sums prescribed:—*Held:* (1) station accommodation, the use of sidings, weighing, checking, clerkage, watching, & labelling, provided & performed by the co. in respect of goods traffic carried by them as carriers, may be, & *primâ facie* are "services incidental to the duty or business of a carrier" within the sect.; (2) whether they are so in any particular case is a question of fact for the Comrs. to decide, &, if found by them to be so, such services may be the subject of a separate reasonable charge in addition to the rates prescribed.—HALL & CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1885), 15 Q. B. D. 505; 5 Ry. & Can. Tr. Cas. 28; 53 L. T. 345; *subsequent proceedings* (1886), 17 Q. B. D. 230, C. A.

Annotations:—As to (1) **Apprvd.** Sowerby *v.* G. N. Ry. (1891), 60 L. J. Q. B. 467. **Folld.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574. **Refd.** Kempson *v.* G. W. Ry. (1885), 4 Ry. & Can. Tr. Cas. 426; Greenwood *v.* L. & Y. Ry. (1888), 6 Ry. & Can. Tr. Cas. 39; M. S. & L. Ry. *v.* Pidcock (1896), 10 Ry. & Can. Tr. Cas. 150. *Generally,* **Consd.** Birchgrove Steel Co. *v.* Mid. Ry. (1887), 5 Ry. & Can. Tr. Cas. 229. **Refd.** A.-G. *v.* Manchester Corpn., [1906] 1 Ch. 643; L. & Y. Ry. *v.* Liverpool Corpn., [1915] A. C. 152. **Mentd.** Girardot, Flinn *v.* Mid. Ry., Beeston Brewery Co. *v.* Mid. Ry. (1885), 5 Ry. & Can. Tr. Cas. 60.

See 1921 Act, s. 55, Sched. V. 19.

1263. —— **Covering & uncovering—What is reasonable sum for.**]—(1) The special Act of a railway co. authorised them to charge, in addition to the maximum mileage rates, a "reasonable sum for loading, unloading, collecting, receiving, or delivering, & for providing covers for minerals, goods, articles, or animals":—*Held:* the words "providing covers" included not only the supply of sheets, but also the labour of covering waggons with them.

(2) A railway co. at the sending station provided a truck & two sheets for covering a load of hay or straw, which amounted to one & a half tons; a railway porter assisted the consignor's servant in loading & drawing the sheets over the load & fastening them; at the receiving station a porter untied the sheets, & then the consignee unloaded the truck & removed the hay or straw; if he detained the truck beyond three clear days he was charged demurrage. The railway porter covered the loaded waggon in 20 minutes, & with the assistance of the consignor's servant he was able to load also in the same space of time; the uncovering at the receiving station took 10 minutes; but as the unloading was generally spread over two or three days, & the uncovering & recovering the load had to be repeated, another 10 minutes should be added to that account:—*Held:* (2) 9*d.* a sheet was a reasonable sum for providing covering, assuming that a sheet used in that traffic would not make more than one journey a week; a reasonable charge for labour of covering the loaded waggon was 2*d.* a ton; for assistance in loading 2*d.* a ton; for uncovering & recovering the load at the receiving station 2*d.* per ton.

(3) The amount of time a railway co. ought to allow a consignee to unload & remove a consignment depends upon the varying circumstances of each particular case.

Semble: 48 hours after a consignee receives notice of the arrival of his goods is a reasonable time on the average. A charge for the use & detention of waggons caused by exceeding the time allowed by a railway co. to unload in, should not, except where the permission to occupy an extra time for unloading forms part of the original contract, be included in the rate for conveyance.—COXON *v.* NORTH EASTERN RY. CO. (No. 2) (1883), 4 Ry. & Can. Tr. Cas. 284.

Annotation:—As to (2) **Distd.** Hall *v.* L. B. & S. C. Ry. (1885), 15 Q. B. D. 511, n.

See, now, 1921 Act, s. 55, Sched. V. 11 (1) (v), 14.

1264. —— Invoicing, clerkage, weighing, etc.—Included.]—ISLE OF WIGHT (NEWPORT JUNCTION) RY. CO. *v.* ISLE OF WIGHT RY. CO., No. 1038, *ante.*

1265. —— —— ——.]—NESTON COLLIERY CO. *v.* LONDON & NORTH WESTERN RY. CO. & GREAT WESTERN RY. CO., No. 1259, *ante.*

1266. —— —— ——.]—KEMPSON *v.* GREAT WESTERN RY. CO., No. 1252, *ante.*

1267. —— —— Not included.]—HALL & CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO., No. 1262, *ante.*

1268. —— —— ——.]—The special Act of a railway co. authorised them to charge in addition to their maximum rates a reasonable sum for loading, covering, & unloading, & for delivery & collection & any other services incidental to the business or duty of a carrier when performed by the co., & a reasonable sum for warehousing & wharfage or for any other extraordinary services performed by the co.:—*Held:* the co. were entitled to make a reasonable charge for (1) share of expenses of providing & maintaining station accommodation for dealing with merchandise traffic as carriers; (2) share of general expenses of station (*e.g.* rates & taxes, insurance, lighting, & water, stationery & stores) attributable to carriers' services; (3) share of expenses of supervision & clerkage (salary & wages of agent, clerk, & general staff) so attributable; (4) shunting (locomotive power, horses, staff, & stores) so attributable; (5) cartage, when performed by the co.

(6) Agricultural seeds do not come within the term "corn & grain."—SOWERBY & CO. *v.* GREAT NORTHERN RY. CO. (1891), 7 Ry. & Can. Tr. Cas. 156; 60 L. J. Q. B. 467; 65 L. T. 546; 7 T. L. R. 392, C. A.

Annotations:—Generally, **Follid.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574. **Refd.** A.-G. *v.* Manchester Corpn., [1906] 1 Ch. 643.

1269. —— Maintaining & working signals—At junction with siding of or branch line to colliery.]—DUNKIRK COLLIERY CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO., No. 1256, *ante.*

1270. —— —— ——.]—NESTON COLLIERY CO. *v.* LONDON & NORTH WESTERN RY. CO. & GREAT WESTERN RY. CO., No. 1259, *ante.*

1271. —— Providing station & siding accommodation—Included.]—NESTON COLLIERY CO. *v.* LONDON & NORTH WESTERN RY. CO. & GREAT WESTERN RY. CO., No. 1259, *ante.*

1272. —— —— ——.]—BERRY *v.* LONDON, CHATHAM & DOVER RY. CO., No. 1251, *ante.*

1273. —— —— ——.]—KEMPSON *v.* GREAT WESTERN RY. CO., No. 1252, *ante.*

1274. —— —— Not included.]—HALL & CO. *v.* LONDON, BRIGHTON & SOUTH COAST RY. CO., No. 1262, *ante.*

1275. —— —— ——.]—SOWERBY & CO. *v.* GREAT NORTHERN RY. CO., No. 1268, *ante.*

1276. —— Haulage—From reception sidings to private sidings.]—The special Act of a railway co. provided that the maximum rate for conveyance was the maximum rate which the co. might charge for the conveyance of merchandise by merchandise train; & that the co. might charge for services rendered to a trader at his request or for his convenience a reasonable sum, by way of addition to the tonnage rate.

The question was whether the co. were entitled to charge for services rendered in hauling the traders' trucks to their private sidings from the co.'s reception sidings, where they were in the first instance deposited after being detached from the merchandise train which hauled them to the station:—*Held:* (1) "conveyance" for the purpose of rates might or might not coincide with the contractual conveyance but that it could not be said as a matter of law that it did. The point at which it ended would be ascertained *primâ facie* by the point at which the goods train detached & deposited the trucks, but if they were so detached & deposited for the convenience of the railway co. at a point short of that to which as conveyers they would be bound to take them for the purpose of delivery to a distributing carrier in times when such carriers existed, a charge could not be made for haulage between those points. This applied to station traders as well as to private siding owners although they, as using the station, were liable to terminal charges to which siding owners were not liable; (2) if *Manchester, Sheffield & Lincolnshire Ry. Co.* v. *Pidcock & Co.* (No. 1279, *post*) laid down as a proposition of law applicable to all cases that conveyance for the purpose of charge stopped at the point where it was reasonable to use the train engine, that decision could not be supported; (3) the use of trucks paid for in the conveyance rate did not end until a reasonable time had been afforded to the consignee to take delivery of his goods, & that when that reasonable time had been exceeded demurrage began.—FOSTER *v.* GREAT EASTERN RY. CO., [1920] 2 K. B. 574; 16 Ry. & Can. Tr. Cas. 337; 89 L. J. K. B. 612; 123 L. T. 363, C. A.; *subsequent proceedings,* 37 T. L. R. 268.

1277. —— —— ——.]—On an application by a firm of traders against the G. E. Ry. Co. under 1894 Act, s. 4, for a rebate from a sum paid by them to the co. for station accommodation at

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C., the railway co. claimed under their Rates & Charges Order Confirmation Act, to set off or counterclaim for an equivalent sum as the value of services rendered to appcts. " at their request, at or in connection with " appcts.' private siding. These services were alleged to be the hauling of appcts.' trucks from the co.'s reception sidings at C. station, where the trucks were deposited after the train had reached C., up to certain other sidings of the co. to which appcts.' trucks were hauled along with the trucks of the station traders, &, after sorting them, hauling them from there to the private siding of appcts. Appcts. contended that these services were incidental to conveyance & covered by the rate for conveyance & were undertaken for the co.'s own convenience & for railway purposes, & also that they were so undertaken under a written sidings agreement between the railway co. & appcts. The Railway Comrs. having decided in favour of appcts. & allowed the rebate, the railway co. appealed, & the ct. remitted the case for further consideration, with a direction that, in considering what services were incidental to conveyance & covered by the rate for conveyance, the proper test to be applied was whether, under the earlier conditions of railway practice, an independent carrier, as distinct from the railway co. as conveyers, if he had been carrying on business at the station in question, would have done the work for which a separate charge was claimed by the co., or whether the co., acting as conveyers, would have done it:—*Held:* (1) the *onus* of proving that the independent carrier would have done the work was upon the railway co., & the co. had not produced sufficient evidence to discharge the *onus;* (2) the independent carrier would not in former times have performed the services in question; (3) the hauling & shunting of the trucks, after their detachment from the goods train, over the station sidings to appcts.' private siding, were not services rendered at appcts.' request, & were covered by the conveyance rate, no extraordinary burden being placed on the railway co. by any peculiar characteristic or condition of the private siding; (4) the contention of the railway co. failed & the rebate must stand.—FOSTER BROTHERS *v.* GREAT EASTERN RY. CO. (1920), 37 T. L. R. 268.

See 1921 Act, s. 55, Sched. V. 11 (1) (i), 19.

SUB-SECT. 5.—ADDITIONAL CHARGES.

A. Specifically Authorised.

See 1921 Act, s. 55, Sched. V. 4–6, 9, 11 (1) (viii).

1278. Haulage—New waggons containing goods—Waggons sent by maker to purchasers—Ordinary rate charged for conveyance of goods.]—(1) Newly built railway waggons sent by the manufacturers from their building-yard, over the lines of the M. Ry. Co.'s system, for delivery at their customer's works or collieries, are not, if wholly or partially loaded, a description of traffic for which the co. can, under their Act of 1846, make a charge for haulage.

(2) The circumstance that the goods carried are the property of third parties, & admittedly loaded as a device or expedient to escape the charge for haulage of empty waggons, does not entitle the co. to a double charge, one charge for the carriage of the goods, & another for the haulage of the waggons. —HARRISON & CAMM *v.* MIDLAND RY. CO. (1893), 8 Ry. & Can. Tr. Cas. 60; 62 L. J. Q. B. 225; 68 L. T. 268; 5 R. 445.

Annotations:—As to (1) **Expld.** Spillers & Bakers *v.* G. W. Ry., [1911] 1 K. B. 386. *As to* (2) **Refd.** Spillers & Bakers *v.* G. W. Ry., [1910] 1 K. B. 778.

1279. Services at or in connection with sidings—Not belonging to company.]—Appcts.' Railway Rates & Charges Order Confirmation Act, 1892, Sched., s. 2, enacts that the maximum rate for conveyance includes the provision of locomotive power & trucks by the railway company, & every other expense incidental to conveyance not thereinafter provided for in the schedule. S. 3 enacts that the maximum station terminal is the maximum charge which the co. may make to a trader for the use of the accommodation provided, & for the duties undertaken by the co. for which no other provision is made in the schedule, at the terminal station for or in dealing with merchandise, as carriers thereof, before or after conveyance. S. 5 enacts that the co. may charge a reasonable sum, by way of addition to the tonnage rate, for services rendered to a trader at his request, or for his convenience, at or in connection with sidings not belonging to the co. . . . provided that where, before any service is rendered to a trader, he has given notice in writing to the co. that he does not require it, the service shall not be deemed to have been rendered at the trader's request, or for his convenience:—*Held:* (1) the tonnage rate authorised by s. 2 is for conveyance by merchandise train & any work incidental to such conveyance, & for the performance of which it is reasonable to use the train engine (*e.g.* when at a junction with the main line of either a station siding or a private siding, the train has to pick up or throw off trucks, the work of hauling or shunting the trucks over the points at the junction & over so much of the siding as the keeping of the main line clear of obstruction may require); but conveyance other than this off the main line does not come within s. 2; (2) a station terminal is for use of the accommodation or staff of a terminal station after conveyance is at an end; goods arriving at a station to which they are consigned for delivery, & which upon arrival have to be hauled a greater or less distance to be in a position where they can be unloaded & delivery given, are liable to a terminal charge.

Resps. were the owners of a siding not belonging to the railway co. The siding had no direct connection with the up and down main lines, being separated from them by the railway co.'s goods yard at R. station. Traffic, therefore, to & from the siding had to pass over the station sidings, & the service of taking it across was done by the railway co. This service was claimed to be one performed " at or in connection with " the traders' siding, & the railway co. asked to be allowed to charge for it the same sum that they charged as a station terminal to traders who came under s. 3:—*Held:* (3) such service might be charged for under s. 5, even though it was a service which was involved in delivery, & which the trader could not himself perform; (4) the railway co. being relieved, by the provision of the siding, from the expense of finding standing room for trucks & space for loading & unloading, three-fourths of the sum which they charged as a station terminal at their R. station, in respect of merchandise similar to resps.' & liable to such terminal charge, was a reasonable sum to be charged to resps. for services rendered by the railway co. at or in connection with resps.' siding at R.

(5) The word " conveyance " means such work only as in the early days of railways was performed by a railway co. acting as conveyers only & not as carriers as well, & as was capable of being measured by a reference to distance travelled.—

MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. Co. *v.* PIDCOCK & Co. (1896), 10 Ry. & Can. Tr. Cas. 150.

Annotations :—As to (1) **Consd.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574. *As to* (3) *&* (4) **Distd.** Cowan *v.* N. B. Ry., N. B. Ry. *v.* Cowan (1898), 10 Ry. & Can. Tr. Cas. 169.

1280. —— ——.]—A railway co. cannot charge beyond the conveyance rate for anything done on their own lines which is properly incidental to conveyance or collection of traffic to or from private sidings, no matter how much the cost & trouble may be increased by the inconvenience of the sidings or the nature of the traffic, unless the defects or inconveniences are such as to relieve the railway co. from their duty to deliver & collect. But a railway co. may be entitled to make a service charge if they are required for the convenience of the siding owner to do work on his siding, & where they are so required, then, if by reason of the insufficiency of the siding or otherwise, that work involves extra work on their own line, that extra work may be a ground for an extra charge.

N. S. Ry. Rates, &c. Order Confirmation Act, 1892, Sched., s. 5, enacts that the co. may charge in addition to the tonnage rate a reasonable sum for certain services rendered to a trader at his request or for his convenience, including (*inter alia*) services rendered by the co. at or in connection with sidings not belonging to the co. & the collection or delivery of merchandise outside the terminal station.

Appcts. claimed payment for shunting services performed by them in respect of defts.' traffic to or from their sidings at M. & W. Owing to the construction of the sidings, & the nature of the traffic, the business of delivering full trucks & of bringing back & taking away empties, was considerable. Appcts. calculated that the time their goods trains were detained while the train engine was occupied in uncoupling trucks intended for delivery at the junctions, & in picking up trucks ready to go in the direction in which the train was travelling, averaged *per diem* at W. one hour, & at M. one hour & some minutes :—*Held :* (1) if the time occupied by appcts.' engine at defts.' request or for their convenience in shunting their traffic to or from their M. sidings exceeded for each train twelve minutes, & to or from W. sidings exceeded six minutes, appcts. might charge defts. for the excess time at the rate of 7*s.* per hour.

Appcts. maintained a small staff at M. to look after the siding traffic, & to superintend the working of it to & from the main line. The traffic was partly defts.' & partly that of another firm of traders, & appcts. claimed that the expense should be borne by the two firms in the proportion of the tonnage dealt with :—*Held :* (2) appcts. were entitled to be paid by defts. the expense they claimed from them.

(3) By s. 7 of the Schedule to the Act, appcts. may charge by way of rent or otherwise for sidings or other structural accommodation provided for the private use of traders & not required by the company for dealing with the traffic for the purposes of conveyance, provided that the amount of such charges or payments is fixed by an agreement.

The premises of defts. were connected at M. & W. with appcts.' railway by means of sidings not belonging to appcts. Appcts. claimed to charge defts. under that sect. for the erection of signal cabins, signals & other structural appliances for the private use of defts. at M. & W. When defts. made their junctions, & for long after, the branch railway on which they were situated was only a goods & mineral line. In 1893, appcts. converted the branch into a passenger line, & the works in question were provided by them to meet the Board of Trade requirement that home & distant signals should be provided at siding junctions before a railway co. were allowed to carry passengers :—*Held :* (4) appcts. could not recover from defts. the expense of providing such signals at M. & W. ; (5) the signals were not within s. 7, not being works provided for the trader's private use, & " not required by the co. for dealing with the traffic for the purpose of conveyance."

(6) *Semble :* such works belong to the railway & are charged for in the rate of conveyance, as part of that rate is for " the use of the railway."

(7) Appcts. also claimed under s. 5 of the Schedule to the Act, to be repaid the cost of working such signals in connection with defts.' sidings : —*Held :* the reasons stated by the ct. for not allowing a charge to be made for the cost of providing the signals extended to the working of them, but that if defts. paid anything for signalling or signalmen before 1893, when the railway was converted into a passenger line, they should continue to do the same for the time since.—NORTH STAFFORDSHIRE RY. Co. *v.* SALT UNION, LTD. (1898), 10 Ry. & Can. Tr. Cas. 161.

Annotations :—As to (1) *&* (3) **Consd.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574. *As to* (4) **Refd.** Portway *v.* Colne Valley & Halstead Ry. & G. E. Ry. (1899), 10 Ry. & Can. Tr. Cas. 211.

1281. —— ——.]—(1) By s. 5 (1) of the Schedule to their Railway Rates & Charges Order Confirmation Acts, 1891 & 1892, a railway co. may charge a reasonable sum for services rendered at, or in connection with, sidings not belonging to the co., & the collection or delivery of merchandise outside the terminal station ; & by s. 7 the co. may charge by way of rent, or otherwise for sidings or other structural accommodation provided for the private use of traders, & not required by the co. for dealing with the traffic for the purposes of conveyance :—*Held :* as regards s. 5, services at or in connection with sidings not belonging to the co. include any service done by a railway co. in the delivery of traffic which is not incidental to conveyance, & which is occasioned by the place of delivery being at a private siding.

(2) V.'s coal traffic, on arrival at the B. goods station on the F. Ry. Co.'s line, was shunted off the running line by the train engine. It was then attached to a yard engine & taken to sidings whence it was daily, at regular intervals, hauled over a branch line by the railway co., & delivered to V. at the junction of their private sidings with the branch. The engine was specially employed on that work, & when not engaged on those journeys, it was occupied in the B. goods yard in shunting V.'s traffic, & otherwise preparing it for removal, & in one way or another, hauling or shunting, the whole day's time of one engine throughout the year was spent upon this traffic :—*Held :* 6*d.* per ton was a reasonable charge for haulage of trucks of coal, shunting, working signals, & for clerkage & checking, for the delivery of the coal traffic from B. goods station to V.'s sidings.—FURNESS RY. Co. *v.* VICKERS, SONS & MAXIM, LTD., VICKERS, SONS & MAXIM, LTD. *v.* FURNESS RY. Co. (1904), 12 Ry. & Can. Tr. Cas. 81 ; 20 T. L. R. 326.

1282. —— —— **Goods not reasonably fit for conveyance.**]—It is the duty of a trader who sends goods by rail to deliver such goods to the railway co. in a condition in which they are reasonably fit for conveyance. If the goods are delivered in a condition in which they are not so fit the railway co. may charge for any services necessary to make

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them so fit a sum in addition to the rate charged for carriage.

A railway co. claimed to charge for services rendered at or in connection with the private sidings of a colliery co. in sorting a long line of trucks into sectional or route order for conveyance to their ultimate destination:—*Held:* the co. were entitled to charge.—LITTLETON COLLIERIES, LTD. *v.* LONDON & NORTH WESTERN RY. CO. (1916), 16 Ry. & Can. Tr. Cas. 169; 85 L. J. K. B. 1481; 115 L. T. 840.

See, now, 1921 Act, s. 55, Sched. V. 19.

Detention of trucks beyond reasonable time.]—*See* Sect. 9, *post.*

Provision of exceptional accommodation.]—*See* Sub-sect. 5, B., *post.*

Disputes in reference to.]—*See* Sub-sect. 8, *post.*

B. For Exceptional Services.

See 1921 Act, s. 55, Sched. V. 7, 11.

1283. Sending back empty waggons.]—(1) *Held:* a demand of the sum actually due for tolls is a condition precedent to the right to sell under 1845 Act, s. 97.

(2) By 9 & 10 Vict. c. cciii., s. 29, a railway co. were empowered to take tolls for the use of their railway in respect of the tonnage of articles conveyed upon the railway certain sums per ton, & a further sum if conveyed in the carriages of the co.; & by s. 30, tolls for the use of engines. S. 35 fixed a maximum rate of charge, including the charges for the use of carriages, waggons or trucks, & for locomotive power, and all other charges incident to such conveyance. By s. 37, the co. were empowered to take increased charges for the conveyance of goods, by agreement with the owners of goods, by reason of any special service. The co. having for a considerable time carried on their line coals in carriages belonging to pltf., from P. to H., made a demand of a gross sum equal to the amount of the tonnage rates for coals & use of engines; & also of a sum claimed by them for sending back pltf.'s empty carriages from H. to P. They gave no explanation of the items making up the gross sum claimed. Pltf. having omitted to pay the amount claimed, the co. sold pltf.'s carriages, etc., to satisfy the amount due:—*Held:* the sum claimed for sending back the return waggons was not toll, & the co. having demanded a larger sum than that due for tolls, the sale was unlawful. (3) *Semble:* the co. might be entitled to charge for sending back the waggons by agreement as for special services under s. 37.—FIELD *v.* NEWPORT, ABERGAVENNY & HEREFORD RY. CO. (1858), 3 H. & N. 409; 27 L. J. Ex. 396; 157 E. R. 529.

Annotations:—As to (2) **Consd.** North Central Wagon Co. *v.* M. S. & L. Ry. (1887), 35 Ch. D. 191. **Refd.** Harrison & Camm *v.* Mid. Ry. (1893), 62 L. J. Q. B. 225.

1284. Weighing out coals — By company's machine.]—A railway co. carried coals on their line for defts., who were coal merchants, & delivered them at defts.' wharf which adjoined a siding at one of the co.'s stations, & they allowed defts., in consideration of paying a specified reasonable charge, to weigh out the coals to customers by a machine belonging to the co. placed in the station yard. The co. had no express statutory power to make charges for the use of their weighing-machines:—*Held:* the charges were not *ultra vires*, & the co. could maintain an action to recover them from defts.—LONDON & NORTH WESTERN RY. CO. *v.* PRICE (1883), 11 Q. B. D. 485, D. C.

*Annotations:—***Consd.** A.-G. *v.* Mersey Ry., [1907] 1 Ch. 81 (*see* [1907] A. C. 415). **Refd.** L. & N. W. Ry. *v.* Donellan, L. & N. W. Ry. *v.* Billington (1898), 78 L. T. 575; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

See, now, 1921 Act, s. 55, Sched. V. 11 (i) (iii).

1285. Exceptional accommodation — Keeping waggons on "wait order" sidings.]—Defts., coal merchants, consigned coal from certain collieries by pltfs.' railway to pltfs.' sidings at W., there to await further orders as to the ultimate destination of the coal to the purchasers, & when the coal was sent on to the ultimate destination pltfs. charged a through rate from the colliery station to the station of the purchaser. Pltfs. had previously given defts. notice that they would charge siding rent at the rate of 6*d.* per waggon per day or part of a day on the "wait order" waggons after the first two clear days. Two clear days afforded sufficient time to enable defts. to furnish instructions to the ultimate destination of the coal:—*Held:* pltfs. were entitled to recover the siding rent, either (1) upon a common law contract to pay, keeping the coal at W. after two days not being an incident of the contract to carry; or (2) under pltfs.' (Rates & Charges) Order Confirmation Act, 1891, Sched., Part IV., as accommodation provided at the desire of defts. for which no provision was made elsewhere in the schedule.—LONDON & NORTH WESTERN RY. CO. *v.* CROOKE & Co. (1904), 20 T. L. R. 506.

Annotation:—As to (1) **Folld.** Mid. Ry. *v.* Myers, Rose (1908), 77 L. J. K. B. 554.

1286. —— ——.]—(1) The provision by a railway co. of "wait order sidings" for the use of waggons waiting orders is accommodation within the scope of the co.'s undertaking. (2) In a schedule to a Provisional Order of applt. co. it was provided that there should be charged for any accommodation or services provided or rendered by the co. within the scope of their undertaking by the desire of a trader, & in respect of which no provisions are made by the schedule such reasonable sum as the co might think fit in each case:—*Held:* the question of the reasonableness of the charge was a question of fact for the jury.—MIDLAND RY. CO. *v.* MYERS, ROSE & CO., LTD., [1909] A. C. 13; 78 L. J. K. B. 95; 99 L. T. 411; 24 T. L. R. 810, H. L.

Annotations:—As to (1) **Consd.** L. & N. W. Ry. *v.* Duerden (1916), 85 L. J. K. B. 885. **Folld.** G. W. Ry. *v.* Dafen Tinplate Co., [1917] 2 K. B. 177. *As to* (2) **Refd.** Spillers & Bakers *v.* G. W. Ry. (1910), 14 Ry. & Can. Tr. Cas. 52; Foster *v.* G. E. Ry. (1920), 37 T. L. R. 268.

1287. —— Shunting waggons on company's sidings—For repair by trader.]—Pltf. co., under the powers conferred upon them by L. & N. W. Ry. Co. (Rates & Charges) Order Confirmation Act, 1891, made regulations with respect to the working of the waggons of private owners on their railway. Deft., a trader, was the owner of certain coal waggons, which he was in the habit of consigning to a destination on the co.'s line. Pltfs. sent to deft. a copy of the regulations, one of which was that when waggons were required to be

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a. *Provision of waggons — Loaded & unloaded at traders' premises.*]—A ry. co. provided waggons to traders who loaded & unloaded on their own premises, & who hauled the waggons to & from the stations for that purpose at their own expense.—*Held:* some remuneration was due to the ry. co. for their waggons being used elsewhere than upon their premises, & that a reasonable sum to be paid to them would be an amount not exceeding 1*d.* per ton.—ABERDEEN COMMERCIAL CO. & ABERDEEN LIME CO. *v.* GREAT NORTH OF SCOTLAND RY. CO. (1878), 3 Ry. & Can. Tr. Cas. 205.—**SCOT.**

b. *Services at or in connection with sidings—Not belonging to company.*]—COWAN & SONS, LTD. *v.* NORTH BRITISH RY. CO., NORTH BRITISH RY. CO. *v.* COWAN & SONS, LTD. (1898), 10 Ry. & Can. Tr. Cas. 169.—**SCOT.**

shunted into their sidings for the purpose of repair a charge would be made for such services, & a siding rent charged on the waggons when detained at the sidings for more than three days. When deft.'s waggons got out of repair the co. shunted them to a siding known as "the crippled waggon siding" & sent him an advice note, & deft. then sent his repairers to the siding, & the waggons were there repaired. When the account for plffs.' charges was sent to deft. he refused to pay it on the ground that he was not liable. The Schedule, Part IV. of the Act, under the heading "Exceptional Class," contains provisions for payment for any accommodation or services provided or rendered by the co. within the scope of their undertaking by the desire of a trader, & in respect of which no provisions are made by the schedule. *Held:* the services in respect of which the charges were made had been rendered by the desire of a trader within Part IV. of the schedule, & defts. were entitled to recover.—LONDON & NORTH WESTERN RY. *v.* DUERDEN (1916), 85 L. J. K. B. 885; 114 L. T. 590; 32 T. L. R. 315, C. A.

Annotation:—**Folld.** G. W. Ry. *v.* Dafen Tinplate Co., [1917] 2 K. B. 177.

Disputes in reference to.]—*See* Sub-sect. 8, *post.*

SUB-SECT. 6.—THROUGH CARRIAGE.

See 1921 Act, s. 55, Sched. V. 8.

1288. Carriage over foreign line—Rates governed by foreign company's Act.]—Under the G. W. Ry. Co. (Rates & Charges) Order Confirmation Act, 1891, the co. are not bound to carry pitwood for mining purposes by measurement weight at the rates specified in the schedule thereto as applicable to goods in Class C. If the customer claims the benefit of the Class C. rates, the co. may charge those rates on the actual machine weight; on the other hand, if the pitwood be consigned at measurement weight, the co. are entitled to charge the rates applicable to goods in Class I.

The maximum rates which under the Act the co. are entitled to charge for the carriage of goods, & which maximum rates vary inversely with the distance carried, apply only to carriage over the co.'s own lines; & where goods are carried under a through contract with the co. from a point on their own line to a point on another co.'s line, the portion of the journey which is over the foreign co.'s line is to be treated as a separate journey, in respect of which the co. are entitled to charge the maximum rate authorised by the foreign co.'s Act as applicable to a journey of that distance, irrespective of the distance which the goods may have previously been carried over the co.'s own line.—GREAT WESTERN RY. Co. *v.* CASWELL & BOWDEN, LTD., [1904] 2 K. B. 508; 73 L. J. K. B. 834.

1289. Special Act—Short distance rate—"Conveyed."]—A special Act of the A. railway co. & a similar Act of the B. railway co. each contained a clause enacting that where merchandise was "conveyed" for an entire distance which did not exceed six miles the railway co. might make the charge authorised by the Act as for six miles; provided that where merchandise was "conveyed" by the co. partly on its own railway & partly on the railway of another co. both railways should, for the purpose of reckoning such short distance, be considered as one railway. Pursuant to a contract between a colliery association & the A. co., that co. took consignments of coal from the colliery sidings on their own line to a station on the line of the B. co. In the case of two of these sidings the distance to that station was less than six miles; in the case of the third siding the distance to that station, & even to the junction between the lines of the two cos., was more than six miles. For the first portion of the distance over the line of the A. co. the traffic was taken by the locomotives of that co., & for the latter portion of that distance & the entire distance over the line of the B. co. the traffic was taken by the locomotives of the B. co.:—*Held:* the word "conveyed" in the clause meant actually carried, & not carried under a contract of carriage; the traffic in question was not "conveyed" by the A. co. on both railways within the proviso, but only on its own railway, & a separate charge for conveyance might be made in respect of the distance for which the traffic was actually taken by each co.—LANCASHIRE & CHESHIRE COAL ASSOCN. *v.* LONDON & NORTH WESTERN RY. CO. & LANCASHIRE & YORKSHIRE RY. CO., [1907] 2 K. B. 902; 13 Ry. & Can. Tr. Cas. 8; 76 L. J. K. B. 1020; 97 L. T. 569; 23 T. L. R. 645, C. A.

Liability for demurrage.]—*See* Sect. 9, *post.*

Through traffic, generally.]—*See* Sect. 1, sub-sect. 5, *ante.*

SUB-SECT. 7.—RATE-BOOKS.

See 1873 Act, s. 14; 1888 Act, s. 34; 1894 Act, s. 3; 1921 Act, ss. 40, 54 (4)-(6), 86, Sched. IX., Part II.

1290. Contents of.]—The book of rates which a railway co. are required by 1873 Act, s. 14, to keep at their stations, should show all rates, local as well as through, which are being charged from the station where the book is kept. Through rates need not be shown, in whole or in part, at any other station than the one from which the traffic carried at through rates is forwarded in the first instance.—OXLADE *v.* NORTH EASTERN RY. Co. (No. 3) (1877), 3 Ry. & Can. Tr. Cas. 35.

1291. ——.]—The details to be given under 1873 Act, s. 14, must be such as to enable the person paying the rates & the Comrs., should application under s. 15 be made to them, to say whether an expense charged for in the rate is an expense for which the railway co. can properly charge, & whether the amount charged for that expense is a reasonable amount or not.—BIRCHGROVE STEEL CO. *v.* MIDLAND RY. CO. (1887), 5 RY. & CAN. TR. CAS. 229.

Annotation:—**Consd.** Pickfords *v.* L. & N. W. Ry., [1905] 1 K. B. 752.

1292. "Station" at which to be kept—Coal sidings.]—The L. & N. W. Ry. Co. carried coals in owner's waggons from certain collieries; the waggons were loaded & made into trains by the colliery owners & placed by them in coal sidings, whence they were taken by the railway co.'s engines, & the co. contended that they were not bound to keep books of rates in respect of such traffic:—*Held:* for the purpose of coal traffic the coal sidings were "stations" within 1873 Act, s. 14, & the cos. were bound to keep books of

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PART X. SECT. 4, SUB-SECT. 6.

c Conveying coal from pier to station—& loading, etc.]—By its special Act a ry. co. were authorised to charge a maximum rate of 1½*d.* per ton for all expenses incidental to the conveyance of coal, except a reasonable charge for loading & unloading, & any other service incidental to the business or duty of a carrier. The co. charged a special reduced waggon rate per cargo where vessels were unloaded at a certain pier on which they kept a special engine:—*Held:* where a small part only of the cargo was unloaded at this pier, the co. were entitled to make reasonable charges for extra services rendered in conveying the coal from the pier to the station, loading, etc.—M'COWEN *v.* WATERFORD & LIMERICK RY. CO. (1893), 27 I. L. T. 90.—IR.

Sect. 4,—Maximum rates: Sub-sects. 7 & 8.]

rates for the conveyance of coals therefrom, such books to be kept either at the sidings, if accessible to the public, or, for the greater convenience of the co. & the public, at the station where the general merchandise traffic of the district was conducted.—HARBORNE RY. CO. *v.* LONDON & NORTH WESTERN RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 169.

Annotations :—**Consd.** Pelsall Coal & Iron Co. *v.* L. & N. W. Ry. (1891), 7 Ry. & Can. Tr. Cas. 36. **Refd.** Jones *v.* N. E. Ry. (1875), 2 Ry. & Can. Tr. Cas. 208.

1293. —— Traffic divided into districts—With central station.]—JONES *v.* NORTH EASTERN RY. Co., No. 1302, *post*.

1294. Division of rates in—Duty of company—To inform person interested.]—WATKINSON *v.* WREXHAM, MOLD & CONNAH'S QUAY RY. CO. (No. 3), No. 979, *ante*.

1295. —— —— ——.]—It being the duty of a railway co. to inform any person interested, & applying to it for information, how much of each local & through rate in its entirety is for conveyance, & how much is for other expenses, if the information is withheld, the Comrs. will, on an application under 1873 Act, s. 14, order it to be given, & to be made public by proper entries in the rate book, & will order the co. to pay the costs of the proceedings which became necessary for the purpose of obtaining such information.—CAIRNS *v.* NORTH EASTERN RY. CO., COXON *v.* NORTH EASTERN RY. CO. (1883), 4 Ry. & Can. Tr. Cas. 221.

1296. —— Who may apply for order for—"Person interested"—Not limited to person paying rates in question.]—PELSALL COAL & IRON CO. *v.* LONDON & NORTH WESTERN RY. CO., No. 1299, *post*.

1297. —— —— —— Includes owner of branch line giving & receiving traffic to & from company at junction.]—TOMLINSON *v.* LONDON & NORTH WESTERN RY. CO., No. 1300, *post*.

1298. —— Jurisdiction of court to order—Withdrawal of rates after application does not affect.]—BERRY *v.* LONDON, CHATHAM & DOVER RY. CO., No. 1251, *ante*.

1299. —— —— Traffic booked to stations not on company's lines.]—(1) *Semble :* the expression "person interested" in 1873 Act, s. 14, is not limited to any persons paying the rates which are the subject of the application.

Semble : (2) the expression "person interested" in the sect. includes any person who makes out by proper evidence that the rates which he seeks to have distinguished are really & substantially competitive rates with his own (WILLS, J., & PRICE, COMR.), & (3) it includes all persons who have a *bonâ fide* interest in knowing how the particular rates which are the subject of their application are made up (SIR F. PEEL, COMR.).

Semble : (4) the Ct. has power under the sect. to require a railway co. to distinguish rates in its rate-books in cases in which the co. books traffic to stations which are not upon its own line.—PELSALL COAL & IRON CO. *v.* LONDON & NORTH WESTERN RY. CO. (1889), 23 Q. B. D. 536 ; 7 Ry. & Can. Tr. Cas. 1 ; 61 L. T. 257.

1300. —— —— Traffic received or delivered at place other than station.]—(1) Appct., the owner of a branch railway communicating with deft.'s line, collected & loaded goods upon trucks & then handed over the trucks to defts. at the junction with their line ; she also received from defts. at the junction, traffic for delivery at the other end of the line :—*Held :* appct. was a person interested with 1873 Act, s. 14, & was entitled to an order requiring defts. to distinguish the rates in the books they were by statute required to keep.

(2) If a rate-book be a book of rates for traffic received or delivered at a place on a railway other than a station within 1873 Act, s. 14, it is not subject to an order for division of rates. It is a book kept in accordance with 1888 Act, s. 34, which contains no power to order a dissection into their component parts of the rates in such a book.—TOMLINSON *v.* LONDON & NORTH WESTERN RY. CO. (1890), 7 Ry. & Can. Tr. Cas. 22 ; 63 L. T. 86.

Annotations :—*As to* (2) **Consd.** New Union Mills Co. *v.* G. W. Ry., [1896] 2 Q. B. 290. **Refd.** Stone *v.* Mid. Ry. (1903), 72 L. J. K. B. 377.

1301. —— —— ——.]—A railway co. kept books of the rates charged from the private sidings of colliery owners or junctions with their collieries at the nearest stations in accordance with 1888 Act, s. 34 :—*Held :* the powers of dissection contained in 1873 Act, s. 14, did not apply to such sidings or junctions, & the ct. had no jurisdiction under 1888 Act, s. 34, to order dissection of rates in books kept in accordance with the provisions of that sect.—PELSALL COAL & IRON CO. *v.* LONDON & NORTH WESTERN RY. CO. (No. 2) (1891), 7 Ry. & Can. Tr. Cas. 36.

1302. —— When ordered.]—(1) A railway co. arranged their mineral traffic into three districts, & in each district had a principal or central station at which the mineral rate-books were kept. No books of mineral rates were kept at any other stations, although many of such stations were close to large ironworks, quarries, & coal mines, and a very considerable traffic in coal was brought down by rail to the main line, & sent forward from such stations, or from sidings near them. The mineral traffic from the local stations was charged & booked at the central stations only :—*Held :* a contravention of 1873 Act, s. 14.

(2) *Semble :* the words "to which they book" in s. 14 mean "to which they quote a rate."

(3) To an application for an order requiring a railway co. to distinguish in the rate-books kept at each of their stations how much of the rate was for the conveyance of the traffic on the railway & how much for other expenses, the co. answered that the rates charged were mileage rates within their parliamentary powers, & were not made up of separate sums :—*Held :* an order to distinguish such rates should be made, as it did not follow that the whole of each rate was for conveyance only, & that part was not for other expenses.—JONES *v.* NORTH EASTERN RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 208.

Annotation :—*As to* (3) **Distd.** New Union Mills Co. *v.* G. W. Ry., [1896] 2 Q. B. 290.

1303. —— ——.]—Appct. employed defts. to

PART X. SECT. 4, SUB-SECT. 7.

1302 i. *Division of rates in—When ordered—Parcel rates.*]—A carrier who collected & carted parcels to the terminus of a ry. co. for conveyance, applied for an order requiring the ry. co. to distinguish in their book of rates how much of their parcels' rates was for conveyance on the railway & how much for collection or cartage :—*Held :* the ry. co. must distinguish in the book of rates at the terminus where appct.'s parcels were received for conveyance, how much of the parcels' rates was for conveyance on the railway, & how much for other expenses, & must specify the nature & detail of such other expenses.—ROBERTSON *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND (1876), 2 Ry. & Can. Tr. Cas. 374.—IR.

1302 ii. —— —— ——.]—A carrier applied for an order under 1873 Act, s. 14, requiring a ry. co. to distinguish in their book of rates, how much of a parcels rate was for conveyance on the line, & how much for other expenses. The evidence was that nothing was included in the rate except the carriage on the railway :—*Held :* the application must be refused.—ROBERTSON *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND (1876), 2 Ry. & Can. Tr. Cas. 409.—IR.

carry sand for him from S. to P., for which he was charged at the rate of 12*s.* per truck load of six tons; he applied for an order for dissection of the rate. By their answer defts. stated that the rate of 2*s.* per ton charged by them was a competitive rate; they were entitled to charge under their Act as much as 3*s.* 2*d.*, but they were obliged to carry sand from S. at this low rate, otherwise a competing line would get the traffic. They had never considered what part of the rate was due to conveyance, & what to terminals, but there were many items which would have to be taken into consideration, such as the use of sidings, servants' wages, rent of station, &c.; they did not load or unload for appct.:—*Held:* defts. could charge only for the use of the sidings, & what might be included in terminal charges were enumerated in the special Acts; the charge for conveyance & terminal services must be separated.—BAILEY *v.* LONDON, CHATHAM & DOVER RY. CO. (1875), 2 Ry. & Can. Tr. Cas. 99.

1304. —— ——.]—PELSALL COAL & IRON CO. *v.* LONDON & NORTH WESTERN RY. CO., No. 1299, *ante*.

1305. —— ——.]—TOMLINSON *v.* LONDON & NORTH WESTERN RY. CO., No. 1300, *ante*.

1306. —— Compliance with order for—What amounts to.]—The words "specifying the nature & detail of such other expenses" in 1873 Act, s. 14, require a railway co. to state in their rate book, to which the order made applies, what terminal services they undertake to perform with regard to the particular traffic, & how much they charge for each of such terminal services; a railway co. does not sufficiently comply with the sect. by giving a list of the various terminal services which they perform & stating what their total charge is for the whole of these services.—COLMAN *v.* GREAT EASTERN RY. CO. (1882), 4 Ry. & Can. Tr. Cas. 108.

Annotation:—**Apprvd.** Pickfords *v.* L. & N. W. Ry., [1905] 1 K. B. 752.

1307. —— —— ——.]—A railway co., against whom an order has been made by the Comrs. under 1873 Act, s. 14, is bound to specify the particular amounts charged in a rate for the carriage of goods in respect of each of the services performed by them other than conveyance on their line.—PICKFORDS, LTD. *v.* LONDON & NORTH WESTERN RY. CO., [1905] 1 K. B. 752; 12 Ry. & Can. Tr. Cas. 154; 74 L. J. K. B. 634; 92 L. T. 607; 53 W. R. 468; 21 T. L. R. 381, C. A.

1308. Inspection of—Jurisdiction of Commissioners to order—Right of person inspecting to take extracts or copies.]—(1) The Comrs. have jurisdiction, under 1873 Act, s. 14, to order an inspection, although justices also have the power to inflict a penalty for refusal to allow such inspection; (2) the right of inspection is general, & it is immaterial what motive or object a person has in desiring inspection; (3) inspection includes the right of taking extracts or copies; & the ct. has power to order that extracts & copies may be taken as ancillary to the right of inspection, & in order to make the right effectual.—PERKINS *v.* LONDON & NORTH WESTERN RY. CO. (1874), 1 Ry. & Can. Tr. Cas. 327

1309. Sea traffic.]—DUBLIN & MANCHESTER S.S. CO. *v.* LONDON & NORTH WESTERN RY. CO., No. 1115, *ante*.

1310. Separate accounts of charges for carriage—Application of 1888 Act, s. 33 (3).]—Where an application is made under 1888 Act, s. 33 (3), to the secretary of a railway co. by a person interested in the conveyance of merchandise over the railway for an account dividing the charge made for carriage & distinguishing the charge made for conveyance on the railway from the terminal charges, if any, & from the dock charges, if any, it is sufficient, if the total charge made is below the co.'s statutory maximum charge for conveyance, for the railway co. to make a formal answer that the whole charge is in respect of conveyance, & that no charge is made in respect of terminals or dock charges.—NEW UNION MILLS CO. *v.* GREAT WESTERN RY. CO., [1896] 2 Q. B. 290; 9 Ry. & Can. Tr. Cas. 152; 65 L. J. Q. B. 493; 74 L. T. 791.

Annotations:—**Refd.** Salt Union *v.* North Staffordshire Ry. (1898), 67 L. J. K. B. 889; Vickers, Sons & Maxim *v.* Mid. Ry. (1902), 87 L. T. 665; Stone *v.* Mid. Ry., [1903] 1 K. B. 741.

1311. —— Sufficiency of.]—LONDON & NORTH WESTERN RY. CO. *v.* LEE (1891), 7 T. L. R. 603, D. C.

1312. —— ——.]—NEW UNION MILLS CO. *v.* GREAT WESTERN RY. CO., No. 1310, *ante*.

SUB-SECT. 8.—DISPUTES.

See 1921 Act, s. 55, Sched. V. 11 (2).

Jurisdiction of Railway Rates Tribunal.]—*See* RAILWAYS & CANALS.

1313. "Difference" arising—What is—Refusal to pay siding accommodation rates.]—The mere refusal to pay siding accommodation rates is not a "difference" which, Midland Railway (Rates & Charges) Order Confirmation Act, 1891, Sched., s. 5, must be referred to arbn., no question being raised as to reasonableness of the charges.—MIDLAND RY. CO. *v.* HAIGH (1896), 13 T. L. R. 135, D. C.

Annotation:—**Consd.** L. & N. W. Ry. *v.* Donellan, L. & N. W. Ry. *v.* Billington (1898), 78 L. T. 575.

1314. —— —— Letter in equivocal terms—Disputing charges for detention of trucks.]—Pltfs. claimed to recover from defts. charges for the detention of their trucks under pltfs.' (Rates & Charges) Order Confirmation Act, 1892, s. 5; by that sect. differences arising thereunder were to be determined by an arbitrator. The charge was disputed, but whether on the ground of legality or reasonableness was uncertain:—*Held:* a difference under the sect. must be limited to the reasonableness of the charge & must arise before proceedings are commenced to recover the charge. Whether or not a dispute is in fact so limited is a question of fact, & if it is so limited, the case must go to an arbitrator; if not, the ct. has jurisdiction.—LONDON, TILBURY & SOUTHEND RY. CO. *v.* WARD & CO. (1906), 50 Sol. Jo. 273, D. C.

1315. —— —— Demurrage—Claim by trader for.]—A railway Act confirming a provisional order, after providing that when merchandise was conveyed in trucks not belonging to the co. the trader should be entitled to recover from the co. a reasonable sum "by way of demurrage" for any detention of his trucks beyond a reasonable period, enacted that any difference arising under the sect. should be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party:—*Held:* a claim by a trader for damages caused by undue detention of his truck & cost of hire of another in lieu thereof was a difference arising under that sect., & could

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1310 i. *Separate accounts of charges for carriage—Application of 1888 Act, s. 33 (3).]—Held:* above sub-sect. applies to a charge for carriage of goods from one private siding to another private siding as well as to a charge for the carriage of goods between station & station.—CALEDONIAN RY. CO. *v.* HAMILTON & CALDER (1906), 8 F. (Ct. of Sess.) 918; *sub nom.* HAMILTON & CALDER *v.* CALEDONIAN RY. CO., 43 Sc. L. R. 696.—**SCOT.**

Sect. 4.—Maximum rates: Sub-sects. 8 & 9. Sects. 5, 6, 7, 8 & 9: Sub-sect. 1.]

be determined only by an arbitrator appointed under the Act.—GREAT WESTERN RY. Co. *v.* PHILLIPS & Co., LTD., [1908] A. C. 101; 77 L. J. K. B. 306; 98 L. T. 319; 24 T. L. R. 293, H. L.; *revsg.* S. C. *sub nom.* R. *v.* MARYLEBONE COUNTY COURT JUDGE & GREAT WESTERN RY. Co., *Ex p.* PHILLIPS & Co., [1907] 2 K. B. 664, C. A.

Annotations :—**Folld.** West Suffolk County Council *v.* Olorenshaw, [1918] 2 K. B. 687. **Refd.** N. B. Ry. *v.* Coltness Iron Co., Cale, Ry. *v.* Coltness Iron Co., G. & S. W. Ry. *v.* Baird (1911), 14 Ry. & Can. Tr. Cas. 246; L. & N. W. Ry. *v.* Jones, [1915] 2 K. B. 35.

1316. —— —— —— Claim by company for.]—A railway Act confirming a provisional order, by s. 5 (4) empowered the railway co. to charge traders a reasonable sum by way of addition to the tonnage rate for (*inter alia*) the detention of trucks, & provided that any difference arising under the sect. shall be determined by an arbitrator :—*Held :* the only case in which an action can be brought to recover charges for the detention of trucks under an enactment in the above terms is where deft. has agreed to pay the sum demanded but has failed to do so. If there is a refusal to pay & no agreement to pay can be proved, the case must be treated as one in which a difference has arisen within s. 5, which must therefore be determined by an arbitrator & not by an action.—LONDON & NORTH WESTERN RY. Co. *v.* JONES, [1915] 2 K. B. 35; 84 L. J. K. B. 1268; 113 L. T. 724, D. C.

1317. —— Whether jurisdiction of court ousted—Demurrage—Claim by company for.]—By a Provisional Order, made by the Board of Trade under the 1888 Act, & confirmed by statute, a railway co. were empowered to charge, in addition to the tonnage rate, a reasonable sum for the service, if rendered to a trader at his request or for his convenience, of allowing him the use or occupation of any accommodation, before or after conveyance, beyond such period as should be reasonably necessary for enabling the co. to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof, & services rendered in connection with such use & occupation; any difference arising under the sect. was to be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party. The co. gave notice to deft., a trader, that they would allow him four days, free of charge, within which to unload goods consigned to him arriving at their station, & that after the expiration of the four days they would charge him 6*d.* per day siding rent for each waggon allowed to remain unloaded. In an action by the co. to recover from deft. siding rent at the rate of 6*d.* per day in respect of waggons which, after receiving that notice, he had allowed to remain unloaded after the four days, deft. disputed his liability to pay the amount charged :—*Held :* the jurisdiction of the ct. was ousted, because under s. 5 of the statute an arbitrator appointed by the Board of Trade is the only tribunal for the settlement of any differences arising under that sect.—LONDON & NORTH WESTERN RY. Co. *v.* DONELLAN, LONDON & NORTH WESTERN RY. Co. *v.* BILLINGTON, LTD., [1898] 2 Q. B. 7; 67 L. J. Q. B. 681; 78 L. T. 575; 14 T. L. R. 361; 42 Sol. Jo. 449, C. A.; *revsd.* on another ground, *sub nom.* LONDON & NORTH WESTERN & GREAT WESTERN JOINT RY. Cos. *v.* BILLINGTON (J. H.), LTD., [1899] A. C. 79, H. L.

Annotations :—**Apprvd. & Folld.** Mid. Ry. *v.* Loseby & Carnley, [1899] A. C. 133. **Consd.** Crosfield *v.* Manchester Ship Canal Co., [1904] 2 Ch. 123; R. *v.* Marylebone County Court Judge & G. W. Ry., *Ex p.* Phillips, [1907] 2 K. B. 664; G. W. Ry. *v.* Phillips, [1908] A. C. 101; L. & N. W. Ry. *v.* Jones, [1915] 2 K. B. 35. **Refd.** Selby *v.* Whitbread, [1917] 1 K. B. 736.

1318. —— —— No difference before action.]—A Railway Act, confirming a Provisional Order, after empowering the railway co. to charge a reasonable sum for certain services rendered to a trader, by way of addition to the tonnage rate, enacted that "any difference arising under this sect., shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party." The co., having sued resps. for services under this sect. resps. objected to the jurisdiction of the ct. on the ground that the matter was one for the arbitrator to determine :—*Held :* as there had been no difference existing between the parties before action brought, the arbitrator had not & the ct. had jurisdiction.—LONDON & NORTH WESTERN & GREAT WESTERN JOINT RY. Cos. *v.* BILLINGTON (J. H.), LTD., [1899] A. C. 79; 68 L. J. Q. B. 162; 79 L. T. 503; 15 T. L. R. 97, H. L.

Annotations :—**Distd.** Mid. Ry. *v.* Loseby & Carnley, [1899] A. C. 133. **Expld.** Crosfield *v.* Manchester Ship Canal Co., [1904] 2 Ch. 123; R. *v.* Marylebone County Court Judge & G. W. Ry., *Ex p.* Phillips, [1907] 2 K. B. 664. **Consd.** L. & N. W. Ry. *v.* Jones, [1915] 2 K. B. 35. **Refd.** G. W. Ry. *v.* Phillips, [1908] A. C. 101; Selby *v.* Whitbread, [1917] 1 K. B. 736.

1319. —— Extent of jurisdiction of arbitrator—All matters material & incidental—Additional charges.]—By Midland Railway Order Confirmation Act, 1891, s. 5, any difference arising thereunder is to be determined by an arbitrator appointed by the Board of Trade :—*Held :* all matters material & incidental to such a difference are within the scope of the reference, & the arbitrator in estimating the charges to be made for services in addition to those covered by the tonnage rate must take into consideration the reasonableness of the time allowed under the tonnage rate itself before the extra charges attach.—MIDLAND RY. Co. *v.* LOSEBY & CARNLEY, [1899] A. C. 133; 68 L. J. Q. B. 326; 80 L. T. 93; 47 W. R. 656; 15 T. L. R. 207, H. L.

Annotations :—**Consd.** R. *v.* Marylebone County Court Judge & G. W. Ry., *Ex p.* Phillips, [1906] 2 K. B. 426; L. & N. W. Ry. *v.* Jones, [1915] 2 K. B. 35. **Refd.** Mid. Ry. *v.* Black (1899), 10 Ry. & Can. Tr. Cas. 142; Crosfield *v.* Manchester Ship Canal Co., [1904] 2 Ch. 123; R. *v.* Marylebone County Court Judge & G. W. Ry., *Ex p.* Phillips, [1907] 2 K. B. 664; Selby *v.* Whitbread, [1917] 1 K. B. 736; Mid. Ry. *v.* Stones & Jackson, G. N. Ry. *v.* Beeson, Coleman *v.* G. N. Ry. (1918), 16 Ry. & Can. Tr. Cas. 261. **Mentd.** Cale. Ry., G. & S. W. Ry., & N. B. Ry. *v.* Lanarkshire Coalmasters' Assocn. (1911), 27 T. L. R. 221.

SUB-SECT. 9.—OFFENCES.

See, now, 1921 Act, s. 56, Sched. VI.

1320. "False account" of goods—Demand for account—Railway company acting as carriers.]—Applts. brought to resps.' goods station three cases of goods for the purpose of having them carried by resps. on their railway & delivered to resps.' servant consignment notes in which the goods had been misdescribed by applts. with the object of procuring the carriage of the goods at a lower

1317 i. "*Difference*" *arising—Whether jurisdiction of court ousted—Demurrage—Claim by company for.*]—Actions were brought by C. & N. B. Ry. Cos. against a shipping co., who acted as intermediate carrier, for recovery of charges for detention of trucks :—*Held :* a difference had arisen under Railway Rates & Charges Order Confirmation Acts, 1892, Schedule of Maximum Rates & Charges, s. 5, & all matters material for the decision of that difference, including the question whether defenders were "traders" fell to be disposed of by an arbitrator to be appointed by the Board of Trade.—CALEDONIAN RY. Co. *v.* CLYDE SHIPPING Co., [1917] S. C. 107.—SCOT.

rate than would have been charged if they had been correctly described. No express demand was made by resps.' servant for an account of the goods, but by the course of business known to applts. the goods would not have been received by resps. if consignment notes had not been delivered. Applts. were charged, under 1845 Act, ss. 98, 99, with giving a false account of the goods with intent to avoid the payment of the tolls in respect thereof, & convicted:—*Held:* ss. 98, 99 apply to cases where the railway co. are themselves acting as carriers; the conviction was right, because, assuming that it was necessary to prove that there had been a demand for an account, there was evidence on which the magistrate could find that there had been a demand.

Qu.: whether, where a false account is delivered, it is necessary to prove a demand.—BARR, MOERING & CO. *v.* LONDON & NORTH WESTERN RY. CO., [1905] 2 K. B. 113; 92 L. T. 421; 69 J. P. 233; *sub nom.* MOREING *v.* LONDON & NORTH WESTERN RY. CO., 74 L. J. K. B. 540; *sub nom.* MOERING *v.* LONDON & NORTH WESTERN RY. CO., 53 W. R. 605; 21 T. L. R. 412; 49 Sol. Jo. 431.

1321. —— What amounts to.]—Applts. consigned by rail from B. to D. a stator forming part of a single-phase alternator generator. The stator consisted of a large ring-like casting about 7 feet in diameter bearing or carrying upon it iron laminations & metal cores with their windings of wire, but was divided into two parts, & packed in two cases. The consignment note described the goods as "bearers," and stated that they were to be sent at owner's risk. The rate between B. & D. for "bearers" at owner's risk was published in the rate book of the railway co. as 9*s.* 2*d.* a ton, & the rate for generators in parts at co.'s risk was published at 22*s.* 9*d.* No rate was in force for generators in parts at owner's risk. The goods were accepted as bearers at owner's risk, & charged at the rate of 9*s.* 2*d.* a ton:—*Held:* there was evidence to support a conviction under 1845 Act, s. 99.—GENERAL ELECTRIC CO., LTD. *v.* EVANS (1911), 105 L. T. 199; 75 J. P. 406.

1322. —— —— False statement of weight.]—An information was preferred against resp., a firm of agricultural engineers, under 1845 Act, ss. 98, 99, for giving to a servant of applts., a railway co., with intent to avoid payment of tolls, a false account of goods about to be sent by the railway. The false account alleged was that the weight of a dust extractor was given on a consignment note which stated the weight to be 1 cwt. 3 qrs., whereas the weight was found to be 3 cwt. Payment for the carriage of such goods varied according to their weight:—*Held:* the words "false account" in s. 99 include a false statement of the weight of the goods.—LONDON & NORTH WESTERN RY. CO. *v.* RICKERBY, LTD., [1921] 1 K. B. 231; 90 L. J. K. B. 398; 124 L. T. 268; 85 J. P. 82; 19 L. G. R. 39.

1323. —— Given by servant of limited company —Liability of company.]—*Held:* under 1845 Act, ss. 98, 99, the owners of goods may, without a *mens rea*, be guilty of giving a false account with intent to avoid payment of tolls, & if their manager actually gives the false account with intent to avoid the payment the owners, though a limited co., are liable.—MOUSELL BROTHERS *v.* LONDON & NORTH WESTERN RY. CO., [1917] 2 K. B. 836; 87 L. J. K. B. 82; 118 L. T. 25; 81 J. P. 305; 15 L. G. R. 706, D. C.

Annotations:—Refd. Pearks' Dairies *v.* Tottenham Food Control Committee (1918), 120 L. T. 95; Warrington *v.* Windhill Industrial Co-op. Soc. (1918), 82 J. P. 149.

SECT. 5.—MINIMUM RATES.

See 1921 Act, s. 48.

SECT. 6.—EXCEPTIONAL RATES AND FARES.

See 1921 Act, ss. 36–41.

SECT. 7.—OWNER'S RISK RATES.

See 1921 Act, ss. 42–46.
See, also, Part IV., Sect. 2, sub-sect. 2, C. (d) i.

SECT. 8.—COLLECTION AND DELIVERY CHARGES.

See 1921 Act, s. 49.

SECT. 9.—DEMURRAGE.

SUB-SECT. 1.—CLAIM BY RAILWAY COMPANY.

See 1921 Act, s. 55, Sched. V. 11 (1) (iv).

1324. Not to be included in rate for conveyance.]—COXON *v.* NORTH EASTERN RY. CO. (No. 2), No. 1263, *ante.*

1325. Not a terminal or transit charge.]—A charge by a railway co. for demurrage for goods delivered, but not removed by the consignee after notice of arrival & of the conditions as to such charge, is not a terminal or transit charge, & is not, therefore, affected by any decision of the Railway Comrs. as to the reasonableness of such charges.—NORTH EASTERN RY. CO. *v.* CAIRNS (1884), 32 W. R. 829, D. C.

Terminal charges generally, *see* Sect. 4, sub-sect. 4, *ante.*

1326. Alteration of rates—6d. per waggon per day held reasonable.]—MIDLAND RY. CO. *v.* SILLS (1896), 9 Ry. & Can. Tr. Cas. 161; 12 T. L. R. 455.

Annotations:—Consd. Mid. Ry. *v.* Black (1899), 10 Ry. & Can. Tr. Cas. 142. Refd. N. B. Ry. *v.* Coltness Iron Co., Cale. Ry. *v.* Coltness Iron Co., G. & S. W. Ry. *v.* Baird (1911), 14 Ry. & Can. Tr. Cas. 246.

1327. Detention beyond reasonable time—What is reasonable time—Reasonable sum.]—The Midland Ry. Co. claimed under Midland Railway Company's Rates Order Confirmation Act, 1891, Sched., s. 5, the sum of 6*d.* per truck per day, as siding rent, at Sheffield, after the expiration of four clear days allowed for unloading:—*Held:* (1) this was a reasonable sum to apply to all traders at Sheffield & similar places, though it would not necessarily apply to other places, *e.g.* rural stations, where the cost of the construction of sidings might be less, & the cost of working might be more, in proportion to the quantity of traffic; & where the loss of business by the blocking of the siding might be greater or less according to circumstances; (2) in ascertaining the reasonable sum to be

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PART X. SECT. 9, SUB-SECT. 1.

1327 *i. Detention beyond reasonable time—What is reasonable time—Reasonable sum.*]—Appct.'s coal was loaded at D. from the ship's side into waggons of deft. ry. co. upon the sidings of another ry. co. The loaded waggons were weighed there, & the weight notes given to appcts. Considerable detention took place in the dispatch of the waggons to their destination & also in unloading the waggons at their points of destination. Deft. co. made a charge for demurrage:—*Held:* (1) a period of one clear day after the day on which the coal had been loaded in D. was a reasonable time for the use of the waggons before conveyance; (2) a period of three days reckoned from 6 a.m. of the day after receipt of notice by the consignee of arrival of the waggon was a reasonable time to take delivery & unload the traffic; (3) at

Sect. 9.—*Demurrage: Sub-sects.* 1 & 2. *Sect.* 10.]

charged under the sect. the cost of maintenance should only be considered where it exceeds that which would be incurred if delivery were taken within the four days, & only those services in excess of those which would be otherwise performed are to be taken into consideration. The cost of accommodation is only a factor in cases where extra accommodation has to be provided owing to the trader's habitual delay in unloading; (3) four days, exclusive of the day on which the notice of arrival was given, was a reasonable period for unloading; *primâ facie*, this time would not begin to run until the trucks were in the siding, handed over to the trader, ready for unloading; yet if the trader were not ready to take delivery, the siding being blocked by him, the time ran from the moment the railway co. were ready to send the trucks to the siding; while, if the railway co. were in default, the trader would have his remedy under the contract for delivery; (4) the fact that ninety per cent. of the traffic was unloaded within four days, was not a ground for set-off to the traders as regards traffic detained after the four days, the period of four days not being a matter of right.

(5) A railway co. are not bound to find warehouse accommodation beyond a reasonable time for traders to take delivery unless they are paid for it, & if they find it inconvenient or expensive to allow the trucks to remain beyond a reasonable time for unloading them, they are entitled to make a reasonable charge for such accommodation.—MIDLAND RY. CO. *v.* BLACK (1899), 10 Ry. & Can. Tr. Cas. 142.

Annotation:—*As to* (1) *&* (5) **Reid.** Cale. Ry., G. & S. W. Ry., & N. B. Ry. *v.* Lanarkshire Coalmasters' Assocn. (1911), 27 T. L. R. 221.

1328. —— ——.]—(1) *Held:* two clear days (terminating at 6 p.m. on the second day, or if a Saturday at 1 p.m.) after the notice of arrival at the station, exclusive of the day of arrival & of holidays, was a reasonable time within which delivery of corn conveyed in a railway co.'s waggons should be taken, after which demurrage should accrue at the rate of 1*s.* 6*d.* a day per waggon & 3*d.* a day per sheet.

(2) The time allowed for unloading coal is not a precedent for other traffic.—NORTH EASTERN RY. CO. *v.* FERENS (1911), 15 Ry. & Can. Tr. Cas. 17.

1329. —— ——.]—A period of four days, inclusive of the day of arrival, from the notice of the arrival is a reasonable period to allow to potato merchants for taking delivery of their goods at railway depots, and the railway cos. are entitled after that period to charge for demurrage of their waggons.—STONE BROTHERS & JACKSON *v.* MIDLAND RY. CO., COLEMAN & SONS *v.* GREAT NORTHERN RY. CO. (1918), 120 L. T. 283; 35 T. L. R. 68; *sub nom.* MIDLAND RY. CO. *v.* STONES BROTHERS & JACKSON, GREAT NORTHERN RY. CO. *v.* BEESON, COLEMAN (E. J.) & SONS *v.* GREAT NORTHERN RY. CO., 16 Ry. & Can. Tr. Cas. 261.

1330. —— **Through carriage.**]—Pltfs., under consignment notes signed by defts., conveyed in trucks tinplates from defts.' works near Swansea to various sheds upon the premises of the S. Harbour Trust, the route being partly over pltfs.' system & partly over the lines of the Trust. Pltfs. did the haulage over the Trust lines & charged a rate for conveyance at 2*s.* 8*d.* per ton & made a charge for the haulage services of 3*d.* extra. By a condition indorsed upon the consignment notes it was provided that after the termination of the transit, goods carried or conveyed by the co. would be subject in addition to the charge for carriage to further charges for demurrage of 3*s.* (subsequently reduced to 1*s.* 6*d.*) "per truck per day . . . no such charges should be made if the co. had not given proper opportunity for the removal of the goods or the discharge." By a circular letter notice was given by pltfs. to defts. that in the event of demurrage being incurred upon waggons loaded by defts. or upon sheets covering them, & detained upon the lines of the Trust at S. pltfs. would hold defts. responsible for the payment of such demurrage; that railway stock upon the Trust lines would be treated as upon a private siding, & that defts. would be allowed four clear days exclusive of the day of arrival before demurrage became chargeable. There was never any delay in transit while the trucks were on pltfs.' system, but when they passed on to the lines of the Trust delays frequently arose, the delays being entirely beyond the control of and not caused by any default of pltfs. In an action for demurrage:—*Held:* (1) the contract between the parties was one whereby pltfs. agreed to carry partly over their own system & partly over the Trust lines; & the condition in the consignment notes only referred to events happening after the termination of the transit, & therefore did not protect defts. against the claim for demurrage which arose during the transit; & (2) the condition did not refer to a detention of trucks upon the lines of the Trust.

By G. W. Ry. Co. (Rates and Charges) Order Confirmation Act, 1891, Sched., Part I., clause 5 (iv), the co. may charge a reasonable sum by way of addition to the tonnage rate for the detention of trucks, or the use or occupation of any accommodation, before or after conveyance, beyond such period as shall be reasonably necessary for enabling the co. to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof; & by Part IV. the co. may charge for any accommodation or services provided or rendered by the co. within the scope of their undertaking by the desire of a trader, & in respect of which no provisions are made by this Schedule such reasonable sum as the co. may think fit in each case:—*Held:* (3) Part I., clause 5 (iv), only referred to detention

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the expiration of the above periods a charge of 1*s.* 6*d.* per waggon per day was reasonable.—WALLACE BROTHERS, LTD. *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND (1912), 15 Ry. & Can. Tr. Cas. 70.—IR.

1327 ii. —— —— ——.]—SPARKS *v.* CANADIAN PACIFIC RY. CO., CANADIAN PACIFIC RY. CO. *v.* SPARKS (1920), 18 O. W. N. 300.—CAN.

1327 iii. —— —— —— *Delay caused by fog or snow.*]—A trader cannot be called upon to pay for delay in conveyance which has been occasioned by fog, snow, frost, or causes of a similar character, or by some error on the part of the ry. co.'s servants.—CALEDONIAN RY. CO., GLASGOW & SOUTH WESTERN RY. CO., & NORTH BRITISH RY. CO. *v.* LANARKSHIRE COALMASTERS' ASSOCN. (1911), 27 T. L. R. 221.—SCOT.

d. *Detention for trader's convenience.*]—Traffic consigned to defts., or to one of their steamers, was conveyed in waggons of appts. to their goods stations at G., where it remained, until instructions were received from defts. as to the berth in the docks to which the waggons were to be sent. Defts. in every case received notice from appts. of the arrival of the waggons at the stations. The ry. cos. were entitled to charge demurrage for detention for the convenience of defts.—NORTH BRITISH RY. CO. *v.* CLYDE SHIPPING CO., LTD. (1918), 16 Ry. & Can. Tr. Cas. 251.—SCOT.

e. *Detention owing to outside causes—Of waggons of another company.*]—Owing to causes beyond their control waggons belonging to another co. were detained by defts. upon the railway of appts.:—*Held:* the ry. co. were entitled to recover from the consignors of traffic conveyed demurrage charges in respect of waggon detained upon their ry. after conveyance.—GLASGOW & SOUTH WESTERN RY. CO., NORTH BRITISH RY. CO. & CALEDONIAN RY. CO. *v.* BALLOCHNEY

of trucks before or after conveyance, & did not apply to the present case; but the keeping by pltfs. of defts.' goods in their trucks until the consignees, to whom on defts.' order they were bound to deliver them, were ready to take them was a service provided & rendered by the co. within the scope of their undertaking by the desire of defts.; (4) pltfs. were also entitled to recover the demurrage under Part IV.—GREAT WESTERN RY. CO. *v.* DAFEN TINPLATE CO., [1917] 2 K. B. 177; 86 L. J. K. B. 785; 117 L. T. 148.

1331. ——.]—FOSTER *v.* GREAT EASTERN RY. CO., No. 1276, *ante*.

1332. Implied contract—Consignee not repudiating notice of charge.]—Pltf. consigned goods to the R. Co. to be carried across the M. Ry. Co.'s system and thence by the L. Ry. Co. to R. As each set of goods arrived at R. the L. Ry. Co. sent to the R. Co. an advice note notifying them of the arrival of the goods & requesting their early removal, and stating that they were held by the L. Ry. Co. not as common carriers, but as warehousemen, at owner's sole risk, & subject to the railway co.'s ordinary wharfage & demurrage charges. The goods were not removed by the R. Co. & subsequently they informed pltf. that they were insolvent & pltf. claimed the return of the goods as an unpaid vendor. There had been no repudiation by the R. Co. of the proposal contained in the advice notes that the goods were held by the L. Ry. Co. as warehousemen on their behalf:—*Held:* the silence of the R. Co. amounted to a consent to the L. Ry. Co. so holding the goods, whereby the L. Ry. Co. became the agents of the R. Co. to hold the goods & the R. Co. were liable for the warehouse rent; the goods had reached the constructive possession of the R. Co. & the transit was an end.—TRENT MINING CO. *v.* MIDLAND RY. CO. (1881), Butterworth's Railway Rates & Traffic, 2nd ed. App. p. 71, C. A.

Annotation:—**Consd.** Ivens *v.* G. W. Ry. (1889), 53 J. P. 148.

1333. —— Trader acting on advice note.]—A railway Act empowered the railway co. to charge traders a reasonable sum by way of addition to the tonnage rate for (*inter alia*) the detention of trucks beyond such period as should be reasonably necessary for enabling the consignee to take delivery. Two truckloads of goods arrived by rail at pltfs.' station on a Friday consigned to a certain person who gave notice to pltfs. to transfer the goods to deft. An advice note was sent on the same day to deft. stating that demurrage would be charged at a specified rate per waggon per day or part of a day if the goods were not unloaded & removed within forty-eight hours after the despatch of the notice, & that deft. was to send for the goods not later than 6 p.m., & on Saturdays not later than 1 p.m. Deft. received the notice on the Saturday, & the unloading of the trucks was proceeded with up to 1 p.m. on that day & on Monday, & was finished on Tuesday. Pltfs. claimed demurrage in respect of the detention of one of the trucks on the Tuesday:—*Held:* (1) the receipt & acceptance of the advice note by deft. constituted privity of contract between pltfs. & deft.; (2) in calculating the period of forty-eight hours the whole of each day, excluding Sunday but including the time after 1 p.m. on Saturday, was to be counted; (3) deft. was liable for the demurrage claimed.—LANCASHIRE & YORKSHIRE RY. CO. *v.* SWANN, [1916] 1 K. B. 263; 85 L. J. K. B. 694; 114 L. T. 517; 32 T. L. R. 188; 60 Sol. Jo. 496, D. C.

Disputes relating to.]—*See* Sect. 4, Sub-sect. 8, *ante*.

See, also, Nos. 1360, 1362, *post*.

SUB-SECT. 2.—CLAIM BY TRADER.

See 1921 Act, s. 55, Sched. V. 3 (1).

1334. Claim by trader for—Conveyance in trader's trucks—Detention during transit.]—By L. & N. W. Ry. Co. (Rates & Charges) Act, 1891, s. 6, where merchandise is conveyed in trucks not belonging to the co., the trader is entitled to recover from the co. a reasonable sum by way of demurrage for any detention of his trucks beyond a reasonable period.

Coal in owners' trucks was conveyed by a railway co. for appcts., a firm of coal merchants, from certain collieries on their line of railway to appcts.' reserved sidings in L., the trucks being returned to the collieries without additional charge; the average duration of the transit during a period of twelve consecutive months was two & a half working days. Appcts. complained that in thirty-three instances during the twelve months their trucks had been detained an unreasonable time in transit, the time taken in nineteen instances being four days, in twelve instances five days, in one instance six days, & in one instance seven days, & they claimed to be entitled to demurrage in respect of the unreasonable detention of these trucks:—*Held:* (1) s. 6 applied to a claim for detention of the trucks during transit, & not merely to cases where the detention occurred before its commencement or after its conclusion; (2) the time occupied in the thirty-three instances in the transit being largely in excess of the average, the *onus* was upon defts. to show that the period of detention of the trucks was not unreasonable; (3) a sum of 6*d.* per ten-ton truck per day was a reasonable allowance in respect of the detention.—CHARRINGTON, SELLS, DALE & CO. *v.* LONDON & NORTH WESTERN RY. CO., [1905] 2 K. B. 437; 12 Ry. & Can. Tr. Cas. 171; 74 L. J. K. B. 835; 93 L. T. 215; 21 T. L. R. 457.

Annotation:—*As to* (1) **Consd.** R. *v.* Marylebone County Court Judge & G. W. Ry. *Ex p.* Phillips, [1907] 2 K. B. 664.

SECT. 10.—REBATES ON SIDINGS RATES.

See 1894 Act, s. 4; 1921 Act, ss. 61, 86, Sched. IX., Part II.

1335. Whether owner of private siding entitled to—Total charge not exceeding authorised maximum.]—(1) The ordinary station services are, as between the co. & their customers, a part of

Co., LTD. (1919), 16 Ry. & Can. Tr. Cas. 288.—**SCOT.**

f. Refusal by consignee to accept delivery.]—Where, owing to the refusal of a consignee to accept delivery of goods consigned to him, waggons are detained after conveyance, the ry. co. upon whose railway they are detained are entitled to claim from him demurrage charges in respect of all waggons so detained, whether owned by themselves or another ry. co. & irrespective of any contract of carriage between the consignor & another ry. co.—CALEDONIAN RY. CO. *v.* STEIN (JOHN G.) & CO., LTD. (1919), 16 Ry. & Can. Tr. Cas. 280.—**SCOT.**

g. Right to free time under Canadian Car Demurrage Rules.]—CANADIAN MANUFACTURERS ASSOCN. *v.* CANADIAN CAR SERVICE BUREAU (1920), 54 D. L. R. 1.—**CAN.**

PART X. SECT. 9, SUB-SECT. 2.

h. For extension of time—Car service rules.]—MCDIARMID & GALL *v.* GRAND TRUNK RY. CO. & CANADIAN PACIFIC RY. CO. (1909), 8 Can. Ry. Cas. 337.—**CAN.**

PART X. SECT. 10.

i. For average demurrage plan—When justifiable—Car service rules.]—WALLACEBURG SUGAR CO. *v.* CANADIAN CAR SERVICE BUREAU (1909), 8 Can. Ry. Cas. 332.—**CAN.**

PART X. SECT. 10.

k. Whether owner of private siding entitled to—Special services rendered.]—Appcts. owned a siding situated

Sect. 10.—*Rebates on sidings rates.*]

the services *primâ facie* included in the contract for conveyance; & no charge can be made for such services in excess of the maximum mileage rate authorised by the co.'s Act, except where the Act gives special power to make such extra charge; notwithstanding that as between two or more railway cos. a deduction of terminal charges in respect of such services would be made at the Clearing House in the division of a through rate.

(2) Where the total charge made by a co. for conveyance does not exceed their maximum mileage rate, & there is nothing on the face of it to show that part of it consists of a separate charge for station services, the co. is, as between itself & the public, entitled to attribute the whole charge to conveyance, notwithstanding that they may perform, in addition, station services, for all customers who require them, for which they might have made a separate charge, a customer who does not require such services is not entitled, on that account, to any rebate.

Appcts. placed waggons containing their goods, duly loaded & labelled in sidings belonging to a railway co.; the only work of a terminal station which the co. performed was that of arranging them in proper train order. In the case of goods consigned to appcts. the co. did part of the haulage from their goods station to appcts.' premises on their private siding. The railway company charged uniform mileage rates for all traffic, including that of appcts.:—*Held:* appcts. were not entitled to a reduction.—HOWARD *v.* MIDLAND RY. CO. (1878), 3 Ry. & Can. Tr. Cas. 253.

Annotations:—As to (1) **Consd.** Girardot, Flinn *v.* Mid. Ry. (No. 2), Beeston Brewery Co. *v.* Mid. Ry. (No 2) (1885), 5 Ry. & Can. Tr. Cas. 60; Greenwood *v.* L. & Y. Ry. (1888), 6 Ry. & Can. Tr. Cas. 39. **Refd.** New Union Mill Co. *v.* G. W. Ry. (1896), 74 L. T. 791. *As to* (2) **Refd.** Berry *v.* L. C. & D. Ry. (1884), 4 Ry. & Can. Tr. Cas. 310.

1336. —— Benefit to railway.]—(1) Where a railway co. makes no separate charge for use of sidings, a siding constructed by a trader to entitle him to a reduction of rates as compared with other traders who have not constructed sidings, must be a benefit to the railway co., & not merely a means of accommodating traffic which could have been conveniently dealt with at the co.'s station.

(2) A difference in the mileage rate for grain carried for competing millers when taken in connection with the fact that the flour of these millers competes at various common points, may infringe 1854 Act, s. 2, although the difference in the grain rates themselves might not have been sufficient to establish the infringement.

(3) A charge for warehousing is not a proper ingredient in a railway rate.

(4) Where the difference in distance over which grain is carried for competing millers is fixed, & the only difference in circumstances in which the flour of the same millers is carried is that distance, a difference in the charge for flour greatly in excess of that for grain would be an undue prejudice.

(5) The charge in these circumstances ought to be uniform, & the difference for grain & flour ought to be the same in one direction as another.

(6) Where the rates to two places both exceed the maxima, it is *primâ facie* evidence of an undue prejudice that the excess should be equal or greater in the case where the costs of the terminal services is less.

(7) When the rate charged to a complaining trader is smaller than that to his competitor, although in such a case an undue preference might be proved, the Comrs. will not in the absence of proof infer an undue preference.—GREENWOOD & SONS *v.* LANCASHIRE & YORKSHIRE RY. CO. (1888), 6 Ry. & Can. Tr. Cas. 39.

Annotation:—As to (2) **Refd.** New Union Mills Co. *v.* G. W. Ry., [1896] 2 Q. B. 290.

1337. —— Terminal charges made.]—(1) A siding was constructed by a trader under a deed entered into by him with a railway co. providing for the sale to him of some surplus land adjoining their station yard, on which he was to erect two malt-kilns, & stipulating that he should, at his own cost, make a siding from the kilns to the line of the railway co. on land belonging to the co. The siding was to be repaired and maintained by the trader, & the railway co. had a right of use for shunting & the control & management subject to the trader's right of access to the kilns:—*Held:* the ownership of the siding was in the trader, & the siding was one "not belonging to the co." within 1894 Act, s. 4.

(2) 1894 Act, s. 4, gives a rebate "in respect that," that is, in proportion as or to the extent the railway co. do not provide station accommodation or perform terminal services, & the jurisdiction of the Railway Comrs. is not ousted by one terminal service, *e.g.* covering, being performed by the railway co.

(3) Appcts.' siding communicated with defts.' railway about thirty yards from defts.' goods station at R. By defts.' Order Confirmation Act, 1892, ss. 3, 26, R. was not a "terminal station":—*Held:* defts. were not entitled to charge appcts. a station terminal at R. station in respect of their traffic passing from or to appcts.' siding connected with R. station.—PIDCOCK & CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. (1894), 9 Ry. & Can. Tr. Cas. 45.

Annotations:—As to (1) **Distd.** Girardot *v.* G. E. Ry. (1900), 11 Ry. & Can. Tr. Cas. 244. *As to* (2) **Consd.** Gilstrap, Earp *v.* G. N. Ry. & Mid. Ry. (1901), 11 Ry. & Can. Tr. Cas. 265; Vickers & Maxim *v.* Mid. Ry. (1902), 87 L. T. 685. **Distd.** Birmingham Corpn. *v.* Mid. Ry., L. & N. W. Ry. & G. W. Ry. (1909), 101 L. T. 920. **Consd.** Foster *v.* G. E. Ry. (1920), 37 T. L. R. 268. **Refd.** Birmingham Corpn., Boston & Clay Cross Co. *v.* Mid. Ry. (1896), 9 Ry. & Can. Tr. Cas. 165; Muntz's Metal Co. *v.* L. & N. W. Ry. (1911), 14 Ry. & Can. Tr. Cas. 284.

1338. —— No delivery at terminus.]—At the request of appcts. the M. Co. made arrangements for the transit of grain traffic at a certain rate "without rebate" over their own line & the N. Co.'s line to the junction with appcts.' sidings.

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immediately to the north of the goods station at P. on the joint line of C. & N. B. Ry. Cos. & about 73 chains from C. station & 56 chains from B. station. They complained, under 1894 Act, s. 4, that they were charged terminals for traffic to & from their works at P. station, although the ry. cos. performed no terminal services & received & delivered the traffic on sidings not belonging to them. Appcts.' allegation that their rates included charges for station accommodation & for terminal services was based on the fact that the rates for similar traffic from the two nearest stations to P., *viz.* C. & B. (where there were no private sidings & no traders performing terminal services for themselves) were the same as those charged to appcts., or differed in amount only in respect of difference of distance.

The ry. co. contended that the charge was for services at or in connection with the sidings, such as marshalling, labelling, clerkage, providing sheets, etc., & that it cost them as much to render those services as it did to do the work which was done at such places as C. & B., & for which, when done, so far as it was not incidental to conveyance, terminals were allowed them.

On the facts:—*Held:* (1) the special services appcts. received at the hands of the ry. co. were not a satisfactory reason for the same rates being charged at appcts.' private sidings at P. as were charged at C. & B.; (2) appcts. were entitled to have lower rates than the rates in force for similar traffic at C. & B.—TENNANT & CO. *v.* CALEDONIAN RY. CO. & NORTH BRITISH RY. CO. (1898), 10 Ry. & Can. Tr. Cas. 194.—**SCOT.**

Appcts. applied under 1894 Act, s. 4, for a rebate from the rate, in respect that the cos. did not provide station accommodation or perform terminal services:—*Held:* (1) appcts. were not entitled, as their traffic was carried over the lines of the two cos. at a voluntary rate; (2) as by the contract appcts.' traffic was not to be delivered at or near —— the M. Co.'s terminal station, but at a siding off the co.'s system altogether, where they charged no one for station accommodation or terminal services, the Comrs. had no jurisdiction under the sect.—WATSON, TODD & CO. *v.* MIDLAND RY. CO. & LONDON & NORTH WESTERN RY. CO. (1896), 9 Ry. & Can. Tr. Cas. 90, C. A.

Annotation:—As to (2) **Consd.** Mid. Ry. *v.* Myers, Rose, [1908] 2 K. B. 356.

1339. —— Siding "belonging to company."]—An ancient siding was situated on a railway co.'s land & ran parallel to their main line, upon the same embankment, & had been constructed by the co. The co. conveyed land for building maltings to appcts. upon the terms (*inter alia*) that they should have full & free right & liberty at all reasonable times & in all reasonable ways to use without charge the railway siding for the purpose of conveniently forwarding & receiving & conveying all goods & commodities, & the co. undertook to place in a convenient part of the siding all trucks destined for appcts. & also on request to remove & forward them with all reasonable expedition; the co. further undertook to maintain the siding in good repair:—*Held:* a siding "belonging to the railway co."—GIRARDOT & CO. *v.* GREAT EASTERN RY. CO. (1900), 11 Ry. & Can. Tr. Cas. 244.

1340. —— ——.]—A trader, the lessee of land adjoining a railway, sub-let it to the railway co., who covenanted to construct upon it a siding & warehouse & to haul from the neighbouring station, three quarters of a mile away, into the siding, free of charge, waggons consigned to the trader & to afford him the free use of the warehouse. The waggons delivered into the siding were to be moved to the warehouse by the trader who was to do his own loading & unloading:—*Held:* (1) the siding was a siding "belonging to the railway co." both in the sense that they were lessees entitled to the possession of it & in the sense that they were entitled to the user of it, subject to the easement granted to the trader; (2) "belonging to the railway co." in 1894 Act, s. 4, does not mean belonging in a legal sense.—HUNTINGTON *v.* LANCASHIRE & YORKSHIRE RY. CO. (1901), 11 Ry & Can. Tr. Cas. 237; 17 T. L. R. 458, C. A.

Annotation:—As to (1) **Consd.** Holywell Iron Co. *v.* Mid. Ry., [1910] 1 K. B. 296.

1341. —— Date from which allowance runs.]—(1) An allowance granted by the ct. under 1894 Act, s. 4, *primâ facie* should begin from the date of the application.

(2) Where a siding owner does not require station accommodation, it does not necessarily follow that he ought to have an allowance in respect of not requiring it, since sidings may be a great burden to a railway company, and each case must stand on its merits.

(3) Where a railway co. has no power to charge a station terminal, & the rate is shown to include something for a station terminal, the ct. is not bound to allow a rebate; 1894 Act, s. 4, gives it a wide jurisdiction to do justice free from technicalities.

(4) In ascertaining the component parts of a rate the system adopted in the case of *Pidcock* v. *Manchester, Sheffield & Lincolnshire Ry. Co.* (No. 1337, *ante*) whereby the service charges were deemed to be in the same proportion to the rates actually charged as the maxima service charges would be to the sum of the maxima rates, cannot be taken as an absolute measure; where no charge is made for loading or unloading, too little would be attributed to the cost of conveyance & to the station terminal.—GILSTRAP, EARP & CO. *v.* GREAT NORTHERN RY. CO. & MIDLAND RY. CO. (1901), 11 Ry. & Can. Tr. Cas. 265.

1342. —— Question of fact—Whether services incidental to conveyance.]—(1) Where a trader's traffic is conveyed to his private sidings, although conveyance properly so-called does not terminate until the private siding points are reached, it does not follow that all use by the railway co. of their own sidings before that is part of conveyance. It is a question of fact in each case whether the service rendered is incident to conveyance, or is a service due to the request of the trader for which the co. are entitled to charge a reasonable sum.

(2) Where owing to inadequate accommodation of the trader's works, services are performed by a railway co. on their own sidings in respect of sorting the trader's outward traffic, & in respect of marshalling & providing sidings accommodation for the traffic, these are services rendered upon the trader's implied request at or in connection with his private sidings, within Railway Rates & Charges Order, 1891, s. 5 (1), in respect of which the co. are entitled to charge a reasonable sum.

(3) In respect of such charge the trader is not entitled, under 1894 Act, s. 4, to claim a rebate on the ground that the co. do not provide station accommodation or perform terminal services at the private sidings.

(4) Rates & Charges Order, s. 9, which specifies the maximum charges for the use of the co.'s trucks for the conveyance of merchandise according to distances, is perfectly general in its terms, & is not limited to the power of charging on the co.'s own line, but applies whether the journey is over one line only, or over more than one line.—BIRMINGHAM CORPN. *v.* MIDLAND RY. CO., LONDON & NORTH WESTERN RY. CO. & GREAT WESTERN RY. CO. (1909), 14 Ry. & Can. Tr. Cas. 24; 101 L. T. 920; 26 T. L. R. 46.

Annotations:—As to (2) **Consd.** Littleton Collieries *v.* L. & N. W. Ry. (1916), 85 L. J. K. B. 1481. **Distd.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574. *As to* (3) **Refd.** Muntz's Metal Co. *v.* L. & N. W. Ry. (1911), 14 Ry. & Can. Tr. Cas. 284.

1343. Proof of title to—Whether terminal charges included in rate—Inferences as to.]—At the hearing of an application for an allowance or rebate under 1894 Act, s. 4, on the ground that the rates charged by the railway co., in respect of goods sent from appcts.' siding, included a charge for station accommodation at the siding:—*Held:* appcts., by merely proving that they were charged the rates, & that the siding did not belong to the railway co., had not made out a *primâ facie* case that the rates included a charge for station accommodation at the siding so as to throw upon the railway co. the *onus* of proving that the rates did not include a charge for station accommodation.—SALT UNION *v.* NORTH STAFFORDSHIRE RY. CO., [1898] 2 Q. B. 435; 10 Ry. & Can. Tr. Cas. 179; 67 L. J. Q. B. 889; 79 L. T. 16; 47 W. R. 4; 14 T. L. R. 523, C. A.

Annotations:—**Consd.** Foster *v.* G. E. Ry. (1920), 37 T. L. R. 268. **Refd.** Vickers & Maxim *v.* Mid. Ry. (1902), 87 L. T. 665.

1344. —— —— ——.]—A railway co. charged equal rates for traffic to appcts.' private sidings at S. & traffic dealt with at the co.'s goods station at S. Appcts. claimed a rebate in respect that

Sect. 10.—*Rebates on sidings rates. Sect.* 11: *Subsect.* 1.]

the co. did not in the case of the siding traffic provide station accommodation or perform terminal services. The co. denied that the rates charged on siding traffic included any charge for a station or service terminals at S. :—*Held:* (1) there was evidence that the rates in fact included terminal charges; (2) appcts. were entitled to a rebate of the whole service &, in the circumstances, defts. having given appcts. the exclusive use of certain sidings to supplement their private sidings, of one-quarter of the station terminal.

(3) *Semble:* the Comrs. have jurisdiction under 1894 Act, s. 4, to allow a rebate without proof that any definite amount of terminal is included, & *primâ facie* it is enough to found jurisdiction under that sect. if it is shown that, in respect of similar traffic between substantially the same termini & passing over substantially similar routes, a sidings' trader, who does not require or use any terminal accommodation or services, is charged the same amount as a trader who uses the station.—VICKERS, SONS & MAXIM, LTD. *v.* MIDLAND RY. CO. (1902), 11 Ry. & Can. Tr. Cas. 249; 87 L. T. 665; 18 T. L. R. 769, C. A.

Annotations:—As to (1) **Refd.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574. *As to* (2) **Refd.** Gilstrap, Earp *v.* G. N. Ry. & Mid. Ry. (1901), 11 Ry. & Can. Tr. Cas. 265.

1345. ——— ——— ——— Statements in rate book.]—Appcts. were the owners of private sidings communicating with defts.' railway. The same rates were charged by defts. for appcts.' siding traffic as for similar traffic of other traders using defts.' goods station at B. :—*Held:* (1) notwithstanding a statement in defts.' siding rate-book that no terminal charges were included in the siding rates, some terminal charges were presumably included in their station rates; (2) the rates of both siding & station traffic being the same, it must be inferred that the siding rates included the same elements of charge as the station rates, thereby entitling appcts. to a rebate corresponding to the amount of such terminal charges; (3) such rebate might be counterbalanced in part by the charges which defts. were entitled to make for services rendered in connection with appcts.' sidings; (4) the net rebate, if any, due to appcts. was the money value, from a business point of view, of the accommodation provided & the services rendered at the station less the value of the services rendered at the siding.

(5) In answer to a complaint of undue preference shown by defts. in that the same rates were charged both to appcts. & certain of their trade competitors for traffic sent to certain common points of destination to which appcts. were considerably nearer, defts. alleged justification on the ground of competition by sea :—*Held:* such rates were justified where actual effective sea communication existed.—MUNTZ'S METAL CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO. (1911), 14 Ry. & Can. Tr. Cas. 284.

1346. Amount of—Proportional to services or accommodation not provided.]—PIDCOCK & CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO., No. 1337, *ante*.

1347. ——— ——— How far principle binding.]—GILSTRAP, EARP & CO. *v.* GREAT NORTHERN RY. CO. & MIDLAND RY. CO., No. 1341, *ante*.

1348. ——— ——— Mode of ascertainment.] — MUNTZ'S METAL CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO., No. 1345, *ante*.

1349. ——— Amounts not applicable to conveyance.]—(1) If the mode in which a junction with a siding of a private owner has been effected is such that a railway co. need incur no greater expense in connection with it than is involved in stopping a goods train specially at the siding junction, & either uncoupling trucks there & depositing them in the siding clear of the points, or drawing out trucks ready marshalled & attaching them to the train, doing no work within the siding, & being paid for any special use of levers by signalmen in a signal box, there is then a mere delivery for which no extra payment is due.

(2) Appcts. owned a private siding near H. station of the C. Ry. Co. Owing to the nature & position of the siding it was not possible for a goods train to stop at the siding junction & for its engine to uncouple a truck & deposit it in the siding or to draw a truck out & unite it to the train, & all trucks to or from appcts.' siding had to be taken into the goods yard at H. station & there prepared for despatch or delivery, a process which involved extra hauling & the provision of standing room. In connection with appcts.' siding traffic the co. had to provide special points & signals, the levers for which were only required for such traffic. The co. charged appcts., on traffic to & from their siding, rates the same in amount as the rates charged as station to station, or collected & delivered rates, as the case might be, on similar traffic using H. station. The ct. having found that, in respect of appcts.' siding traffic, the co. did not provide the accommodation nor render the services, or any of them, for which station & service terminals were chargeable, but that they rendered certain other services in respect of that traffic, namely, some clerkage, shunting & signalling, for which a payment ought to be made to them :—*Held:* a reasonable & just allowance or rebate to be made from the rates charged to appcts., would be so much of each rate as is not applicable to, or charged for, conveyance, less the following sums: (*a*) a sum for clerkage equal to 30 per cent. of the charge the railway co. make in any rate as a station terminal at the H. end; (*b*) a sum for shunting equal to the station terminal at the H. end; and (*c*) in respect of the cost of signals, being a cost bearing the same proportion to the cost of all the signals in the siding signal box as the number of siding levers bears to the whole number of acting levers in that box, multiplied in each case by the average number of times they are respectively daily worked, such sum as the cost so ascertained works out at per ton of the siding traffic.—PORTWAY *v.* COLNE VALLEY & HALSTEAD RY. CO. & GREAT EASTERN RY. CO. (1899), 10 Ry. & Can. Tr. Cas. 211.

1350. Effect of agreement.] — WATSON, TODD & CO. *v.* MIDLAND RY. CO. & LONDON & NORTH WESTERN RY. CO., No. 1338, *ante*.

1351. ———.]—In 1879, defts. agreed to allow appcts., traders at N., a rebate, in respect of appcts.' performing their own loading & unloading, on all goods delivered to or received by defts. from appcts., who agreed to pay an extra toll of 6*d.* for all goods carried over the Q. railway. In 1892, defts. agreed with the corpn. of N. not to make any charge in respect of the Q. railway so long as the

1350. *Effect of agreement.*]—An agreement between a ry. co. & a trader with reference to a siding belonging to the trader provided that the co. should work the second trader's traffic at the siding; & that if the co. performed any shunting or marshalling of waggons or other service at the siding for the trader other than the more taking away & delivering of waggons, the trader should pay therefor to the co. such sums as might be agreed on, & failing agreement as might be determined by an arbitrator to be appointed by the Board of Trade :—*Held:* the trader was given no advantage beyond his statutory rights under 1894 Act, s. 4.—BERNARDS, LTD. *v.* NORTH BRITISH RY. CO. (1899), 36 Sc. L. R. 683.—SCOT.

rates paid for traffic using that railway were the same as those for similar traffic to or from their goods station at N. All appcts.' traffic used the Q. railway & also a yard of defts. adjoining appcts.' siding: the rates paid had, subject to the agreed rebate, been the same as those charged for traffic using defts.' goods station, although nearly the whole of appcts.' traffic was loaded & unloaded on their own premises. Appcts. applied for a rebate in respect of their having provided their own station accommodation:—*Held:* (1) under the agreement of 1879, appcts. should, subject to the rebate then agreed upon, pay the same rates as those charged for traffic using defts.' goods station; (2) the rates referred to in the agreement of 1892 were rates which included station accommodation.—NEWCASTLE GRAIN & GENERAL WAREHOUSING CO., LTD. *v.* NORTH EASTERN RY. CO. (1911), 14 Ry. & Can. Tr. Cas. 275.

1352. —— Silent as to terminal charges.]—By an agreement made with appcts.' predecessors, defts.' predecessors agreed to construct certain sidings in front of certain warehouses, subsequently leased to appcts., & to work the traffic from the principal siding free of charge. In computing the amount of mileage to be paid to defts. the warehouses were to be considered a terminal station in regard to all traffic conveyed thereto or therefrom on the main line & no extra charge was to be made in consequence of trucks going to or from the warehouses instead of to or from any ordinary terminus or station:—*Held:* (1) defts. were only entitled to charge appcts. in respect of the traffic to & from the said sidings a mileage rate calculated by the distance traversed both on defts.' own line & on such sidings; (2) the agreement being silent as to terminal charges appcts. were entitled to a rebate off the rates charged them in respect of their siding traffic.—WEAVER & CO., LTD. *v.* GREAT WESTERN RY. CO. (1911), 15 Ry. & Can. Tr. Cas. 1, C. A.

1353. —— Subsequent legislation.]—By an agreement made in 1891 by a trading co. with a railway co. for the construction of a siding, the railway co. agreed to make to the trading co. an allowance of not less than 3*d.* per ton for loading & unloading waggons & sheeting them, in respect of cotton & yarns & other goods usually handled by the co., received at or forwarded from the proposed sidings, & agreed also not to charge any terminal in respect of coal traffic from the sidings. By the subsequent Railway Rates & Charges Order Confirmation Act, 1891 & 1892, Sched., s. 5, railway cos. are authorised to charge a reasonable sum, in addition to the tonnage rate, for services rendered to a trader at his request or for his convenience, at or in connection with sidings not belonging to the co. The trading co. applied for a rebate under 1894 Act, s. 4, the railway co. made a cross application for an allowance under Railway Rates & Charges Order Confirmation Act, 1892:—*Held:* (1) by the agreement the sidings in question were treated as a station, & the railway co. were to charge as at a station less the special allowances; (2) there was nothing in the subsequent legislation incompatible with the agreement, into which the parties had entered with the knowledge of impending legislation, & for perfectly good consideration, & by which they were bound.—CROMPTON & CO. *v.* LANCASHIRE & YORKSHIRE RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* CROMPTON & CO. (1902), 11 Ry. & Can. Tr. Cas. 285; 18 T. L. R. 322, C. A.

Annotations:—As to (1) **Consd.** Newcastle Grain & General Warehousing Co. *v.* N. E. Ry. (1911), 14 Ry. & Can. Tr. Cas. 275. **Reld.** Foster *v.* G. E. Ry., [1920] 2 K. B. 574.

1354. Set-off — Value of services rendered — Against claim for rebate.]—Appcts., B. Corpn., had coal delivered to them by a railway co. at (*a*) the corpn.'s private siding at S., & (*b*) the railway co.'s station at L. The railway co. charged appcts. the same rates for the carriage of coal to S. & L.:—*Held:* (1) the fact that the railway co. performed for appcts. various services at S. for which they were entitled to charge under Railway Rates & Charges Order Confirmation Acts, 1891 & 1892, Sched., s. 5, might be used by the co., if not as a defence, as a set-off to a claim for a rebate under 1894 Act, s. 4.

(2) The value of the services received by appcts. at S. was at least as great as the value of the services received at L., the distance to S. was longer, & appcts. failed to show that any part of the rate to S. was a terminal charge; in addition storage accommodation was provided at S.:—*Held:* the rates might fairly be equal in both cases.—BIRMINGHAM CORPN., BOSTON (T.) & SON & CLAY CROSS CO. *v.* MIDLAND RY. CO. (1896), 9 Ry. & Can. Tr. Cas. 165.

Annotations:—Generally, **Consd.** Salt Union *v.* North Staffordshire Ry., [1893] 2 Q. B. 435. **Reld.** Muntz's Metal Co. *v.* L. & N. W. Ry. (1911), 14 Ry. & Can. Tr. Cas. 284.

1355. —— —— ——.]—MUNTZ'S METAL CO., LTD. *v.* LONDON & NORTH WESTERN RY. CO., No. 1345, *ante*.

SECT. 11.—INCREASE OF RATES.

See 1888 Act, s. 33 (6); 1894 Act, s. 1; 1913 Act, s. 1; 1921 Act, ss. 34, 35, 38, 39.

SUB-SECT. 1.—NOTICE OF INTENDED INCREASE.

1356. Sufficiency of.]—Under 1888 Act, s. 33 (6), the Board of Trade, in an order made in 1889, prescribed a form of notice of increase of rates, whereby a railway co. were to give notice that they intended to increase "the under-mentioned of the rates" published in the books required to be kept for public inspection. After the passing of 1913 Act, defts. gave notice of a general increase of rates, stating that they intended "subject to the statutory maxima" to increase the rates "to the extent & in the manner undermentioned," & underneath there were two columns, the first being "Present rate up to & not exceeding," & the second being "Additions to be made," beginning with "present rate up to & not exceeding" 1*s.*, & "addition to be made," ½*d.*, the increases ranging from ½*d.* to 4*s.*; & a notice in substantially the same form was inserted in the front of the rate book showing the increases so made. Appcts. contended that the notice did not comply with the requirements of the Act & the prescribed Board of Trade form, in that it contained the words "subject to the statutory maxima," & was a general notice applying to all the rates & did not set out each individual rule proposed to be increased; &, further, that the increased rates were not inserted in the rate books in the manner required by the Act:—*Held:* (1) the notice was a distinct notice of what the proposed increases were to be & was a sufficient compliance with the requirements of the Act as to the notice to be given; (2) there was a sufficient insertion of the increased rates in the rate books to satisfy the statutory requirements in that respect.—BRITISH PORTLAND CEMENT MANUFACTURERS, LTD. & NELSON (CHARLES) & CO., LTD. *v.* GREAT EASTERN RY. CO., MIDLAND RY. CO. & LONDON & NORTH WESTERN RY. CO., THOMAS (C.) & BROTHERS,

Sect. 11.—Increase of rates: Sub-sects. 1, 2 & 3.]

LTD., & PARSONS (C. H.) & BROTHER, LTD. *v.* MIDLAND RY. CO. & GREAT WESTERN RY. CO. (1914), 15 Ry. & Can. Tr. Cas. 213; 111 L. T. 586; 30 T. L. R. 523.

SUB-SECT. 2.—WHAT AMOUNTS TO INCREASE.

1357. Alteration in calculation of—Weight.]—RICKETT, SMITH & CO. *v.* MIDLAND RY. CO., DERBYSHIRE SILKSTONE COAL CO. *v.* MIDLAND RY. CO., GRASSMOOR CO., LTD. *v.* MIDLAND RY. CO., No. 1365, *post*.

1358. —— ——.]—WATSON (JOSEPH) & SONS, LTD. *v.* MIDLAND RY. CO., No. 1375, *post*.

1359. —— ——.]—Appcts. agreed to pay defts. for the carriage of casks containing vinegar on the actual weight of the casks, or in accordance with a scale of computed weights, not exceeding actual weights, to be fixed by defts., & under a scale of computed weights fixed by defts., carriage was paid by appcts. It being found that the weights upon which appcts. had been charged did not represent the true weights of the casks, defts. introduced a new scale under which their charges were increased:—*Held:* (1) on the construction of the agreement defts. were at liberty from time to time to frame a scale of computed weights for the purpose of arriving at the actual weights which they were carrying; (2) in any case no increase of rates had been made; defts. had only established a more accurate way of arriving at the weights than that under the old scale.—HOLBROOKS, LTD. *v.* LONDON & NORTH WESTERN RY. CO. (1916), 16 Ry. & Can. Tr. Cas. 154.

1360. —— **Time for taking delivery.**]—A railway co., being bound to give a reasonable time to the traders, after conveyance, to take delivery, prior to 1894 allowed the traders for that purpose four clear days, calculated on the average time that all the trucks of a particular trader occupied the co.'s sidings. After 1894, they allowed four days exclusive of the day of arrival, but calculated the time allowed on each truck & not on the average:—*Held:* not an indirect increase of the tonnage rate, which the co. were called upon to justify, under 1894 Act, s. 1, because, under the former system, no particular ton of coal would have had greater accommodation as regards time than under the new system.—MANCHESTER & NORTHERN COUNTIES FEDERATION OF COAL TRADERS' ASSOCNS. *v.* MIDLAND RY. CO. (1896), 10 Ry. & Can. Tr. Cas. 121.

1361. Alteration in classification.]—Appcts. for a period of thirty years prior to 1912 had consigned steel "strips," 1/8th in. in thickness & not exceeding 12 ins. in width, by rail from S. to L. & other places. Such strips were despatched either unpacked, or packed in cases or casks, & were described as "Bessemer undamageable" or "undamageable steel hoops." They were carried, whether packed or unpacked, at Class C. rates, amounting, in the case of 2 ton lots from S. to L., to 13*s.* 4*d.* per ton. In 1891 "strips not packed" were placed in Class C. of the general railway classification, while packed strips remained unclassified. From 1908 an exceptional rate was quoted in the rate books for steel strips packed, from S. to L., at 18*s.* 4*d.* per ton, but such rate was not charged to appcts.' traffic, which continued to be described as before. In 1910 strips iron & steel "except otherwise herein provided," *i.e.* packed, were introduced into Class 2 of the general railway classification, but appcts. continued to pay the old rate on their traffic, under its usual description. In 1912 the railway cos. required appcts. to describe such traffic, where packed, as "steel strips," & charged for its carriage from S. to L. the Class 2 or an exceptional rate of 18*s.* 4*d.* per ton. The railway cos. contended that, "steel strips packed" being unclassified, they were entitled, under their Rates & Charges Order, to charge Class 3 or any lower rates, & stated that this would have been done had appcts. truly declared the contents of the cases or casks containing their steel strips. Upon a complaint by appcts. that deft. railway cos. had increased the rates for their traffic & that such increase was unreasonable:—*Held:* (1) the railway cos. did in fact know of the contents of the cases & casks consigned by appcts., & in charging for such traffic Class 2 rates in lieu of Class C. rates they had increased the rates; (2) the fact that other traders had paid the higher rates on similar traffic did not in itself justify the increases complained of, although defts. would have laid the foundation for argument if they had proved that the volume of traffic upon which the higher charge was paid was really substantial as compared with that upon which the lower rate was paid; (3) the above decision should not prejudge an application to the Board of Trade for the classification of the traffic in question.—BEESLEY (W. T.) & CO., LTD. *v.* MIDLAND RY. CO. & CHESHIRE LINES COMMITTEE (1914), 15 Ry. & Can. Tr. Cas. 306.

Annotation:—As to (1) **Consd.** Stewarts & Lloyds *v.* L. & N. W. Ry. (1919), 16 Ry. & Can. Tr. Cas. 241.

1362. Charge for demurrage.]—Railway Rates & Charges Order Confirmation Act, 1892, s. 5, gives railway cos. power to charge a reasonable sum in addition to the tonnage rate for (*inter alia*) the use or occupation of any accommodation for such period as may be reasonably necessary for enabling the co. to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery.

Coal traffic on a certain railway was conveyed in waggons belonging to the traders themselves; & the practice was for the company to allow the waggons, on their arrival with coal at the terminal station, to remain on the co.'s sidings for an indefinite time until the consignees had discharged the coal from the waggons, & no charge was made for sidings rent beyond the conveyance rate & the station terminal. Owing to the increase of traffic the co., under the above sect., imposed a new charge for siding rent of 6*d.* a day per waggon for each day the waggon continued on the sidings after the expiration of four days:—*Held:* (1) four days was a sufficient time during which the obligation of the co. as carriers should continue; (2) as the Act gave the co. power to make a charge for accommodation after their duty as carriers had ended, the charge for siding rent was not a direct or indirect increase of any rate or charge within 1894 Act, s. 1, & the co. were not called upon to justify it; (3) the reasonableness of the amount of such charge in any individual case was a matter, not for the ct., but for an arbitrator appointed by the Board of Trade.—MANCHESTER & NORTHERN COUNTIES FEDERATION OF COAL TRADERS' ASSOCNS. *v.* LANCASHIRE & YORKSHIRE RY. CO. (1897), 10 Ry. & Can. Tr. Cas. 127; 76 L. T. 786.

Annotations:—As to (1) **Refd.** L. & N. W. Ry. *v.* Donellan, L. & N. W. Ry. *v.* Billington (1898), 78 L. T. 575; Mid. Ry. *v.* Black (1899), 10 Ry. & Can. Tr. Cas. 142; Cale. Ry., G. & S. W. Ry. & N. B. Ry. *v.* Lanarkshire Coalmasters' Assocn. (1911), 27 T. L. R. 221. *As to* (2) **Foll.** Stone & Jackson *v.* Mid. Ry., Coleman *v.* G. N. Ry. (1918), 120 L. T. 283. **Refd.** Cale. Ry., G. & S. W. Ry. & N. B. Ry. *v.* Lanarkshire Coalmasters' Assocn. (1911), 27 T. L. R. 221; N. B. Ry. *v.* Coltness Iron Co., Cale. Ry. *v.* Coltness Iron Co., G. & S. W. Ry. *v.* Baird (1911), 14 Ry. & Can. Tr. Cas. 246. *As to* (3) **Refd.** Mid. Ry. *v.* Stones & Jackson,

G. N. Ry. *v.* Beeson, Coleman *v.* G. N. Ry. (1918), 16 Ry. & Can. Tr. Cas. 261. *Generally*, **Refd.** G. S. & W. Ry. *v.* Wallace (1913), 15 Ry. & Can. Tr. Cas. 75.

See, now, 1921 Act, s. 55, Sched. V. 11 (1) (iv).

1363. Increase after previous reduction—Former rate not exceeded.]—MILLOM & ASKAM HEMATITE IRON CO., LTD. *v.* FURNESS RY. CO., NORTH EASTERN RY. CO. & LONDON, & NORTH WESTERN RY. CO., No. 1162, *ante*.

1364. —— ——.]—A railway co. after Jan. 1, 1893, made a reduction in a rate then in force, & subsequently increased it as from Aug. 1, 1900, but the rate was after the increase no higher than it had been on Dec. 31, 1892 :—*Held :* the railway co. had increased the rate since Dec. 31, 1892, within 1894 Act, s. 1 (1).—NORTH STAFFORDSHIRE COLLIERY OWNERS' ASSOCN. *v.* NORTH STAFFORDSHIRE RY. CO., LONDON & NORTH WESTERN RY. CO., GREAT WESTERN RY. CO., & SHROPSHIRE UNION RYS. & CANAL CO., [1907] 2 K. B. 191 ; 13 Ry. & Can. Tr. Cas. 78 ; 76 L. J. K. B. 602 ; 96 L. T. 893 ; 23 T. L. R. 418 ; 51 Sol. Jo. 386, C. A. ; *subsequent proceedings*, [1908] 1 K. B. 771 ; 2 K. B. 765, C. A.

Annotation :—**Refd.** *Ex p.* G. S. & W. Ry., *Ex p.* Fishguard & Rosslare Rys. & Harbours Co., G. S. & W. Ry. & G. W. Ry. (1914), 15 Ry. & Can. Tr. Cas. 282.

See, now, 1921 Act, s. 38 (2).

SUB-SECT. 3.—JUSTIFICATION OF INCREASE.

1365. Onus of proof.]—On Jan. 1, 1893, a railway co. indirectly increased their rate for the carriage of coal, but not to the maximum. Before 1894 Act all rates below the maxima were presumed to be reasonable :—*Held :* (1) in the case of rates increased after Dec. 31, 1892, 1894 Act, s. 1 (1), removed that presumption & threw upon cos. the *onus* of proving that the increase was reasonable ; (2) the standard of reasonableness depended on circumstances existing or apprehended before the increase was made, and, therefore, in the case then before the ct., before the Act came into operation.

The rates & charges made by defts. for the conveyance of coal were, before Jan. 1, 1893, based upon the carriage of 21 cwt. to the ton ; they had, since Dec. 31, 1892, been based upon the carriage of 20 cwt. to the ton with an allowance for wastage of 2 cwt. per truck carried by defts. without charge :—*Held :* (3) defts. had, by so reducing the weight of coal carried to the ton, indirectly increased their rates & charges for the carriage of coal ; (4) it had not been proved by defts. that the whole of the increase in the rates which had been so made was reasonable.—RICKETT, SMITH & CO. *v.* MIDLAND RY. CO., DERBYSHIRE SILKSTONE COAL CO. *v.* MIDLAND RY. CO., GRASSMOOR CO., LTD. *v.* MIDLAND RY. CO., [1896] 1 Q. B. 260 ; 9 Ry. & Can. Tr. Cas. 107 ; 65 L. J. Q. B. 274 ; 12 T. L. R. 6.

Annotations :—*As to* (1) **Consd.** Mansion House Assocn. on Ry. & Canal Traffic for the United Kingdom *v.* L. & N. W. Ry. (1896), 9 Ry. & Can. Tr. Cas. 174 ; South Yorkshire Coal Owners' Assoc. Soc. *v.* Mid. Ry. (1897), 10 Ry. & Can. Tr. Cas. 28 ; Smith & Forrest *v.* L. & N. W. Ry., G. W. Ry. & Mid. Ry. (1900), 11 Ry. & Can. Tr. Cas. 156. *As to* (2) **Consd.** South Yorkshire Coal Owners' Assoc. Soc. *v.* Mid. Ry. (1897), 10 Ry. & Can. Tr. Cas. 28 ; Coal Merchants' Soc. *v.* Mid. Ry. (1909), 14 Ry. & Can. Tr. Cas. 100 ; Associated Portland Cement Manufacturers (1900), Ltd. *v.* G. N. Ry., [1916] 2 K. B. 262. **Refd.** Black *v.* Cale. Ry., N. B. Ry. & G. & S. W. Ry. (1901), 11 Ry. & Can. Tr. Cas. 176 ; North Staffordshire Colliery Owners' Assocn. *v.* North Staffordshire Ry., L. & N. W. Ry., G. W. Ry. & Shropshire Union Rys. & Canal Co., [1908] 1 K. B. 771 ; *Ex p.* G. S. & W. Ry., *Ex p.* Fishguard & Rosslare Rys. & Harbours Co., G. S. & W. Ry. & G. W. Ry. (1914), 15 Ry. & Can. Tr. Cas. 282. *As to* (3) **Refd.** Watson *v.* Mid. Ry. (1909), 13 Ry. & Can. Tr. Cas. 339. *Generally*, **Mentd.** Smith, Stone & Knight *v.* L. & N. W. Ry., [1914] 3 K. B. 1195.

1366. —— **1913 Act.**]—(1) 1913 Act does not impose upon railway cos. seeking to justify an increase of rates the same burden of proving that the increase was reasonable as was imposed by 1894 Act.

(2) In order to determine under 1913 Act, s. 1, whether a particular increase for the purpose of meeting "a rise in the cost of working the railway," resulting from improvements made by the co. since Aug. 19, 1911, in the conditions of employment of labour, is justified, the right method is to compare the actual cost of labour in connection with the goods traffic at the date of the increase complained of with what would have been the cost of that labour under the old conditions.—ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LTD. *v.* GREAT NORTHERN RY. CO., [1916] 2 K. B. 262 ; 16 Ry. & Can. Tr. Cas. 94 ; 85 L. J. K. B. 1097 ; 114 L. T. 1185 ; 32 T. L. R. 466, C. A.

Annotations :—*As to* (2) **Consd.** Butterley Co. *v.* Mid. Ry., [1920] 3 K. B. 86. **Refd.** Butterley Co. *v.* Mid. Ry., L. & N. W. Ry. & L. & Y. Ry. (1917), 16 Ry. & Can. Tr. Cas. 225.

See 1921 Act, s. 55, Sched. V., Part I.

1367. At what time reasonableness to be determined.]—(1) The question whether an increase in a rate is reasonable within 1894 Act, s. 1 (1), depends upon the circumstances existing at the time the increase was made, including the charges before & after the increase with reference to the services rendered & to be rendered, the expenses of performance, & every other fact with relation thereto.

(2) 1894 Act does not confer any general jurisdiction upon the Ct. of the Railway & Canal Commission to investigate the reasonableness of rates.—NORTH STAFFORDSHIRE COLLIERY OWNERS' ASSOCN. *v.* NORTH STAFFORDSHIRE RY. CO., LONDON & NORTH WESTERN RY. CO., GREAT WESTERN RY. CO., & SHROPSHIRE UNION RYS. & CANAL CO., [1908] 2 K. B. 765 ; 13 Ry. & Can. Tr. Cas. 78 ; 77 L. J. K. B. 102 ; 99 L. T. 652 ; 24 T. L. R. 780, C. A.

Annotation :—*As to* (1) **Refd.** *Ex p.* G. S. & W. Ry., *Ex p.* Fishguard & Rosslare Rys. & Harbours Co., G. S. & W. Ry. & G. W. Ry. (1914), 15 Ry. & Can. Tr. Cas. 282.

1368. Increased cost of working.]—Defts. increased their rates for coal for shipment from

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PART X. SECT. 11, SUB-SECT. 3.

1365 i. *Onus of proof.*]—CANADIAN FREIGHT ASSOCN. *v.* WINNIPEG BOARD OF TRADE & CANADIAN MANUFACTURERS' ASSOCN. (1911), 21 W. L. R. 646 ; 13 Can. Ry. Cas. 122.—**CAN.**

1367 i. *At what time reasonableness to be determined.*]—In 1900 three railway cos. were amalgamated. Upon applications for orders sanctioning increases of all local rates, for goods & merchandise traffic, & for perishable traffic carried by passenger train, & also sanctioning similar increases of certain through rates, various tables in support were put in evidence comparing receipts, working expenses, & other figures for 1892, when the scale of maximum rates was fixed, & 1897 on the one hand, & 1912 on the other ; but, with certain exceptions, no comparison was instituted between the period immediately succeeding the amalgamation & the date of the applications. The result shown by the tables was that the percentage of working expenses had increased as between 1892 & 1912, but certain tables comparing 1901, the year succeeding amalgamation, & 1912, which were subsequently prepared at the request of the ct., showed that such percentage had considerably decreased as between the last-mentioned years :—*Held :* 1892 could not be accepted as a proper year for comparison, & the year succeeding the amalgamation, unless abnormal, should be adopted, the question to be considered being, how, if at all, the circumstances had altered since the date when the amalgamating Act said that the actual rates then in force were not to be increased without the consent of the ct.—*Ex p.* GREAT SOUTHERN & WESTERN RY. CO., *Ex p.* FISHGUARD & ROSSLARE RYS. (1914), 15 Ry. & Can. Tr. Cas. 282.—**IR.**

1368 i. *Increased cost of working—Whether applicants damaged.*]—Upon ..

Sect. 11.—*Increase of rates: Sub-sect.* 3. *Sects.* 12 & 13. *Part XI. Sect.* 1: *Sub-sect.* 1.]

appcts.' collieries to T. & S. by 5*d.* per ton. Defts. proved that the cost of working appcts.' traffic had increased by increased cost for locomotive power, owing chiefly to the shortening of the hours of labour, increased wages, a greater number of waggons having been allotted to appcts. owing to their requiring greater despatch, & increased rates & taxes:—*Held:* the increase was not unreasonable.—CHARLAW & SACRISTON COLLIERIES CO. *v.* NORTH EASTERN RY. CO. (1896), 9 Ry. & Can. Tr. Cas. 140; 12 T. L. R. 211.

1369. ——.]—The charges made by the railway co. for the conveyance of coal were, prior to Jan. 1, 1893, calculated upon the carriage of 21 cwt. to the ton, of which 1 cwt. was an allowance for "wastage"; they were now calculated upon the carriage of 20½ cwt. to the ton; this resulted in an increase of 2½ per cent. upon the rate formerly charged to appcts.:—*Held:* (1) the railway co. having shown at least a proportional increase in the cost of working the traffic between 1877, when the original rates were fixed, & 1892, the increase of rate was reasonable; (2) the fact that since 1880 the railway co. had supplied waggons for the mineral trade as carriers of minerals, for the use of which a separate rate was charged, did not necessitate the exclusion of this branch of their business from the general account (for purposes of comparison, in order to ascertain a reasonable conveyance rate) because the trader providing his own waggons was also benefited by the increased facility & greater economy with which the traffic was handled; (3) the cost of providing relief men for mineral trains, which was necessitated by the shortened hours of labour, & the fact that such trains had to stand on one side for goods & passenger trains, was an item properly attributable to the mineral traffic, which must be worked subject to the ordinary conditions on a highway; (4) a comparison of expenditure & receipts in any two years is a fair method of comparison where no special disturbing elements can be proved to exist. For a comparison based on train mileage to be of value, it must be shown that the conditions of working the traffic in the two compared years have remained substantially constant.—SOUTH YORKSHIRE COAL OWNERS' ASSURANCE SOCIETY *v.* MIDLAND RY. CO. (1897), 10 Ry. & Can. Tr. Cas. 28; 13 T. L. R. 192.

Annotations:—As to (1) **Refd.** Smith & Forrest *v.* L. & N. W. Ry., G. W. Ry. & Mid. Ry. (1900), 11 Ry. & Can. Tr. Cas. 156. *As to* (3) **Refd.** Portway *v.* Colne Valley & Halstead Ry. & G. E. Ry. (1899), 10 Ry. & Can. Tr. Cas. 211. *Generally*, **Mentd.** Coal Merchants Soc. *v.* Mid. Ry. (1909), 14 Ry. & Can. Tr. Cas. 100.

1370. —— **Ratio of costs to receipts.**]—(1) In justifying an increase of rates under 1894 Act, s. 1, it is not sufficient to show an increase in the ratio of cost to receipts to an extent equalling or exceeding that of the advance in the rates. If it be shown, after all elements of cost & economy have been taken into consideration, that the necessary cost per ton carried will, under uniform conditions, be increased by any sum without any compensating circumstances, then it is *primâ facie* reasonable to increase the charge by the same sum.

(2) In considering under the sect. whether an increase of rate is reasonable, the ct. is not precluded from having regard to any circumstances which may tend either to justify the increase or to prove it unreasonable.

(3) Although the rates, as existing before 1893, are presumed by the Railway and Canal Traffic Act, 1894, to be sufficiently high, an advance shown to be necessary to accommodate them to circumstances may be allowed, even though the circumstances are of a date prior to 1893 (*e.g.* circumstances existing since 1888), provided that the date is not too remote.—SMITH & FORREST *v.* LONDON & NORTH WESTERN RY. CO., GREAT WESTERN RY. CO., & MIDLAND RY. CO. (1900), 11 Ry. & Can. Tr. Cas. 156.

Annotations:—As to (1) **Consd.** Coal Merchants' Soc. *v.* Mid. Ry. (1909), 14 Ry. & Can. Tr. Cas. 100. **Refd.** G. W. Ry. *v.* Postmaster-General (1903), 12 Ry. & Can. Tr. Cas. 11; *Ex p.* G. S. & W. Ry., *Ex p.* Fishguard & Rosslare Rys. & Harbours' Co., G. S. & W. Ry. & G. W. Ry. (1914), 15 Ry. & Can. Tr. Cas. 282. *As to* (2) **Consd.** Associated Portland Cement Manufacturers (1900), Ltd. *v.* G. N. Ry., [1916] 2 K. B. 262. **Refd.** North Staffordshire Colliery Owners' Assocn. *v.* North Staffordshire Ry., L. & N. W. Ry., G. W. Ry., & Shropshire Union Rys. & Canal Co., [1908] 1 K. B. 771. *Generally*, **Refd.** Millom & Askam Hematite Iron Co. *v.* Furness Ry., N. E. Ry. & L. & N. W. Ry. (1903), 12 Ry. & Can. Tr. Cas. 1.

1371. ——.]—In 1895 a railway co. was authorised to increase its rate for mineral traffic by 2½ per cent. In 1907 the co. gave notice of its intention to raise the rate by an additional 2½ per cent.:—*Held:* upon the evidence, such increase was justifiable in view of the increased cost to the railway co. of the carriage of mineral traffic.—COAL MERCHANTS' SOCIETY *v.* MIDLAND RY. CO. (1909), 14 Ry. & Can. Tr. Cas. 100; 26 T. L. R. 135.

1372. —— **How ascertained.**] — ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LTD. *v.* GREAT NORTHERN RY. CO., No. 1366, *ante*.

1373. —— **"Exceptional rate" traffic only increased.**]—Defts. in order to meet the increase in the cost of working their railways resulting from the improvements they had made in the conditions of employment of their labour & clerical staff in the form of higher wages, shortening the hours of labour, etc., placed an increase of 4 per cent. on all their "exceptional rate" traffic & nothing on the "class" traffic or on coal, coke and patent fuel. Almost all kinds of merchandise are carried at exceptional rates, so that practically no particular kind of merchandise was unaffected except coal, coke & patent fuel. The reason for this was that class traffic was already charged almost up to the maximum & the rates on coal, coke & patent fuel had already been raised more than once, & it was not thought advisable to disturb the recent arrangements that had been made:—*Held:* there had been no contravention by defts. of 1913 Act, s. 1 (1), inasmuch as the word "traffic" in clause (d) referred to the class of goods, the particular industry, in which complainant was

complaint, under 1894 Act, s. 1 (1), by colliery owners that the ry. co., Dec. 1899, increased the rates for the carriage of coal to an extent varying from 1*d.* per ton on rates not exceeding 2*s.* per ton, to 3*d.* per ton on rates exceeding 5*s.* per ton, & that such increase was unreasonable, the ry. co. alleged that the increase was reasonable on the grounds that the cost of working their coal traffic had increased owing to the shortening of hours of labour, increase of price of fuel, additional capital expenditure, & other causes. On the facts:—*Held:* raising the rates was not justified.—BLACK & SONS *v.* CALEDONIAN RY. CO., NORTH BRITISH RY. CO. & GLASGOW & SOUTH WESTERN RY. CO. (1901), 11 Ry. & Can. Tr. Cas. 176.—SCOT.

1370 i. —— *Ratio of costs to receipts.*]—Circumstances (*see supra*) in which:—*Held:* in view of the decrease of the percentage of working expenses to receipts, & also of the net increase in the train mile & tonnage receipts as between the year succeeding the amalgamation & the period preceding the application, appcts. had failed to justify the proposed increases of rates.—*Ex p.* GREAT SOUTHERN & WESTERN RY. CO., *Ex p.* FISHGUARD & ROSSLARE RYS. (1914), 15 Ry. & Can. Tr. Cas. 282.—IR.

n. *Existing rate remunerative.*]—DOOLITTLE & WILCOX *v.* GRAND TRUNK RY. CO. & CANADIAN PACIFIC RY. CO. (1908), 8 Can. Ry. Cas. 10.—CAN.

o. ——.] — VANCOUVER & PRINCE RUPERT MEAT CO. *v.* GREAT NORTHERN

interested, & the object of the sub-sect. was to prevent one trader being unduly burdened by the increase of rates made, whereas the 4 per cent. increase on the exceptional rate traffic applied practically to all classes of goods & to all industries, & no complaint was made that any one industry or class of goods had been unduly burdened, nor was there any evidence of any hardship.—BUTTERLEY CO., LTD. *v.* MIDLAND RY. CO., LONDON & NORTH WESTERN RY. CO. & LANCASHIRE & YORKSHIRE RY. CO., [1920] 3 K. B. 86; 16 Ry. & Can. Tr. Cas. 295; 90 L. J. K. B. 33; 124 L. T. 284.

1374. Compliance with order against undue preference—Levelling down rates involving loss.]—(1) Where a railway co. can show that, in complying with an order of the ct. against undue preference, a levelling down of the rates at other similar places, proportionate to the amount of the rate complained of, would involve a great risk of serious loss, a levelling up or increase of such rate or charge complained of is reasonable.

(2) *Qu.:* whether 1894 Act, s. 1, applies to an increase made in *bonâ fide* obedience to an order of the ct. against undue preference.—RISHWORTH, INGLEBY & LOFTHOUSE, LTD. *v.* NORTH EASTERN RY. CO. (1903), 12 Ry. & Can. Tr. Cas. 34.

Annotation:—As to (1) **Reld.** Grayson, Lowood & Silica Fire Brick Co. *v.* G. C., L. & N. W., Mid., Cale., G. & S. W., & N. B. Rys. (1909), 13 Ry. & Can. Tr. Cas. 281.

1375. Correction of undue preference—Alteration in computation of weight.]—By an arrangement between appcts. & defts. in 1906 appcts.' soap was carried by defts. at rates based upon its computed weight, which was, in fact, substantially less than its actual weight. In 1907 other traders, whose traffic was carried at rates based upon actual weight, complained of the undue preference accorded by means of the computed weights, & thereupon defts. adopted the practice of charging all consignments at actual weight. Appcts. complained of this change of rate as an unreasonable increase & as illegal, inasmuch as public notice was not given of it as prescribed by 1888 Act, s. 33: —*Held:* defts. had taken a reasonable step in altering the computation when they found it inaccurate.—WATSON (JOSEPH) & SONS, LTD. *v.* MIDLAND RY. CO. (1909), 13 Ry. & Can. Tr. Cas. 339; 25 T. L. R. 805; *affd.* 14 Ry. & Can. Tr. Cas. 18, C. A.

Annotation:—**Consd.** Beesley *v.* Mid. Ry. & Cheshire Lines Committee (1914), 15 Ry. & Can. Tr. Cas. 306.

1376. —— Increase of lower rate—Over partly different routes.]—Where there are two different rates over in part different routes between two different starting points & a common destination & where the respective charges are made in respect of different railway cos. as to part of the routes, an increase in the lower of two such rates cannot be justified on the ground that a continuance of the former lower rate would constitute an undue preference.—GRAYSON, LOWOOD & CO., LTD. & SILICA FIRE BRICK CO. *v.* GREAT CENTRAL, LONDON & NORTH WESTERN, MIDLAND, CALEDONIAN, GLASGOW & SOUTH WESTERN, & NORTH BRITISH RY. COS. (1909), 13 Ry. & Can. Tr. Cas. 281.

1377. Higher rates on similar traffic paid by other traders.]—BEESLEY (W. T.) & CO., LTD. *v.* MIDLAND RY. CO. & CHESHIRE LINES COMMITTEE, No. 1361, *ante*.

Practice before & jurisdiction of Railway & Canal Commissioners generally, *see* RAILWAYS & CANALS.

SECT. 12.—**REDUCTION OF RATES.**

See 1921 Act, ss. 35, 38 (2) (3), 57.

SECT. 13.—**JURISDICTION OF AND PROCEDURE BEFORE RAILWAY AND CANAL COMMISSIONERS AND RAILWAY RATES TRIBUNAL**

See RAILWAYS & CANALS.

Part XI.—Remedies of and against Carriers.

SECT. 1.—**REMEDIES OF CARRIERS.**

SUB-SECT. 1.—AGAINST WHOM.

1378. Person actually employing carrier—Whether ultimate principal liable.]—A., being commissioned by deft. to purchase & ship wheat for him, employed pltf. to bring it down to the coast, & to pay shipping charges, etc., but failed to pay him. Pltf. claimed the amount from the deft., who had not at that time paid to A. any part of the sum due:—*Held:* pltf. must sue the person who actually employed him, not deft.—CULL *v.* BACKHOUSE (1793), 6 Taunt. 148, n.; 128 E. R. 990.

1379. With whom contract made—Consignor or consignee.]—Defts. hired a trolley, & agreed with the owner to pay for the carriage both ways. Defts. delivered the trolley to pltfs., to be returned to the owner under a consignment note which stated that defts. requested pltfs. to receive & forward the trolley as per address & particulars on the note, & on the conditions stated therein. The note gave the name of the owner as consignee, & in a column headed "who pays carriage" was inserted "consignee." Pltfs. delivered the goods to the consignee, who declined to pay the freight on the ground that defts. had agreed to pay it. In an action to recover the freight from defts.:—*Held:* in the circumstances defts. could not be treated merely as agents of the consignee to make the contract for the carriage of the trolley, but were themselves contracting parties, & liable to pay the freight.—GREAT WESTERN RY. CO. *v.* BAGGE (1885), 15 Q. B. D. 625; 54 L. J. Q. B. 599; 53 L. T. 225; 34 W. R. 45; 1 T. L. R. 615, D. C.

Annotations:—**Distd.** G. E. Ry. *v.* Nix (1895), 39 Sol. Jo. 709. **Reld.** Wallis *v.* G. N. Ry. (Ireland) (1903), 12 Ry. & Can. Tr. Cas. 38.

1380. ——.]—Deft. brought bricks to pltfs.' station at B., & signed a consignment note, by

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RY. CO. (1911), 20 W. L. R. 625.—**CAN.**

p. *Temporary increase.*]—*Re* RAILWAY COMPANIES' DEMURRAGE CHARGES (1912), 23 W. L. R. 237.—**CAN.**

q. —— *Whether revision requisite.*]—CANADIAN MANUFACTURERS' ASSOCN. *v.* CANADIAN FREIGHT ASSOCN. (1911), 20 W. L. R. 614.—**CAN.**

r. —— —— *Approval of new tariff.*]—*Re* CARTAGE TOLLS TARIFFS (1912), 23 W. L. R. 598.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 1.

1379 i. *With whom contract made—Consignor or consignee.*]—CANADIAN PACIFIC RY. CO. *v.* WATTS (1914), 30 W. L. R. 126; 6 W. W. R. 1234; 7 W. W. R. 785; 20 D. L. R. 607.—**CAN.**

Sect. 1.—*Remedies of carriers: Sub-sects.* 1, 2, 3 & 4, *A.* (*a*).]

which he requested pltfs. to forward the bricks to H. at E. Under the heading in the consignment note, "Who pays carriage," were written the words "to pay," & this it was admitted meant that the consignee, H., was to pay. The bricks had been bought from deft. by H., & were, according to the terms of the purchase, to be delivered by deft. at B., & to be carried thence by pltfs. to E., H. paying the cost of carriage. Pltfs. carried the bricks to E., & delivered them to H., on receiving a letter from C. by which he undertook to pay for the carriage if the bricks were delivered to H. C. failed to pay, & afterwards became bkpt. Pltfs. then brought action against deft.:—*Held:* the contract to carry the bricks was a contract between pltfs. & H., & made by deft. as agent for H., & deft. was not liable.—GREAT EASTERN RY. CO. *v.* NIX (1895), 39 Sol. Jo. 709, D. C.

1381. —— Effect of transfer notes.]—Defts. had a contract to supply bricks to W. & Co., builders' merchants. The bricks were ordered by defts. from a firm at N., who consigned them, marked "carriage forward" to the defts. at T. On the arrival of the bricks at T. defts. gave an order to the L. & S. W. R. Co. to transfer the bricks "carriage forward" to W. & Co. Subsequently W. & Co. gave a similar order for the transfer of the bricks to T. The railway co. delivered the bricks to T., but he failed to pay the carriage. The co. could not be treated as having given up their claims against defts. merely because they had accepted a transfer note, & defts. were liable, but they were entitled to be indemnified by the third parties, W. & Co., without prejudice to any rights which W. & Co. might have over against T.—LONDON & SOUTH WESTERN RY. CO. & GREAT NORTHERN RY. CO. *v.* BISHOP, PRATT & CO., WARD & CO., THIRD PARTIES (1898), 42 Sol. Jo. 255.

Effect of indorsement of bill of lading.]—*See* SHIPPING & NAVIGATION.

1382. Carrier's servant—When action maintainable.]—If the servant of a common carrier accidentally lose goods intrusted to his master to carry, the master cannot maintain an action against him for the value, unless he can prove negligence, & has paid the money to the owners.—SAVAGE *v.* WALTHEW (1707), 11 Mod. Rep. 135; 88 E. R. 947.

See, generally, MASTER & SERVANT.

SUB-SECT. 2.—RIGHT TO FREIGHT OR COST OF CONVEYANCE.

See Railways Act, 1921 (c. 55), s. 55, Sched. V. 11 (3).

Charge for carriage.]—*See* Part III., Sect. 2, *ante.*

1383. When right to freight accrues—Conveyance must be complete.]—Pltf., a carrier & wharfinger at S., agreed in writing with deft., living in Surrey, to carry his timber by barge to L., at 16*s.* per ton, including all charges but wharfage. It was necessary to haul the timber from the place where it lay to the wharf, & pltf. provided horses for the purpose when deft.'s horses were absent. Pltf. sued in the S. county ct. for the balance of his account for the carriage, including a separate charge for hauling:—*Held:* on motion for a prohibition, the hauling & the carriage formed one cause of action; such cause of action was not complete until the timber was delivered in L.; & the county ct. judge had not jurisdiction under County Courts Act, 1846 (c. 95), s. 60.—BARNES *v* MARSHALL (1852), 18 Q. B. 785; Saund. & M. 32; 21 L. J. Q. B. 388; 19 L. T. O. S. 217; 17 J. P. 38; 16 Jur. 1086; 118 E. R. 296.

Annotation:—**Consd.** Borthwick *v.* Walton (1855), 3 C. L. R. 364.

See, further, CONTRACT; SHIPPING & NAVIGATION.

1384. —— Goods stopped in transit.]—If the conduct of a vendor who has stopped goods in transit prevents them from being carried on to their specified ultimate destination, he is liable for the freight not only to the place at which the goods are in fact carried, but also to the ultimate destination.—BOOTH S.S. CO., LTD. *v.* CARGO FLEET IRON CO., LTD., [1916] 2 K. B. 570; 85 L. J. K. B. 1577; 115 L. T. 199; 32 T. L. R. 535; 13 Asp. M. L. C. 451; 22 Com. Cas. 9, C. A.

See, generally, SALE OF GOODS.

Freight pro ratâ itineris.]—*See* SHIPPING & NAVIGATION.

1385. On implied contract—Receipt of goods on delivery order—Course of dealing.]—WILSON *v.* KYMER, No. 1426, *post.*

1386. —— Luggage fraudulently carried in excursion train.]—RUMSEY *v.* NORTH EASTERN RY. CO., No. 852, *ante.*

1387. Cost of preparing goods for conveyance.]—LITTLETON COLLIERIES, LTD. *v.* LONDON & NORTH WESTERN RY. CO., No. 1282, *ante.*

1388. Whether dependent on maintenance of mile posts—Passenger fare not a "toll."]—BROWN *v.* GREAT WESTERN RY. CO., No. 1226, *ante.*

See, also, cases in Sub-sect. 4, *post.*

Carriage of goods by sea.]—*See* SHIPPING & NAVIGATION.

SUB-SECT. 3.—CARRIER'S SPECIAL PROPERTY IN GOODS CARRIED.

1389. Goods stolen.]—If a stage-coach be robbed of a parcel which was intended to be conveyed from one place to another, the things stolen may be laid to be the property of the coachman.—R. *v.* DEAKIN & SMITH (1800), 2 Leach, 862.

1390. Under insurance policy.]—Pltfs., common carriers, insured goods against fire, in an insurance co. of which deft. was treasurer. By a condition indorsed on the policy goods held in trust, or on commission, were to be insured as such, otherwise the policy would not extend to cover such property. By the policy, £15,000 was declared to be insured on goods their, pltfs.', own & in trust as carriers in a certain warehouse; & it was stipulated that the funds of the insurance co. were to be liable to pay, reinstate, or make good . . . to the . . . assured . . . all damage & loss which the . . . assured should suffer by fire, on the property therein particularised. Another of the conditions indorsed ran thus: "In every case of loss duly proved, the co. will either reinstate the property, or the assured shall receive satisfaction to the

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PART XI. SECT. 1, SUB-SECT. 2.

s. *When right to freight accrues—On part delivery—Whether contract divisible.*]—Pltf. contracted with deft. to convey supplies to deft.'s mines. Pltf. delivered part of the consignment only, & it was accepted by deft., who made a part payment of the freight. Pltf. sued for the balance, but made no claim in respect of goods not delivered:—*Held:* delivery of the entire consignment was not a condition precedent to the recovery of the contract price, as the subject-matter of the contract was divisible.—CHARLESON *v.* ROYAL STANDARD INVESTMENT CO. (1914), 19 B. C. R. 226.—CAN.

PART XI. SECT. 1, SUB-SECT. 3.

t. *Goods replevied.*]—The carrier's agent has a special property, in goods detained for non-payment of freight, which he may set up against a consignee who has replevied them.—ROWE *v.* MCEWEN (1889), 28 N. B. R. 86.—CAN.

amount thereof, without discount or deduction": —*Held:* to the named amount, the whole value of goods in the warehouse, in pltfs.' possession as carriers, was insured by it, & not merely pltfs.' interest as carriers in such goods.—LONDON & NORTH WESTERN RY. Co. *v.* GLYN (1859), 1 E. & E. 652; 28 L. J. Q. B. 188; 33 L. T. O. S. 199; 5 Jur. N. S. 1004; 7 W. R. 238; 120 E. R. 1054.

Annotations:—**Apld.** North British Insce. *v.* Moffatt (1871), L. R. 7 C. P. 25. **Consd.** Martineau *v.* Kitching (1872), L. R. 7 Q. B. 436. **Refd.** Ebsworth *v.* Alliance Marine Insce. (1873), L. R. 8 C. P. 596.

See, generally, BAILMENT, Vol. III., pp. 112 *et seq.*

SUB-SECT. 4.—LIEN.

See, generally, LIEN.

A. Particular Lien.

(*a*) *For What Charges.*

1391. Freight.]—A carrier may detain goods for the carriage.—SKINNER *v.* UPSHAW (1702), 2 Ld. Raym. 752; 92 E. R. 3.

1392. —— Stoppage in transitu.]—Consignors delivered a quantity of iron to a carrier by water, the freight of which was to be paid for by the consignee. After the carrier had placed some of the iron out of each of the boats on the wharf of the consignee, he discovered that the consignee was a bkpt., & immediately reloaded the iron, & took it to his own premises:—*Held:* inasmuch as the consignee had not tendered the amount of the freight, & the carrier had not consented to forego his lien upon it, the delivery of the iron was not complete, &, consequently, the consignors were entitled to stop *in transitu.*

A carrier has a lien on the entire cargo, for his whole freight; & until the amount is either tendered or paid, the special property which he has in his character of carrier does not pass out of him to the vendee, unless, indeed, he does some act to show that he assents to the vendee's taking possession of the property before the freight is paid (BAYLEY, J.).—CRAWSHAY *v.* EADES (1823), 1 B. & C. 181; 2 Dow. & Ry. K. B. 288; 1 L. J. O. S. K. B. 90; 107 E. R. 68.

Annotations:—**Distd.** Allan *v.* Gripper (1832), 2 Cr. & J. 218. **Refd.** Sheridan *v.* New Quay Co. (1853), 4 C. B. N. S. 618.

See, generally, SALE OF GOODS.

1393. Fare.]—The master of a ship has a lien on the luggage of a passenger for his passage money.—WOLF *v.* SUMMERS (1811), 2 Camp. 631, N. P.

Annotation:—**Consd.** Chase *v.* Westmore (1816), 5 M. & S. 180.

1394. —— Whether place booked.]—If a person go to a coach-office, & direct that a place be booked for him by a particular coach, & that be done, & he leave his portmanteau, the coach proprietor will have a lien on the portmanteau for something, but not for the full amount of the coach fare; but, if the party merely leave the portmanteau while he goes to inquire if there be an earlier coach, & no place be actually booked, the coach proprietor has no lien at all.—HIGGINS *v.* BRETHERTON (1831), 5 C. & P. 2, N. P.

1395. Tolls—Railways Clauses Consolidation Act, 1845 (c. 20), s. 97—Sending back waggons.]—FIELD *v.* NEWPORT, ABERGAVENNY & HEREFORD RY. Co., No. 1283, *ante.*

1396. —— —— Confined to goods on which toll charged.]—The word "tolls" in Railways Clauses Consolidation Act, 1845, s. 97, does not mean charges for the conveyance of goods by the railway co. in their carriages, but only charges for the use of the co.'s line by persons conveying their own goods over the line in their own carriages; & the railway co. has no right, by virtue of that sect., to detain or sell goods on their premises delivered to them for conveyance, merely because the owner has failed to pay charges previously incurred in respect of the conveyance by the co. of other goods for him.—WALLIS *v.* LONDON & SOUTH WESTERN RY. Co. (1870), L. R. 5 Exch. 62; 39 L. J. Ex. 57; 21 L. T. 675; 18 W. R. 347.

Annotations:—**Consd.** Brown *v.* G. W. Ry. (1882), 9 Q. B. D. 744; Barr, Moering *v.* L. & N. W. Ry., [1905] 2 K. B. 113. **Refd.** Evershed *v.* L. & N. W. Ry. (1877), 2 Q. B. D. 254; North Central Wagon Co. *v.* M. S. & L. Ry. (1887), 35 Ch. D. 191.

1397. —— —— Goods carried in third party's trucks.]—A railway co. claimed under Railways Clauses Consolidation Act, 1845, s. 97, to detain waggons belonging to resps. for tolls due from the B. Co. for the carriage of goods in the waggons:—*Held:* the claim could not be sustained under the earlier or the later part of s. 97; not under the later, because the waggons did not belong to the persons from whom the tolls were due; not under the earlier, because that part of the sect. does not entitle a railway co. to detain waggons for tolls due only in respect of the goods carried in the waggons.—MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. Co. *v.* NORTH CENTRAL WAGON CO. (1888), 13 App. Cas. 554; 58 L. J. Ch. 219; 59 L. T. 730; 37 W. R. 305; 4 T. L. R. 728, H. L.; *affg.* S.C. *sub nom.* NORTH CENTRAL WAGON CO. *v.* MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. Co. (1887), 35 Ch. D. 191, C. A.

Annotations:—**Consd.** *Re* Yarrow, Collins *v.* Weymouth (1889), 59 L. J. Q. B. 18; Beckett *v.* Tower Assets Co., [1891] 1 Q. B. 1. **Mentd.** French *v.* Bombernard (1888), 60 L. T. 48; Haydon *v.* Brown (1888), 59 L. T. 810; Newlove *v.* Shrewsbury (1888), 21 Q. B. D. 41; Redhead

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PART XI. SECT. 1, SUB-SECT. 4. —A. (a).

1391 i. *Freight.*]—Pltf. ordered his agent to forward goods to him at B.; the agent instructed a carrying agent to forward them. The carrying agent agreed with a carrier to take the goods to B., but he, not being able to carry to B., agreed with the carrying agent to take the goods to W. The carrier having delivered the goods at W., pltf. refused to pay the freight. In an action by pltf. for conversion of the goods:—*Held:* deft. had a lien for the carriage.—GALLIMORE *v.* MOORE (1867), 6 N. S. W. S. C. R. 388.—AUS.

1391 ii. ——.]—A carrier is entitled to his freight & charges, & he is entitled to retain the goods in satisfaction of his lien upon them.—BULDEO DASS *v.* NATHOO MULL (1867), 2 Agra, 132.—IND.

1391 iii. —— *More demanded than due.*]—Iron had been imported from E. by B., B., & G. Ry. Co., & was shipped from K. to C., subject to ocean freight, & the freight by schooner from K. On arriving at C., no one being ready to pay, the iron was left by the master in deft.'s charge, to hold subject to the freight. Pltfs. who had bought the iron demanded it from deft., who refused to give it up, claiming the freight from K., as well as demurrage, & other charges not recoverable. Pltfs. refused to pay anything:—*Held:* deft. had a clear right to detain for the freight from K., of which no tender had been made, & his right was not prejudiced by having demanded more than was due.—BUFFALO & LAKE HURON RY. Co. *v.* GORDON (1858), 16 U. C. R. 283.—CAN.

1391 iv. —— *Charges paid on goods—Packer's charges.*]—Pltf. employed B. to pack furniture & send it to him by defts.' railway. B. did so, & received his charges for packing from defts., who were authorised by him to collect them:—*Held:* defts. could legally retain the goods for these charges as well as for their freight.—HAYWARD *v.* GRAND TRUNK RY. Co. (1872), 32 U. C. R. 392.—CAN.

1391 v. —— *Delay in delivery.*]—LUDWIG *v.* BEEDE (1908), 8 W. L. R. 973.—CAN.

1391 vi. —— *Not for charges paid to intermediate carriers.*]—Pltf. shipped goods at J., by G. T. Ry. Co., consigned to himself at N., to be transported by several connecting lines to W., & paid the freight in advance. When pltf. demanded the goods at W., defts., who were the last of the carriers, claimed a lien thereon for charges paid by them to intermediate carriers from whom they had received them, & for freight for carriage by their own line:—*Held:* not entitled to a lien.—TROTTIER *v.* RED RIVER TRANSPORTATION CO. (1879), *Temp.* Wood, 255.—CAN.

Sect. 1.—*Remedies of carriers: Sub-sect.* 4, *A.* (*a*) *&* (*b*), *B.* (*a*) *&* (*b*).]

v. Westwood (1888), 59 L. T. 293; *Re* Yates, Batcheldor *v.* Yates (1888), 38 Ch. D. 112; Jones *v.* Tower Furnishing Co. (1889), 61 L. T. 84; *Re* Watson, *Ex p.* Official Receiver in Bankruptcy (1890), 25 Q. B. D. 27; Grigg *v.* National Guardian Assce., [1891] 3 Ch. 206; Secretary of State in Council of India *v.* British Empire Mutual Life Assce. (1892), 67 L. T. 434; *Re* Whiteley, *Ex p.* Smith (1892), 66 L. T. 291; *Re* Hood, *Ex p.* Burgess (1893), 9 T. L. R. 541; Ramsay *v.* Margrett, [1894] 2 Q. B. 18; Clapham *v.* Ives (1904), 91 L. T. 69.

1398. Cloak-room charges.]—(1) A railway co. have a lien against all the world for their charges for the safe custody of articles deposited in their cloak-room by a bailee of such articles, & there abandoned by him.

(2) *Semble:* a cloak-room is a reasonable facility for the receiving, forwarding, & delivery of traffic within Railway & Canal Traffic Act, 1854 (c. 31), s. 2.—SINGER MANUFACTURING CO. *v.* LONDON & SOUTH WESTERN RY. CO., [1894] 1 Q. B. 833; 63 L. J. Q. B. 411; 70 L. T. 172; 42 W. R. 347; 10 T. L. R. 246; 38 Sol. Jo. 238; 10 R. 152, D. C.

Annotations:—*As to* (1) **Consd.** Keene *v.* Thomas, [1905] 1 K. B. 136; Cassils *v.* Holden Wood Bleaching Co. (1914), 84 L. J. K. B. 834. **Refd.** Jowitt *v.* Union Cold Storage Co., [1913] 3 K. B. 1; Green *v.* All Motors, [1917] 1 K. B. 625. *As to* (2) **Refd.** Metropolitan Water Board *v.* L. B. & S. C. Ry., [1910] 2 K. B. 890; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

1399. Not booking or warehousing—Unless services actually rendered.]—Where goods are taken up on the road & not booked, & are taken by the owner from the waggon, without being warehoused, the carrier or warehouseman has no claim for booking or warehouseroom: there is in such case no lien by law.—LAMBERT *v.* ROBINSON (1793), 1 Esp. 119, N. P.

(b) Over What Goods.

1400. Only over goods in respect of which freight claimed.]—WALLIS *v.* LONDON & SOUTH WESTERN RY. CO., No. 1396, *ante*.

1401. ——.] — MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO. *v.* NORTH CENTRAL WAGON CO., No. 1397, *ante*.

See, also, No. 1427, *post*.

1402. Stolen goods—Delivered to carrier by thief.]—A. stole goods, & delivered them to the E. carrier, to be carried to E.: the right owner finding the goods in possession of the carrier, demanded them of him, upon which the carrier refused to deliver, without being paid for the carriage. The owner brought trover:—*Held:* the carrier might justify detaining against the right owner for the carriage; for when A. brought them to him, he was obliged to receive them & carry them; & since the law compelled him to carry them, it will give him remedy for the premium due for the carriage.—EXETER CARRIERS CASE, undated, cited in 2 Ld. Raym. at p. 867; 92 E. R. 80.

1403. Passenger's luggage.]—WOLF *v.* SUMMERS, No. 1393, *ante*.

1404. ——.]—HIGGINS *v.* BRETHERTON, No. 1394, *ante*.

1405. —— **Fraud by passenger—Excursion train.**]—RUMSEY *v.* NORTH EASTERN RY. CO., No. 852, *ante*.

B. General Lien.

(a) How Established.

1406. By course of dealing.]—To an action in trover, deft. pleaded that the goods were put by H. into the hands of defts. as a carrier to be forwarded from M. to his warehouse in L., & that deft. was entitled to retain against the estate for the general balance due from H. for the carriage of goods. This right was established by evidence of deft. having before claimed & been allowed to retain for his general balance both against bkpt. estates & solvent customers, & also by the evidence of a principal carrier on the western road to the same effect respecting himself.—ASPINALL *v.* PICKFORD (1800), 3 Bos. & P. 44, n.; 127 E. R. 26.

Annotations:—**Refd.** Rushforth *v.* Hadfield (1805), 2 Smith, K. B. 634; Rushforth *v.* Hadfield (1806), 3 Smith, K. B. 221.

1407. ——.]—The lien of a common carrier for his general balance, however it may arise in point of law from an implied agreement to be inferred from a general usage of trade, proved by clear & satisfactory instances sufficiently numerous & general to warrant so extensive a conclusion affecting the custom of the realm, yet is not to be favoured, nor can be supported by a few recent instances of detention of goods by four or five carriers for their general balance; but such a lien may be inferred from evidence of the particular mode of dealing between the respective parties.—RUSHFORTH *v.* HADFIELD (1805), 6 East, 519; 2 Smith, K. B. 634; 102 E. R. 1386; *subsequent proceedings* (1806), 7 East, 224.

1408. ——.]—Where, as in the case of a common carrier claiming a lien for his general balance, such a lien is against the policy of the common law & the custom of the realm, which only gives him a lien for the carriage price of the particular goods, there ought to be very strong evidence of a general usage for such a lien to induce a jury to infer the knowledge & adoption of it by the particular parties in their contract; & the jury having negatived such a general usage, though proved to have been frequently exercised by defts. & various other common carriers throughout the North for ten or twelve years before, & in one instance so far back as thirty years, though not opposed by other evidence, the ct. refused to grant a new trial.—RUSHFORTH *v.* HADFIELD (1806), 7 East, 224; 3 Smith, K. B. 221; 103 E. R. 86.

Annotations:—**Refd.** Judson *v.* Etheridge (1833), 3 Tyr. 954. **Mentd.** United States Steel Products Co. *v.* G. W. Ry., [1916] 1 A. C. 189.

1409. By agreement—Between carrier & consignor.]—(1) An usage for carriers to retain goods as a lien for a general balance of account between them and the consignees, cannot affect the right of the consignor to stop the goods *in transitu*.

(2) *Semble:* such a lien could not be established even by agreement between the carrier & the consignor.—OPPENHEIM *v.* RUSSELL (1802), 3 Bos. & P. 42; 127 E. R. 24.

Annotations:—*As to* (1) **Consd.** Leuckhart *v.* Cooper (1836), 3 Bing. N. C. 99. **Refd.** Harris *v.* Packwood (1810), 3

PART XI. SECT. 1, SUB-SECT. 4. —A. (b).

a. Not over all goods carried—For unpaid charges as to portion only.]—A contract to carry a given number of articles for a lump sum, & any further number of similar articles, if any, at so much a head, is divisible; & a lien for the excess over the lump sum does not attach to the whole.—PRENTY *v.* MIDLAND GREAT WESTERN RY. CO. (1866), 14 W. R. 314.—IR.

b. Not over goods carried without privity of true owner.]—A carrier has no lien for carriage of goods given to him without the privity or consent of the true owner for the purpose of being carried.—GOLDSBROUGH *v.* MCCULLOCH (1869), 6 W. W. & A'B. 113.—AUS.

PART XI. SECT. 1, SUB-SECT. 4. —B. (a).

1409 1. *By agreement—Between carrier & consignor.*]—Goods were sent over the N. Ry. from J. to C., the consignor agreeing that the railway should have a lien thereon for any general balance due by the owner of the goods to the railway. The consignee refused to pay the general balance, & was refused delivery:—*Held:* there was no general lien.—MOORE *v.* REID (1899), 8 Nfld. L. R. 367.—NFLD.

Taunt. 264; Morley *v.* Hay (1828), 3 Man. & Ry. K. B. 396; Jackson *v.* Nichol (1839), 5 Bing. N. C. 508; Pearson *v.* Goschen (1864), 17 C. B. N. S. 352; United States Steel Products Co. *v.* G. W. Ry. Co., [1914] 3 K. B. 567; Booth S. S. Co. *v.* Cargo Fleet Iron Co., [1916] 2 K. B. 570. *As to* (2) **Refd.** Richardson *v.* Goss (1802), 3 Bos. & P. 119.

1410. —— Construction of.]—Pltf. was assignee of a bkpt. colliery co., & defts. were carriers of goods on their line of railway from their B. station, having also an establishment at D. on their line, where they made and repaired their own locomotive engines, & also occasionally repaired those belonging to colliery proprietors whose works were connected with the main line of the railway. Before their bkpcy. the colliery co. carried on business as coal merchants & coal proprietors about two miles from B. station, at which latter their works were connected, by a tramway of their own, with the main line of defts.' railway; & in June, 1864, defts. opened a monthly credit account with the colliery co. for the carriage of their goods by defts. from B. upon certain written conditions, the sixth of which provided that if the monthly accounts were not paid in accordance with the specified conditions, defts. were to have the right at any time to detain any goods or waggons in their possession by way of lien to secure the general balance owing to them. In July, 1864, a locomotive engine of the colliery co., used by them for taking coals & goods from their works to defts.' line at B., being out of repair, was sent, by agreement, to defts.' establishment at D. to be repaired by them, & was drawn by defts. from B. to D. for that purpose attached to one of their ordinary luggage trains, & a sum of £2 18*s.* for such haulage was charged by defts. to the colliery co. in the monthly carriage account for July, & was not disputed by the latter before their bkpcy. Upon the subsequent adjudication of the colliery co. as bkpts., in Oct. 1864, defts. claimed to hold the engine, which was then in their establishment at D. undergoing repairs, as a security, not only for the cost of such repairs & the charge for haulage, but also for a general balance due to them for the carriage of coals, &c., for the colliery co.:—*Held:* the terms of the sixth condition of the agreement between defts. & the colliery co. which was intended merely to enlarge the rights of defts. as carriers, & to give them as such a right of lien beyond what they would have at common law, applied only to coals & such like "goods" to be carried in the ordinary way, & not to the engine in question, which was delivered to defts., not under any contract to carry, but under an agreement to repair, to which the charge for haulage was incidental; & the right of general lien claimed by defts. did not attach.—KINNEAR *v.* MIDLAND RY. CO. (1868), 19 L. T. 387.

—— **Whether agreement requires registration as a bill of sale.**]—*See* BILLS OF SALE, Vol. VII., p. 19.

1411. By notice—Goods sent to factor.]—(1) A carrier had given notice that all goods would be subject to a lien, not only for the freight of the particular goods, but also for any general balance due from their respective owners. Goods having been sent by the carrier addressed to the order of S. a mere factor:—*Held:* the carrier had, not as against the real owner, any lien for the balance due from S.

(2) *Qu.:* whether, if the notice had been, that all goods, to whomsoever belonging, should be subject to a lien for any general balance that may be due from the persons to whom they are addressed, he would have any right to retain the goods for the balance due from S.—WRIGHT *v.* SNELL (1822), 5 B. & Ald. 350; 106 E. R. 1219.

Annotations:—**Apld.** Leuckhart *v.* Cooper (1836), 3 Bing. N.C. 99. **Refd.** Cassils *v.* Holden Wood Bleaching Co. (1914), 84 L. J. K. B. 834; United States Steel Products Co. *v.* G. W. Ry., [1916] 1 A. C. 189. **Mentd.** Riley *v.* Horne (1828), 5 Bing. 217.

1412. —— Evidence of.]—In trover against a carrier, where the question was whether the goods were rightfully detained by deft. in satisfaction of a general lien:—*Held:* (1) parol evidence could not be given of the contents of a portable notice, hung up in deft.'s office, containing a statement that all goods carried by deft. were to be subject to such general lien, but that the notice itself must be produced; (2) evidence of bills delivered to pltf., containing a similar statement, could not be received without a notice to produce the bills.

(3) In trover by the owner of goods against a carrier who has detained the goods under a claim of lien, it is not necessary, in order to entitle pltf. to recover, that he should prove an actual tender of the carriage money, if it appear that he was ready to pay it, but that deft. refused to deliver the goods except on payment of an alleged old balance, which the jury find not to have been really due.—JONES *v.* TARLETON (1842), 9 M. & W. 675; 1 Dowl. N. S. 625; 11 L. J. Ex. 267; 6 Jur. 348; 152 E. R. 285.

Annotations:—*As to* (1) & (2) **Distd.** Kirchner *v.* Venus (1859), 12 Moo. P.C.C. 361. *As to* (3) **Refd.** Weeks *v.* Goode (1859), 6 C. B. N. S. 367; Yungmann *v.* Briesemann (1892), 67 L. T. 642.

1413. —— Existence of contract a question for jury.]—The assignees of B. & Co. sued to recover possession of certain gas retorts delivered by B. & Co. to defts. to be carried to L., & which were detained by them under a claim of general lien. Bkpts. had agreed to pay ready money for all goods sent by them, & on three occasions they had done so, on each of which occasions, defts. had given them a receipt, with a heading, stating that all goods were considered as a general lien with respect not only to freight thereon, but also to the balance of any former account due from the owners to defts.:—*Held:* common carriers are not entitled to a general lien; but where the lien is claimed by express contract in writing, it is a question for the jury whether the goods were delivered on the terms of defts.' having a general lien.—ALDRED *v.* PEARSON (1843), 1 L. T. O. S. 457.

1414. —— Railway company acting as warehousemen.]—TRENT MINING CO. *v.* MIDLAND RY. CO., No. 1332, *ante*.

1415. —— ——.]—Pltf. consigned certain goods to the H. station on defts.' line to his own order. On their arrival at the station defts. intimated that if they remained there they would remain at his (pltf.'s) sole risk, & in the custody of defts. as warehousemen, & not as carriers "subject to the co.'s ordinary wharfage & demurrage charges." The goods remained there for a period of about two years, when defts. sold them to defray their charges. Defts. sometimes insisted on, & sometimes waived, payment of such charges:—*Held:* defts. had power to sell the goods to defray their ordinary charges.—IVENS *v.* GREAT WESTERN RY. CO. (1889), 53 J. P. 148; 5 T. L. R. 193, D. C.

See, generally, LIEN.

(*b*) *Against Whom.*

1416. Not against consignee—When consignor liable.]—A carrier, who by the usage of a particular

PART XI. SECT. 1, SUB-SECT. 4. —B. (b).

1416 i. *Not against consignee—When consignor liable.*]—B. consigned, by railway, goods to A., his agent in L., & drew 2 bills against the consignment, which were accepted by A. The practice was for B. to pay directly to the ry. co., with whom by arrangement he ran an account, the carriage to G. The goods were detained by the ry. co. in security of a general

Sect. 1.—*Remedies of carriers: Sub-sect.* 4, *B.* (*b*) & (*c*), *C.* & *D.*]

trade, is to be paid for the carriage of goods by the consignor, has no right to retain them against the consignee for a general balance due to him for the carriage of other goods of the same sort sent by the consignor.—BUTLER *v.* WOOLCOTT (1805), 2 Bos. & P. N. R. 64; 127 E. R. 546.

1417. Against consignor—For balance due by consignee—Goods consigned to consignor's factor.]—WRIGHT *v.* SNELL, No. 1411, *ante*.

1418. —— —— Stoppage in transitu.]—The vendors of goods, an American co., authorised their agents, on the arrival of the goods in England, to deliver the goods to defts. for carriage to the buyers upon the terms of a consignment note which contained a condition that all goods delivered to defts. would be received & held by them subject to a lien for money to them for the carriage of & other charges upon such goods, & also to a general lien for any moneys due to them from the owners of such goods upon any account. The vendors' agents accordingly delivered the goods to defts. for carriage to the buyers. The vendors had paid all freight & charges in respect of the carriage of the goods. While the goods were still in the possession of defts. as carriers the vendors, being unpaid & having been informed that the buyers were insolvent, gave notice of stoppage *in transitu* to defts. The buyers, who had meanwhile become owners of the goods by indorsement & delivery of the bill of lading, were indebted to defts. in the sum of £1170, on a general account. Defts. claimed, under the condition in the consignment note, that they had a lien as against the vendors in respect of the £1170 due from the buyers:—*Held:* the condition did not confer on defts. a right to assert a general lien on the goods in respect of the debt of the buyers in priority to the vendors' right of stoppage *in transitu*.—UNITED STATES STEEL PRODUCTS CO. *v.* GREAT WESTERN RY. CO., [1916] 1 A. C. 189; 85 L. J. K. B. 1; 113 L. T. 886; 31 T. L. R. 561; 59 Sol. Jo 648; 21 Com. Cas. 105, H. L.

Annotations:—**Consd.** Booth S.S. Co. *v.* Cargo Fleet Iron Co., [1916] 2 K. B. 570. **Mentd.** Denholm *v.* Shipping Controller (1920), 36 T. L. R. 855.

(*c*) *Effect of Liquidation and Bankruptcy.*

1419. Possession obtained after winding-up petition—But before order.]—The N. Co. was indebted to the M. Ry. Co. for goods carried by the latter for the former. A petition was presented praying for a winding-up order of the N. Co. That co. then sent other goods to the M. Ry. Co. for carriage by them, after which an order was made to wind up the N. Co. The M. Ry. Co. refused to deliver to the official liquidator of the N. Co. the goods in their hands, claiming a lien on them for the debt previously due for the carriage of the other goods. The official liquidator of the N. Co. then took out a summons in chambers to obtain delivery of the goods to him on payment of the money due for the carriage thereof:—*Held:* the official liquidator of the N. Co. must pay the debt due to the M. Ry. Co. if he wished to obtain possession of the goods in their hands.—*Re* NORTHFIELD IRON & STEEL CO., LTD. (1866), 14 L. T. 695.

Annotation:—**Distd.** *Re* Bushell, *Ex p.* G. W. Ry. (1882), 22 Ch. D. 470.

1420. —— ——.]—In 1876 an agreement was entered into between the L. Coal Co. & the G. W. Ry. Co., by which coals consigned by the coal co. were carried to a "ledger account," one condition of which was, that the goods & waggons belonging to or sent by the person having a ledger account should be subject to a general lien in favour of the railway co. for all moneys due to them, etc., from such person on any account, such lien to take effect immediately after the failure of payment on demand of any sums appearing to be due on the ledger account; "in case of bkpcy., insolvency, or stoppage of payment, such lien to take effect immediately for any sum appearing due in the books of the co.," with a right to sell the goods & waggons, & out of the proceeds to retain the sums due. The coal co. became insolvent, & on Dec. 16, 1885, a petition was presented for winding-up; in Feb. 1886 an order to wind up was made, & on the Jan. 20 following a provisional liquidator was appointed. When the petition was presented the coal co. was indebted to the railway co. in respect of charges for freight. Of the fifteen waggons in use by the coal co., & employed in carrying coal over the railway co.'s line, nine had been received by the railway co. prior to the presentation of the winding-up petition & had been detained by them ever since; four in possession of the railway co. when the petition was presented had travelled up & down the line since, but returned into the possession of the railway co. before the date of the winding-up order; two did not come into the possession of the railway co. until between the presentation of the petition & the winding-up order. The liquidator claimed delivery up by the railway co. of the fifteen waggons which the co. claimed to retain in satisfaction of the general lien under the agreement:—*Held:* the lien given to the railway co. by the agreement, which was made for the ordinary purposes of the coal co.'s business, was good & valid, & took effect upon the insolvency of that co., & had not been displaced by anything that had taken place in the winding-up proceedings.—*Re* LLANGENNECH COAL CO. (1887), 56 L. T. 475.

1421. Possession obtained after winding-up order—Without notice.]—In 1864 an agreement was entered into between pltfs., a joint-stock co., & defts., a railway co., by which goods consigned to pltfs. were carried by defts. on a credit account; one condition being that the goods or waggons belonging to or sent by pltfs. should be subject to a general lien in favour of defts. for all moneys due to them from pltfs., to take effect at the option of defts. at any time after the failure of payment of any sums appearing due on the credit account, or in case of bkpcy., insolvency, or stoppage of payment. Coke had been carried for some time by defts. for pltfs. under this agreement, & on Nov. 19, 1866, there was £2000 due from pltfs. to defts. on the account, for carriage. On Oct. 30, 1866, a petition for winding up pltfs.' co. was presented by a creditor, & notice was given in the *London Gazette*, & on Nov. 16 an order for winding up was made under Companies Act, 1862 (c. 89). On Nov. 19 an official liquidator was appointed, but the formal appointment was not made till Nov. 30. Pltfs.' business was still carried on under the liquidator, & on Nov. 20, coke, consigned to pltfs.' co., was put in trucks belonging to pltfs. on defts.' line, & they detained them at the place of loading, for three days, in exercise of their general lien, but, on the liquidator informing them of the order for winding up, they forwarded the trucks at once. An action having been brought by the liquidator in the name of the co. for this

balance due by B. for previous carriages. In an action by A. for delivery of the goods:—*Held:* the goods were not subject to a general lien for previous carriages.—PEEBLES & SON *v.* CALEDONIAN RY. CO. (1875), 2 R. (Ct. of Sess.) 346; 12 Sc. L. R. 247.—SCOT.

detention :—*Held :* the action was maintainable. —WILTSHIRE IRON CO., LTD. *v.* GREAT WESTERN RY. CO. (1871), L. R. 6 Q. B. 776 ; 40 L. J. Q. B. 308 ; 23 L. T. 666 ; 19 W. R. 935, Ex. Ch. ; *affg.* L. R. 6 Q. B. 101.

Annotation :—**Mentd.** Sankey Brook Canal Co. *v.* Marsh (1871), L. R. 6 Exch. 185.

1422. Goods consigned by receiver—Carriage owing by bankrupt.]—(1) A trader opened with a railway co. a credit account for freight, by which it was agreed that the co. should have a general lien for all moneys due by him to them on any account on all goods belonging to him in their hands. He afterwards filed a liquidation petition, under which a receiver of his property & manager of his business was appointed. In order to carry on the business the receiver bought some goods, which he paid for with his own money, & sent them to the co. consigned to the trader. The co. claimed the benefit of the agreement, & refused to deliver the goods until they were paid the amount which the trader owed them for freight due at the time of the filing of the petition. The receiver in order to obtain the goods paid the co. £50 under protest, & then applied to the Ct. of Bkpcy. to order the co. to repay him the £50, & an order was made accordingly :—*Held :* the Ct. of Bkpcy. had no jurisdiction to make the order.

(2) *Semble :* the co. would have no defence to an action by the receiver for the £50.—*Re* BUSHELL, *Ex p.* GREAT WESTERN RY. CO. (1882), 22 Ch. D. 470 ; 52 L. J. Ch. 734 ; 48 L. T. 196 ; 31 W. R. 419, C. A.

See, also, Nos. 1410, 1413, *ante, & generally,* BANKRUPTCY & INSOLVENCY, Vol. V., p. 700 *et seq.* ; COMPANIES.

C. Enforcement of Lien.

1423. By sale.]—IVENS *v.* GREAT WESTERN RY. Co., No. 1415, *ante.*

1424. —— Under private Act—Conditions not complied with.]—4 & 5 Will. 4, c. lxxviii., s. 166, empowers a railway co. to seize & sell goods, for which tolls due to the co. have not been paid, provided the persons seizing the goods have their names annexed to the list of tolls, & that a demand shall have been previously made, & that on refusal the goods shall have been appraised. A railway co. who had seized coals belonging to A., for tolls due by him, had not complied with the first & last conditions. The only evidence of a demand was the presenting of a bill of A. for the amount of the tolls, which was dishonoured :—*Held :* the co. had no right to seize the goods in question.—NORTH *v.* LONDON & SOUTH WESTERN RY. CO. (1863), 14 C. B. N. S. 132 ; 2 New Rep. 33 ; 32 L. J. C. P. 156 ; 8 L. T. 246 ; 9 Jur. N. S. 897 ; 11 W. R. 624 ; 143 E. R. 395.

—— Under Railways Clauses Consolidation Act, 1845 (c. 20), s. 97.]—*See* Sub-sect. 4, A., (*a*), *ante.*

1425. Duty in dealing with goods held.]—GREAT WESTERN RY. CO. *v.* CROUCH, No. 197, *ante.*

D. Extinguishment of Lien.

1426. Loss of possession—Goods landed by shipowner.]—The consignees of a West India cargo deliverable by bill of lading to them or their assigns, he or they paying freight for the same, indorsed it to defts., their brokers, for advances made by them, & the cargo on its arrival was landed at the West India Docks in the names of the consignees, but was entered at the custom-house by defts. in their own names ; afterwards defts. obtained delivery from the West India Docks under an order from the consignees for that purpose, & not under the bill of lading :—*Held :* (1) the receipt of the cargo by defts. under the order of the consignees was not a sufficient ground to raise an implied *assumpsit* on their part to pay the freight, & the entry at the custom-house made no difference ; but as it appeared from previous dealings that defts. had been in the habit of receiving goods in the same manner & paying the freight for them, that was considered sufficient to raise such an implied promise ; (2) the lien of pltfs., the ship-owners, for freight continued after the landing of the cargo at the West India Docks, although they did not give notice to the co. to retain the cargo until payment of the freight.—WILSON *v.* KYMER (1813), 1 M. & S. 157 ; 105 E. R. 59.

Annotations :—*As to* (1) **Expld.** Moorson *v.* Kymer (1814), 2 M. & S. 303. **Distd.** Dougal *v.* Kemble (1826), 3 Bing. 383. **Apprvd.** Coleman *v.* Lambert (1839), 5 M. & W. 502. **Consd.** Sanders *v.* Vanzeller (1843), 4 Q. B. 260. **Reld.** Bell *v.* Kymer (1814), 5 Taunt. 477.

1427. —— Delivery of part.] — Where several goods, belonging to one owner are carried the same voyage, a delivery of part does not defeat the lien upon the remainder for the whole freight. But if there be two contracts to carry, with different *termini* to the voyage in each contract, no lien attaches for freight under the one contract, upon goods shipped under the other & improperly detained on board by the carrier. Goods are divested of a lien by a complete delivery. It is for the jury to say whether there has been a complete delivery. —BERNAL *v.* PIM (1835), 1 Gale, 17.

1428. —— —— Part delivered an essential part of whole.]—(1) A cargo of 114 tons of miscellaneous iron castings was consigned from S. to L. on board a ship chartered by the vendor, the bill of lading being made out in favour of the purchaser or his assigns, he or they paying freight. After thirty tons of the cargo had been delivered to the purchaser the vendor gave notice to stop the unloading of the ship. At this time, only part of the freight had been paid to the master of the ship. Soon afterwards the purchaser filed a liquidation petition, & a receiver was appointed. The balance of the freight was paid by the receiver, & the remainder of the iron was placed *in medio :*—*Held :* inasmuch as it could not be supposed that the master intended to abandon his lien for the unpaid freight, the delivery of the thirty tons did not operate as a constructive delivery of the whole

PART XI. SECT. 1, SUB-SECT. 4.—C.

c. *By sale* — 1845 (*Scotland*) *Act*, s. 90.]—The right conferred upon a ry. co. by above sect. to detain & sell goods & carriages for arrears of tolls due by the owner of the same, in respect of any carriage or goods covers not only charges for the use of the line by persons using their own waggons, but charges for goods conveyed by the co. as common carriers.—CALEDONIAN RY. CO. *v.* GUILD (1873), 1 R. (Ct. of Sess.) 198 ; 11 Sc. L. R. 125.—**SCOT.**

d. —— ——.]—A ry. co. petitioned for warrant to sell, for payment of tolls, goods carried by them. Resp. consented to the warrant of sale & pleaded that the petition was incompetent, no "demand" in terms of above sect. having been made before detention & sale :—*Held :* the incompetency was waived when resp. consented to the warrant of sale.—NORTH BRITISH RY. CO. *v.* CARTER (1870), 8 Macph. (Ct. of Sess.) 998.—**SCOT.**

PART XI. SECT. 1, SUB-SECT. 4.—D.

e. *Loss of possession — Goods delivered to consignee.*]—CLISDELL *v.* KINGSTON & PEMBROKE RY. CO. (1909), 18 O. L. R. 169 ; 13 O. W. R. 626 ; 9 Can. Ry. Cas. 73.—**CAN.**

f. *Goods taken in execution — At suit of carrier.*]—A carrier's lien on goods carried by him will be defeated by procuring them to be taken in execution at his own suit.—*Re* COUMBE, COCKBURN & CAMPBELL (1877), 24 Gr. 519.—**CAN.**

g. *Not by unsatisfied judgment order.*]—An unsatisfied judgment obtained by a common carrier for the amount due for carriage of goods does not extinguish the carrier's lien for his charges.—MORRES *v.* ELLERTON (1919), V. L. R. 712.—**AUS.**

Sect. 1.—*Remedies of carriers: Sub-sect.* 4, *D.; sub-sects.* 5 & 6. *Sect.* 2: *Sub-sect.* 1.]

cargo, &, consequently, the transit was not at an end as to the remainder of the cargo, & the vendor's notice to stop *in transitu* was given in time.

(2) In the absence of evidence to the contrary, it must, as a general rule, be assumed that the delivery of part of a cargo is intended only to operate as a delivery of that part.

(3) *Semble:* if the cargo consisted of the different parts of one entire machine, the delivery of an essential part of the machine would operate as a delivery of the whole.—*Re* MCLAREN, *Ex p.* COOPER (1879), 11 Ch. D. 68; 48 L. J. Bcy. 49; 40 L. T. 105; 27 W. R. 518; 4 Asp. M. L. C. 63, C. A.

Annotations:—*As to* (1) **Expld.** *Re* Kiell, *Ex p.* Falk (1880), 42 L. T. 780. **Consd.** Taylor *v.* G. E. Ry. (1901), 70 L. J. K. B. 499. **Refd.** *Re* Knight, *Ex p.* Golding Davis (1880), 13 Ch. D. 628.

1429. Consignee refusing to accept goods.]—Pltf. consigned certain goods for carriage by deft. co. to the consignee's address. The consignment note, which was signed by pltf., contained a condition that all goods delivered to the co. would be received & held by them subject to a general lien for money due to them, whether for carriage of such goods or for other charges, etc.:—*Held:* the lien continued so long as the co. held the goods, & was in no way affected by the refusal of the consignee to accept the goods after they had arrived at their destination.—WESTFIELD *v.* GREAT WESTERN RY. CO. (1883), 52 L. J. Q. B. 276, D. C.

See, further, SHIPPING & NAVIGATION.

SUB-SECT. 5.—INTERPLEADER.

See INTERPLEADER.

SUB-SECT. 6.—OTHER CASES.

1430. Action for deceit—False statement as to weight.]—Pltf., a common carrier, contracted to carry for deft. certain wood at 2*s.* per cwt., & when pltf. asked the weight, deft. replied "8 cwt." Afterwards pltf. found the weight was too heavy for his cart, two horses being killed, & on weighing the wood, the weight turned out to be 20 cwt.:—*Held:* an action for deceit did not lie, for the default was in pltf. in not weighing, for he saw the goods before they were put in the cart.—BAILY *v.* MERRELL (1615), 3 Bulst. 94; 81 E. R. 81; *sub nom.* BAYLY *v.* MERREL, Cro. Jac. 386.

Annotations:—**Distd.** Brass *v.* Maitland (1856), 6 E. & B. 470. **Refd.** Pasley *v.* Freeman (1789), 3 Term Rep. 51; Smith *v.* Chadwick (1884), 9 App. Cas. 187; Derry *v.* Peek (1889), 14 App. Cas. 337; Nash *v.* Calthorpe, [1905] 2 Ch. 237.

1431. Delay in appointing place of unloading—Damage to horses through cold.]—Deft. hired pltf. to carry a load of timber from W. to I. & unload it at the place deft. should appoint. Pltf. gave notice of the time of carriage & requested the place of unloading to be appointed & alleged that through his delay in appointing the place his horses took cold, one died & the rest were spoiled:—*Held:* no action lay, as he might have unloaded in any convenient place & returned.—VIRTUE *v.* BIRDE (1677), 2 Lev. 196; 83 E. R. 515; *sub nom.* VERTUE *v.* BIRD, 3 Keb. 766; 1 Vent. 310.

Annotation:—**Refd.** Iveson *v.* Moore (1697), 1 Ld. Raym. 486.

1432. Charges for preservation recoverable—Delay in removal of animal.]—GREAT NORTHERN RY. CO. *v.* SWAFFIELD, No. 208, *ante*.

1433. Reimbursement — Misdelivery — Goods appropriated by wrong consignee.]—If a carrier, by mistake, delivers to B. goods consigned & sold to C., & B. appropriates the goods, & the carrier, on demand, without action, pays C. their value, the carrier may recover it against B. as money paid to B.'s use, but not as the price of goods sold & delivered to B.—BROWN *v.* HODGSON (1811), 4 Taunt. 189; 128 E. R. 301.

Annotations:—**Distd.** Coles *v.* Bulman (1848), 6 C. B. 184. **Refd.** Brittain *v.* Lloyd (1845), 14 M. & W. 762. **Mentd.** Spencer *v.* Parry (1835), 3 Ad. & El. 331; Kemp *v.* Finden (1844), 13 L. J. Ex. 137.

1434. Indemnity—Liability of principal.]—Deft. employed pltfs., who were carriers & wharfingers, to convey ten hogsheads of acetate of lime to N.; two hogsheads had been delivered, but the remainder were still in the possession of pltfs. when N. became bkpt.; deft. had, in consequence of the bills of N., which were drawn for the payment of the ten hogsheads, not being accepted, expressly ordered pltfs. to deliver the remainder to the order of another person, which they did; N.'s assignees afterwards brought an action of trover against pltfs., which action, after notice to defts., they settled:—*Held:* from the order of deft., an implied promise arose to indemnify pltfs. against the consequences of acting upon it, & they were entitled to recover from deft. the sum which they had paid the assignees to settle the action, together with the costs.—BETTS *v.* GIBBINS (1834), 2 Ad. & El. 57; 4 Nev. & M. K. B. 64; 4 L. J. K. B. 1; 111 V. E. R. 22.

Annotations:—**Follid.** Toplis *v.* Grane (1839), 5 Bing. N. C. 636; Dugdale *v.* Lovering (1875), L. R. 10 C. P. 196. **Consd.** Cory *v.* Lambton & Hetton Collieries (1916), 86 L. J. K. B. 401. **Refd.** Shackell *v.* Rosier (1836), 2 Hodg. 17; The Englishman & The Australia, [1895] P. 212; Burrows *v.* Rhodes, [1899] 1 Q. B. 816; Moxham *v.* Grant, [1900] 1 Q. B. 88; Sheffield Corpn. *v.* Barclay, [1905] A. C. 392. **Mentd.** Bartlett *v.* Dimond (1845), 5 L. T. O. S. 56; Tanner *v.* Scovell (1845), 14 M. & W. 28; Leslie *v.* Reliable Advertising & Addressing Agency, [1915] 1 K. B. 652; Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520.

1435. Delivery wrongly accepted—Whether carrier estopped by his negligence.]—Thirty-two iron drums of crude carbolic acid were consigned by rail to one of pltfs., & on the same day from the same station there were consigned to deft. twenty-five wooden casks of creosote. Each of the casks of creosote was not more than half the weight of one of the drums of carbolic acid. Fourteen of the drums of carbolic acid were wrongly labelled to deft., & the twenty-five wooden casks of creosote were wrongly labelled to the above-mentioned pltf. An advice note for twenty-five casks of creosote was sent to deft., but through negligence the delivering railway co. delivered to him the fourteen drums of carbolic acid. Without any inquiry deft. emptied six of the drums of carbolic acid into the tank which he used for creosoting purposes. The consignees of the carbolic acid claimed its value from the delivering railway co., which paid the claim, & then the two railway cos. concerned in the carriage & the consignees of the carbolic acid brought an action against deft. to recover the value of the six drums of carbolic acid:—*Held:* the railway cos. or the consignees of the carbolic acid were entitled to recover from deft. damages for conversion, since, although the delivering co. was negligent, pltfs. were not

h. *Reimbursement — Money paid for use of consignor.*] B. delivered to pltfs. goods, to be forwarded by them to K.; B. then wrote to K., enclosing him pltfs.' receipt for the goods, & requesting him to make an advance on them; K. advanced £40 to B. on the goods. B. subsequently got back the goods from pltfs., whereupon K. required pltfs. to pay him the £40; pltfs. paid under threat of legal proceedings:—*Held:* they might recover such sum from B., in an action for money paid for his use.—MIDLAND GREAT WESTERN RY. CO. *v.* BENSON (1857), 30 L. T. O. S. 26.—IR.

estopped from recovering, inasmuch as no reasonable person could have taken delivery of the fourteen iron drums of carbolic acid as agreeing with the advice note for twenty-five casks of creosote.—LANCASHIRE & YORKSHIRE RY. Co., LONDON & NORTH WESTERN RY. Co. & GRAESER, LTD. *v.* MACNICOLL (1918), 88 L. J. K. B. 601; 118 L. T. 596; 34 T. L. R. 280; 62 Sol. Jo. 365, D. C.

See, also, No. 203, *ante*.

See, further, ESTOPPEL.

1436. Delivery delayed—Perishable goods.]—SPRINGER *v.* GREAT WESTERN RY. Co., No. 201, *ante*.

1437. Duty of consignor—To deliver goods ready for conveyance.]—LITTLETON COLLIERIES, LTD. *v.* LONDON & NORTH WESTERN RY. Co., No. 1282, *ante*.

See, also, Part III., Sect. 3, sub-sect. 2, D., *ante*.

—— **As to dangerous goods.**]—*See* Part VIII., *ante*.

SECT. 2.—REMEDIES AGAINST CARRIERS.

SUB-SECT. 1.—WHO MAY SUE.

1438. General rule.]—Though, generally speaking, where there is a delivery to a carrier to deliver to a consignee, the latter is the proper person to bring the action against the carrier, yet if the consignor make a special contract with the carrier, such contract supersedes the necessity of showing the ownership in the goods, & the consignor may maintain the action, though the goods may be the property of the consignee. The question whether goods are delivered to a carrier at the risk of the consignor or consignee is a question for the jury: delivery of goods to a carrier by a consignor, does not necessarily vest the property in them in the consignee.—DUNLOP *v.* LAMBERT (1839), 6 Cl. & Fin. 600; Macl. & Rob. 663; 7 E. R. 824, H. L.

Annotations:—**Reid.** Calcutta & Burmah Steam Navigation Co. *v.* De Mattos, De Mattos *v.* Calcutta & Burmah Steam Navigation Co. (1863), 2 New Rep. 575; Colonial Insce. of New Zealand *v.* Adelaide Marine Insce. (1886), 12 App. Cas. 128. **Mentd.** Coombs *v.* Bristol & Exeter Ry. (1858), 3 H. & N. 1.

1439. ——.]—In an action against common carriers for not delivering goods according to contract, the person, whose property the goods are, is *primâ facie* the person with whom the contract is made; & declarations made by him subsequent to the delivery to the carrier, that the goods belong to another person, are not of themselves sufficient to prevent him recovering in such action.—MULLINSON *v.* CARVER (1843), 1 L. T. O. S. 59.

1440. Joint owners—Goods addressed to one—Carriage paid by one.]—If A. & B. are separately owners of several articles contained in a box which is delivered to a railway co. to carry for them jointly, they may jointly sue the co. for the loss of the goods, though the box be directed to one of them only, & the price of the carriage be paid by that one only.—METCALFE *v.* LONDON, BRIGHTON & SOUTH COAST RY. Co. (1858), 4 C. B. N. S. 307; 27 L. J. C. P. 333; 31 L. T. O. S. 166; 4 Jur. N. S. 487; 6 W. R. 593; 140 E. R. 1102.

Annotations:—**Mentd.** Vaughton *v.* L. & N. W. Ry. (1874), L. R. 9 Exch. 93; McQueen *v.* G. W. Ry. (1875), L. R. 10 Q. B. 569; Shaw *v.* G. W. Ry., [1894] 1 Q. B. 373.

1441. Consignee — As trustee.] — An action against the master of a vessel for the loss of goods must be brought by the person in whom the property in them is vested. Upon a general consignment the property vests in the consignee, notwithstanding it appears upon the invoices that he is a trustee only; but on a consignment to A. for the use of B. the property is in B.—EVANS *v.* MARLETT (1697), 1 Ld. Raym. 271; 91 E. R. 1078; *sub nom.* EVANS *v.* MARTELL, 3 Salk. 290; 12 Mod. Rep. 156.

Annotations:—**Apprvd.** Mason *v.* Lickbarrow (1790), 1 Hy. Bl. 357. **Consd.** Martini *v.* Coles (1813), 1 M. & S. 140; Sargent *v.* Morris (1820), 3 B. & Ald. 277; Amos *v.* Temperley (1841), 8 M. & W. 798; Burdick *v.* Sewell (1884), 13 Q. B. D. 159. **Mentd.** Caldwell *v.* Ball (1786), 1 Term Rep. 205.

1442. —— **Goods delivered by consignor—By order of consignee.**]—If the consignor of goods deliver them to a particular carrier, by order of the consignee, & they be afterwards lost, the consignor cannot maintain an action against the carrier for the loss, although he paid for booking the goods; the action can only be brought by the consignee.—DAWES *v.* PECK (1799), 8 Term Rep. 330; 3 Esp. 12; 101 E. R. 1417.

Annotations:—**Distd.** Freeman *v.* Birch (1833), 1 Nev. & M. K. B. 420. **Consd.** Leake *v.* Lovoday (1842), 4 Man. & G. 972; Crouch *v.* G. N. Ry. (1856), 11 Exch. 742; G. W. Ry. *v.* Bagge (1885), 15 Q. B. D. 625. **Reid.** Stephenson *v.* Hart (1828), 4 Bing. 476; Dunlop *v.* Lambert (1839), Macl. & Rob. 663; Coats *v.* Chaplin (1842), 3 Q. B. 483; Coombs *v.* Bristol & Exeter Ry. (1858), 3 H. & N. 510.

1443. —— **Paying freight.**]—B., a miller in S., sold flour to pltf., &, according to the usual course of business between them, consigned it to him in K., paying the carriage by the G. E. Ry. Co. to L.; the G. E. Ry. Co. delivered it to the S. E. Ry. Co., who forwarded it to pltf. in K., & charged him for the carriage by their line:—*Held:* though the property in the flour might not have passed to pltf. under Stat. Frauds, still, as he had contracted with the S. E. Ry. Co. for its carriage, he could sue them for damage done to it in the transit over their line.—MEAD *v.* SOUTH EASTERN RY. Co. (1870), 18 W. R. 735.

—— **When property passes.**]—*See* SALE OF GOODS.

1444. Consignor—Paying freight.]—An action lies against a common carrier by the consignor of the goods, if he agreed to pay the carrier.—DAVIS *v.* JAMES (1770), 5 Burr. 2680; 98 E. R. 407.

Annotations:—**Distd.** Dawes *v.* Peck (1799), 3 Esp. 12. **Consd.** Dunlop *v.* Lambert (1839), Macl. & Rob. 663. **Reid.** G. W. Ry. *v.* Bagge (1885), 15 Q. B. D. 625.

1445. —— —— **Agent for foreign consignee.**]—A person who ships goods in an English port, as the agent of the owner of the goods resident abroad, & pays the freight for them, may maintain an action in his own name for not delivering them according to the bill of lading.—JOSEPH *v.* KNOX (1813), 3 Camp. 320, N. P.

Annotation:—**Consd.** Dunlop *v.* Lambert (1839), Macl. & Rob. 663.

1446. —— **Remaining owner—Goods insured by consignee.**]—By a bill of lading, the captain was to deliver the goods for the consignor, &, in his name, to the consignee. At the time of shipment, the consignee had no property in the goods:—*Held:* an action against the shipowners for damage done to the goods, must be brought in the name of the consignor, although the consignee had insured the goods & advanced the premiums of insurance before the arrival of the ship.—SARGENT *v.* MORRIS (1820), 3 B. & Ald. 277; 106 E. R. 665.

Annotations:—**Consd.** Dunlop *v.* Lambert (1839), Macl. & Rob. 663. **Mentd.** Coombs *v.* Bristol & Exeter Ry. (1858), 27 L. J. Ex. 269.

PART XI. SECT. 2, SUB-SECT. 1.

1. *Consignor — Remaining owner.*]—Pltf. by his agents delivered to defts. corn, to be carried from C. to S., & to be delivered to M. In an action for delay in delivery:—*Held:* pltf. was entitled to maintain the action.—KYLE *v.* BUFFALO & LAKE HURON RY. Co. (1865), 16 C. P. 76.—CAN.

k. —— ——.]—STEELE *v.* GRAND TRUNK RY. Co. (1880), 31 C. P. 260.—CAN.

l. —— —— *Goods ordered by unauthorised agent—Goods misdelivered.*]—Goods received by a ry. co. for

Sect. 2.—Remedies against carriers: Sub-sects. 1 & 2.]

1447. —— Goods forwarded for sale on approval.] —When goods are forwarded for sale on approval, the consignor is the party to sue the carriers for the loss of the goods.—SWAIN *v.* SHEPHERD (1832), 1 Mood. & R. 223, N. P.

Annotations :—**Consd.** Coats *v.* Chaplin (1842), 3 Q. B. 483. **Refd.** Coombs *v.* Bristol & Exeter Ry. (1858), 3 H. & N. 510.

1448. —— Acceptance refused by consignee—Goods misaddressed.]—Pltf., the owner of goods in bulk, sold a portion of them to F. The goods were ascertained & forwarded by defts.' line, but addressed in error to "Jeeves." Jeeves refused to take the goods. Jarvis applied to defts. for goods similar in quantity & kind to pltf.'s goods & consigned by a person of a like surname. Defts. without inquiry delivered the goods to Jarvis. In an action for the price of the goods :—*Held :* the property in the goods had not passed from pltf., & he was the proper person to bring the action.—HOARE *v.* GREAT WESTERN RY. CO. (1877), 37 L. T. 186 ; 25 W. R. 631 ; De Colyar's County Ct. Cases 192.

Annotations :—**Distd.** Stevens *v.* G. W. Ry. (1885), 52 L. T. 324. **Consd.** Forder *v.* G. W. Ry. (1905), 74 L. J. K. B. 871. **Refd.** Goldsmith *v.* G. E. Ry. (1881), 29 W. R. 651.

See, also, No. 256, *ante.*

1449. —— After judgment recovered against consignee for goods sold & delivered—Consignee bankrupt.]—Goods were delivered by the owners to forwarding agents to be carried by sea to H. & thence forwarded to a customer in M. When the goods arrived at H. the owners instructed the forwarding agents not to deliver to the customer, but the goods were nevertheless delivered to him. The owners thereupon invoiced the goods to the customer & sued him & recovered judgment for the price of goods sold & delivered, & then, failing to get satisfaction, took proceedings in bkpcy. against him :—*Held :* they could not afterwards sue the forwarding agents for negligence & breach of duty.—VERSCHURES CREAMERIES, LTD. *v.* HULL & NETHERLANDS S.S. CO., LTD., [1921] 2 K. B. 608 ; 125 L. T. 165, C. A.

Election of remedies generally, *see* ACTION, Vol. I., pp. 18, 19 ; CONTRACT ; COUNTY COURTS ; TORT.

1450. —— With special property in goods consigned — Bailee.] — Pltf. consigned by defts., carriers, a parcel containing several watches, only a few of which were his own. As to the rest, he was bailee for other persons. The parcel was lost : —*Held :* he might recover for the whole, the owners not objecting.—MADDOCKS *v.* MEERES (1826), 4 L. J. O. S. K. B. 216.

1451. —— —— —— Laundress.]—A laundress sent linen, which she had washed, to the owner, by the carrier, whom she paid. The carrier having lost it :—*Held :* the laundress was entitled to sue the carrier for the loss.—FREEMAN *v.* BIRCH (1833), 3 Q. B. 492, n. ; 1 Nev. & M. K. B. 420 ; 114 E. R. 596.

1452. —— By agreement with carrier.]—DUNLOP *v.* LAMBERT, No. 1438, *ante.*

1453. —— Freight to be paid by consignee.]—In an action by the consignor of goods against a carrier for non-delivery, where pltf. averred that deft. undertook to deliver, &c., in consideration of the hire to be paid by pltf. :—*Held :* proof that the hire was to be paid by the consignee was no variance, the consignor being by law liable.—MOORE *v.* WILSON (1787), 1 Term Rep. 659 ; 99 E. R. 1306.

Annotations :—**Distd.** Dawes *v.* Peck (1799), 3 Esp. 12. **Consd.** Dunlop *v.* Lambert (1839), Macl. & Rob. 663 ; Tronson *v.* Dent (1853), 8 Moo. P. C. C. 419. **Refd.** Gilbart *v.* Dale (1836), 5 Ad. & El. 543 ; Berkley *v.* Watling (1837), 7 Ad. & El. 29.

1454. —— As buyer—Whether property has passed.*]—BROWN *v.* HODGSON (1809), 2 Camp. 36, N. P.

Annotation :—**Consd.** Dunlop *v.* Lambert (1839), Macl. & Rob. 663.

* *Note.*—This case & the three cases following are inserted as "catchword cases" only, as the law relating to "Whether property has passed" will be fully dealt with in SALE OF GOODS.

1455. —— —— ——.]—FRAGANO *v.* LONG (1825), 4 B. & C. 219 ; 6 Dow. & Ry. K. B. 283 ; 3 L. J. O. S. K. B. 177 ; 107 E. R. 1040.

Annotations :—**Consd.** Alexander *v.* Gardner (1835), 1 Bing. N. C. 671 ; Tronson *v.* Dent (1853), 8 Moo. P. C. C. 419 ; Browne *v.* Hare (1859), 4 H. & N. 822 ; Martineau *v.* Kitching (1872), 26 L. T. 836 ; Anderson *v.* Morice (1875), L. R. 10 C. P. 609. **Refd.** Joyce *v.* Swann (1864), 17 C. B. N. S. 84 ; *Re* Wiltshire Iron Co., *Ex p.* Pearson (1868), 3 Ch. App. 443 ; Castle *v.* Playford (1872), L. R. 7 Exch. 98. **Mentd.** Valpy *v.* Gibson (1847), 4 C. B. 837.

1456. —— —— ——.]—COATS *v.* CHAPLIN (1842), 3 Q. B. 483 ; 2 Gal. & Dav. 552 ; 11 L. J. Q. B. 315 ; 6 Jur. 1123 ; 114 E. R. 592.

Annotations :—**Consd.** Crouch *v.* G. N. Ry. (1856), 11 Exch. 742 ; Coombs *v.* Bristol & Exeter Ry. (1858), 3 H. & N. 510 ; Fenhouse *v.* Brindley (1862), 11 C. B. N. S. 869. **Refd.** Bushel *v.* Wheeler (1844), 15 Q. B. 442 ; Machu *v.* L. & S. W. Ry. (1848), 5 Ry. & Can. Cas. 302 ; Bailey *v.* Sweeting (1861), 9 C. B. N. S. 843.

1457. —— —— ——.]—COOMBS *v.* BRISTOL & EXETER RY. CO. (1858), 3 H. & N. 510 ; 27 L. J. Ex. 401 ; 6 W. R. 725 ; 157 E. R. 572.

Annotations :—**Consd.** Mead *v.* S. E. Ry. (1870), 18 W. R. 735. **Refd.** Pontifex *v.* Hartley (1892), 8 T. L. R. 657 ; Wallis *v.* G. N. Ry. (Ireland) (1903), 12 Ry. & Can. Tr. Cas. 38. **Mentd.** Clay *v.* Oxford (1866), 15 L. T. 286.

1458. Pledgee.]—In an action for wrongfully depriving pltfs. of goods, it appeared that the goods had been consigned to E. from a colony. The bills of lading provided that the goods were to be delivered to the order of the consignor or his assigns. The consignor drew bills of exchange on the consignee against the consignment, & sold the bills of exchange, with the bills of lading annexed, which he had indorsed in blank, to a colonial bank, who sent them to a bank in L., with a hypothecation note empowering the L. bank to sell the goods if the bills of exchange were not accepted or not paid at maturity. The goods arrived in E., & were delivered to defts., a railway co., to be delivered to the order of the shipowners. The consignee paid the freight & other shipping charges & accepted the bills of exchange, but before the bills became due, he induced defts. wrongfully to deliver the goods to him without producing a delivery order from the shipowners. When the bills became due the consignee requested pltfs. to advance the money & take up the bills. They did so, & received the bills of exchange & the bills of

carriage & delivery were delivered to a person who had purchased them from the consignor for the consignee, alleging that he was agent of the latter, but being unauthorised either to hold himself out as authorised, or to purchase or to receive them :—*Held :* an action lay by the consignor against the co. in respect of the misdelivery, as the property in the goods had not passed to the consignee, & defts. had not been led by pltf. to believe that the alleged agent was authorised to receive the goods.—EGAN *v.* GREAT NORTHERN RY. CO. (1879), 14 I. L. T. 28.—**IR.**

m. —— *Retaining interest in goods.]*—The indorsement of a bill of lading to a bank for collection, though it passes the property in the goods, does not prevent the shipper from bringing an action in respect of the loss of the goods, if he still has an interest in them.—FERRIS *v.* CANADIAN NORTHERN RY. CO. (1905), 15 Man. L. R. 134.—**CAN.**

n. —— *Acceptance refused by consignee.]* — STEVENS BROTHERS *v.* BURCH (1908), 9 W. L. R. 329 ; (1909), 10 W. L. R. 400.—**CAN.**

o. *Endorsee of railway receipt.]* — A railway receipt is a mercantile document of title & the endorsee of the receipt has sufficient interest in the

lading from the L. bank, & ultimately obtained delivery orders from the shipowners in exchange for the bills of lading. When they presented the delivery orders to defts. they found that the goods had been already given up to the consignee, & they thereupon commenced the present action :—*Held :* (1) pltfs. must be taken to be pledgees of the goods, & had a property sufficient to entitle them to maintain the action independently of Bills of Lading Act, 1855 (c. 111); (2) pltfs.' right of action was not affected by the fact that at the date of the wrongful delivery they had not acquired their title to the goods.—BRISTOL & WEST OF ENGLAND BANK *v.* MIDLAND RY. CO., [1891] 2 Q. B. 653; 61 L. J. Q. B. 115; 65 L. T. 234; 40 W. R. 148; 7 T. L. R. 627; 7 Asp. M. L. C. 69, C. A.

Annotation :—As to (2) **Consd.** London Joint Stock Bank *v.* British Amsterdam Maritime Agency (1910), 16 Com. Cas. 102.

Master—In respect of luggage sent with servant.]—*See* Part VI., Sect. 3, sub-sect. 3, *ante*.

—— **In respect of injury to servant.**]—*See* Nos. 639, 640, *ante*.

SUB-SECT. 2.—NATURE OF REMEDY.

1459. Tort or contract—Overloading boat.]—Deft. undertook to carry in his boat, pltf.'s mare safely across the Humber; deft. overloaded his boat with other horses by reason whereof the mare perished :—*Held :* (1) deft. committed a tort when he overloaded his boat, thereby losing the mare; (2) case lay.—J. DE B. *v.* G. DE F. (1348), 22 Lib. Ass. pl. 41.

*Annotations :—***Refd.** Southcote's Case (1601), 4 Co. Rep. 83b; Williams *v.* Lloyd (1628), W. Jo. 179; Coggs *v.* Bernard (1703), 2 Ld. Raym. 909; Forward *v.* Pittard (1785), 1 Term Rep. 27; Taylor *v.* Caldwell (1863), 3 B. & S. 826.

1460. —— Loss.]—An action on the case lies against a common bargeman for the loss of goods which he undertakes to carry for hire; if he plead that pltf. discharged him, the discharge is traversable.—RICH *v.* KNEELAND (1613), Cro. Jac. 330; Hob. 17; 79 E. R. 282, Ex. Ch.

*Annotations :—***Folld.** Morse *v.* Slue (1672), 2 Lev. 69. **Refd.** Lane *v.* Cotton (1700), 1 Com. 100; Nugent *v.* Smith (1876), 1 C. P. D. 423.

1461. —— Negligence by lighterman.] — Pltf. declared that at common law every lighterman should so steer & govern his lighter that goods carried in it should not be damaged, that deft. was a lighterman & had carried pltf.'s goods for hire, & that through his negligence pltf.'s goods were damaged :—*Held :* (1) it was immaterial that deft. was not alleged to be a common lighterman; (2) the action was in tort not in contract.—SYMONS *v.* DARKNOLL (1629), Palm. 523; 81 E. R. 1202.

Annotation :—As to (1) **Refd.** Boson *v.* Sandford (1689), 1 Show. 101.

1462. —— Injury to passengers.] — (1) In an action against stage coach proprietors for an injury to a passenger by the coachman upsetting the coach, the declaration may be framed in tort, for a breach of duty by negligence of servants. (2) Proof of contract is not necessary to support an action against common carriers. They may be sued in trespass on the case for the injury, as arising *ex delicto*. Such actions are not necessarily to be considered as *quasi ex contractu*, or founded on contract.

(3) *Held :* a verdict recovered against some of defts. in an action against several was consistent in such a case with the form of action in trespass on the case, & it was not in substance an action bottomed on contract, but might be supported against some of defts. by proof of the injury sustained by pltf., although a verdict of not guilty were found for the others.—BRETHERTON *v.* WOOD (1821), 3 Brod. & Bing. 54; 9 Price, 408; 6 Moore, C. P. 141; 147 E. R. 134, Ex. Ch..

Annotations :—As to (1) **Folld.** Pozzi *v.* Shipton (1838), 8 Ad. & El. 963. **Refd.** Leslie *v.* Wilson (1821), 6 Moore, C. P. 415; Marshall *v.* York, Newcastle & Berwick Ry. (1851), 21 L. J. C. P. 34; Legge *v.* Tucker (1856), 1 H. & N. 500; Tattan *v.* G. W. Ry. (1860), 29 L. J. Q. B. 184; Alton *v.* Mid. Ry. (1865), 19 C. B. N. S. 213. *As to* (2) **Consd.** Clarke *v.* West Ham Corpn., [1909] 2 K. B. 858. **Refd.** Wyld *v.* Pickford (1841), 8 M. & W. 443; Readhead *v.* Mid. Ry. (1867), L. R. 2 Q. B. 412. *Generally*, **Mentd.** Burnett *v.* Lynch (1826), 5 B. & C. 589.

1463. —— Loss of goods—Form of claim.]—POZZI *v.* SHIPTON, No. 95, *ante*.

1464. —— —— Passenger's luggage.] — MARSHALL *v.* YORK, NEWCASTLE & BERWICK RY. CO., No. 811, *ante*.

1465. —— Supply of unseaworthy barge.]—Where the owner of goods contracts with a steamship co. under a through bill of lading for their conveyance & delivery, including transhipment by barge at a port *en route*, a co. which contracts with the steamship company to supply a barge to tranship the goods commits a tort against the owners of the goods by supplying an unseaworthy barge & is liable to them for damages.—THE TERMAGANT (1914), 30 T. L. R. 377; 19 Com. Cas. 239.

See, generally, Part VI., Sect. 3, sub-sect. 3, *ante*.

—— **Costs—Under County Courts Acts.**]—*See* COUNTY COURTS.

1466. Trover.]—In a special action upon the case brought by pltf. against deft., being a carrier, a boatman, for a trover & conversion of his goods to him delivered, which miscarried, two actions being brought, the one a trespass, the other a trover and conversion :—*Held :* he should proceed in the trover & conversion only.—BIRD *v.* ASTCOCK (1614), 2 Bulst. 280; 80 E. R. 1122.

1467. ——.]—Pltf. declared in an action upon the case, upon the custom of the realm against a common carrier, & also *sur* trover & conversion :—*Held :* if a carrier loseth goods committed to him, a general action of trover doth not lie against him.—OWEN *v.* LEWYN (1672), 1 Vent. 223; 86 E. R. 150.

*Annotations :—***Folld.** Ross *v.* Johnson (1772), 5 Burr. 2825. **Refd.** Stephenson *v.* Hart (1823), 1 Moo. & P. 357.

1468. ——.]—Trover lies against a carrier for refusing to deliver goods given him to carry, but trover will not lie against him for refusing to deliver goods given to his servant, unless he has been guilty of an actual conversion.—TAYLOR *v.* —— (1702), 2 Ld. Raym. 792; 92 E. R. 29, N. P.

1469. ——.]—Trover lies not against a carrier for negligence, as for losing a box, but it does for an actual wrong, as if he break it to take out goods,

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goods covered by it to maintain an action against the ry. co. for damages in respect of the goods covered by the receipt.—DOLATRAM DWARKADAS *v.* BOMBAY BARODA & CENTRAL INDIA RY. CO. (1914), I. L. R. 38 Bom. 659. —**IND.**

PART XI. SECT. 2, SUB-SECT. 2.

1462 i. *Tort or contract—Injury to passengers—Loss of goods.*]—SHAW *v.* CANADIAN PACIFIC RY. CO. (1888), 5 Man. L. R. 198.—**CAN.**

1462 ii. —— ——.]—The action for damages for injury caused by negligence of a common carrier of passengers is in tort. A duty is imposed by law upon a carrier of passengers to carry them safely & securely so that no damage or injury shall happen to them by the negligence or default of the carrier. A breach of this duty is one for which an action lies which is founded on the common law, & requires not the aid of contract to support it.—KENNY *v.* CANADIAN PACIFIC RY. CO. (1902), 5 Terr. L. R. 420.—**CAN.**

p. —— *Wrongful delivery — Carriage over several systems.*] — Pltfs. sent by G. T. Ry. Co. from T. goods addressed to their own order, to C., a station on defts'. line of railway,

Sect. 2.—Remedies against carriers: Sub-sect. 2.]

or sell it.—ANON. (1704), 2 Salk. 655; 91 E. R. 557, N. P.

Annotation:—**Refd.** Stephenson *v.* Hart (1828), 1 Moo. & P. 357.

1470. ——.]—Upon a contract to carry & deliver goods, the possession of the goods still remaining with deft., trover lies.—DEWELL *v.* MOXON (1808), 1 Taunt. 391; 127 E. R. 885.

Annotation:—**Mentd.** Reynolds *v.* Jex. (1865), 7 B. & S. 86.

1471. Replevin.]—Replevin will not lie for goods delivered to a carrier, & detained by him.—GALLOWAY *v.* BIRD (1827), 4 Bing. 299; 12 Moore, C. P. 547; 5 L. J. O. S. C. P. 180; 130 E. R. 782.

Annotation:—**Mentd.** Mellor *v.* Leather & Clough (1853), 22 L. J. M. C. 76 & Q. B. 169.

1472. Equitable defence—Claim for freight—Cross claim for damages.]—To a declaration for freight & porterage for the conveyance of goods, defts. pleaded by way of equitable defence as to £47 0*s.* 6*d.*, parcel, &c., that pltf.'s claim was for work done by him as a lighterman; that in the course of such employment pltf. agreed to convey on a certain river a quantity of coal of defts.; that the coal was utterly lost through the negligence & improper conduct of pltf., & that the cost price of the coal so lost was £47 0*s.* 6*d.*, which defts. claimed equitably to set off against the sum pleaded to, & say that the said sums are equal in amount:—*Held:* the subject-matter of the plea could not be pleaded by way of equitable defence, but merely afforded ground for a cross action.—STIMSON *v.* HALL (1857), 1 H. & N. 831; 26 L. J. Ex. 212; 28 L. T. O. S. 325; 5 W. R. 367; 156 E. R. 1436.

Annotation:—**Refd.** Dakin *v.* Oxley (1864), 15 C. B. N. S. 646.

1473. Mandamus — Refusal to carry — Not granted.]—A mandamus will not lie to compel a railway co. to convey goods along their rail, where no clause in their Act of incorporation requires them to carry all goods offered for conveyance, although they had agreed with certain persons to carry their goods to the exclusion of all others.—*Ex p.* ROBINS (1839), 7 Dowl. 566; 1 Will. Woll. & H. 578; 3 Jur. 103.

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receiving the usual shipping note issued by G. T. Ry. Co. The goods were delivered by that co. to defts. in the ordinary course, & carried to C. They were intended for S. there, who had agreed to purchase them from pltfs., but pltfs. required payment from him before delivery. The station-master at S., being authorised by pltfs. to deliver only half of the goods to S., allowed him to take all, receiving from him the entire freight from T.:—*Held:* defts. were liable in trover for the packages wrongfully delivered; it made no difference that the contract to carry was with G. T. Ry. Co. only.—LESLIE *v.* CANADA CENTRAL RY. Co. (1878), 44 U. C. R. 21.—**CAN.**

q. —— *Misrepresentation as to freight tariff.*]—URQUHART *v.* CANADIAN PACIFIC RY. Co. (1909), 11 W. L. R. 425.—**CAN.**

r. —— *Freight rates incorrectly quoted.*]—GILLIS SUPPLY CO. *v.* CHICAGO MILWAUKEE & PUGET SOUND RY. Co. (1911), 18 W. L. R. 355.—**CAN.**

s. *Set-off — Alleged overcharge — Effect of bye-law.*]—RODGER *v.* MINUDIE COAL CO. (1907), 4 E. L. R. 255.—**CAN.**

t. *Restitution.*] — A. sold goods to B., who sold them to C. A. forwarded the goods to a ry. station to remain at his own order. The ry. co., by mistake, without a delivery order from A., delivered them to C. on B.'s order. The ry. co. having paid A. the price of the goods raised an action against C. for redelivery or for the price & cost of carriage:—*Held:* the ry. co. were entitled to restitution from C. or to the value including cost of carriage, unless the latter could show that he would suffer prejudice through the mistake.—CALEDONIAN RY. Co. *v.* HARRISON & Co. (1879), 7 R. (Ct. of Sess.) 151; 17 Sc. L. R. 87.—**SCOT.**

u. *Petition of right — Government railway.*]—A petition of right does not lie against the Crown for injuries resulting from the non-feasance or misfeasance, wrongs, negligences, or omissions of duty of the subordinate officers or agents employed on Govt. railways.—R. *v.* MCLEOD (1882), 8 S. C. R. 1.—**CAN.**

CASUAL EJECTOR.

See REAL PROPERTY AND CHATTELS REAL.

CATHEDRAL.

See ECCLESIASTICAL LAW.

CATTLE.

See ANIMALS; BOUNDARIES, FENCES AND PARTY-WALLS; CARRIERS; COMMONS AND RIGHTS OF COMMON; DISTRESS; HIGHWAYS, STREETS AND BRIDGES; MARKETS AND FAIRS; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

CAVEAT.

See ADMIRALTY: EXECUTORS AND ADMINISTRATORS; HUSBAND AND WIFE; PRIZE LAW AND JURISDICTION.

CAVEAT EMPTOR.

See ANIMALS; FOOD AND DRUGS; SALE OF GOODS; SALE OF LAND.

CEMETERIES.

See BURIAL AND CREMATION.

CENTRAL AFRICA.

See DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

CENTRAL CRIMINAL COURT.

See COURTS; CRIMINAL LAW AND PROCEDURE.

CERTIORARI.

See COUNTY COURTS; CRIMINAL LAW AND PROCEDURE; CROWN PRACTICE; MAYOR'S COURT, LONDON; RAILWAYS AND CANALS.

CESTUI QUE TRUST.

See SETTLEMENTS; TRUSTS AND TRUSTEES.

CESTUI QUE USE.

See REAL PROPERTY AND CHATTELS REAL.

CESTUI QUE VIE.

See REAL PROPERTY AND CHATTELS REAL.

CEYLON.

See DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

CHALLENGE.

See CRIMINAL LAW AND PROCEDURE; JURIES.

CHAMPERTY.

See ACTION; CRIMINAL LAW AND PROCEDURE.

CHANCEL.

See ECCLESIASTICAL LAW.

CHANCERY.

See COURTS; EQUITY; INFANTS AND CHILDREN; INJUNCTION; LUNATICS AND PERSONS OF UNSOUND MIND; PRACTICE AND PROCEDURE.

CHANGE OF NAME.

See NAME AND ARMS, CHANGE OF.

CHANNEL ISLANDS.

See DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

CHAPEL.

See Burial and Cremation; Charities; Criminal Law and Procedure; Ecclesiastical Law; Husband and Wife; Rates and Rating; Registration of Births, Marriages and Deaths.

CHAPLAIN.

See Ecclesiastical Law; Poor Law.

CHAPTER.

See Ecclesiastical Law.

CHARGES ON PROPERTY.

See Bills of Sale; Choses in Action; Companies; Equity; Executors and Administrators; Judgments and Orders; Mortgage.

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NOTE.—*In this Title Charitable Trusts Act*, 1853 (*c.* 137), *Charitable Trusts Amendment Act*, 1855 (*c.* 124), *Charitable Trusts Acts*, 1860 (*c.* 136), 1862 (*c.* 112) & 1869 (*c.* 110), *Mortmain & Charitable Uses Acts*, 1888 (*c.* 42) & 1891 (*c.* 73), & *Charitable Trusts* (*Places of Religious Worship*) *Amendment Act*, 1894 (*c.* 35), *are referred to as* 1853 *Act*, 1855 *Act*, 1860 *Act*, 1862 *Act*, 1869 *Act*, 1888 *Act*, 1891 *Act*, & 1894 *Act*, *respectively.*

In view of the changes in the law relating to Charities introduced by 1888 & 1891 *Acts, cases decided before those Acts have been dealt with, as a general rule, as "catchword" cases only. In these cases the catchwords have been amplified to give the effect of the decisions.*

Part I.—Charitable Purposes.

SECT. 1.—IN GENERAL.

1. What are.]—(1) Lands in England were conveyed by deed in 1813 to trustees upon trust after payment of costs & outgoings to apply two-fourths of the rents & profits for the general purposes of maintaining, supporting & advancing the missionary establishments among heathen nations of the Protestant Episcopal Church, commonly known as the Moravian Church; & to apply the remaining two-fourths for purposes which were admitted to be charitable within the meaning of the Act. On a claim for an allowance in respect of income tax under Income Tax Act, 1842 (c. 35), s. 61, No. VI. in respect of the whole trust:—*Held:* the words "charitable purposes" in the Act were not restricted to the meaning of relief from poverty, but must be construed according to the legal & technical meaning given to those words by English law & by legislation applicable to Scotland & Ireland as well as England, & the allowance ought to be granted.

(2) There are, doubtless, some words to which the law had attached in the stricter sense a technical meaning; but the word "charitable" is not one of those words, though I do not deny that the old Ct. of Ch., in enforcing the performance of charitable trusts, included in that phrase a number of subjects which undoubtedly no one outside the Ct. of Ch. would have supposed to be comprehended within that term. The alternative, therefore, to my mind may be more accurately stated as lying between the popular & ordinary interpretation of the word "charitable," & the interpretation given by the Ct. of Ch. to the use of those words in 43 Eliz. c. 4. The enumeration of charitable objects in the preamble of the statute was very soon interpreted not to be limited to the exact charities therein referred to. Where a purpose by analogy was deemed by the Ct. of Ch. to be within its spirit & intendment, it was held to be "charitable" within the statute (LORD HALSBURY, C.).

"Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; & trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit

PART I. SECT. 1.

1 i. *What are.*]—Funds derived from the gift of the Crown or the gift of the Legislature, or from private gift, for paving, lighting, etc., are charitable funds to be administered by the ct.; but where an Act of Parliament passes for paving, lighting, etc., to be paid for wholly by rates or assessments levied upon inhabitants of a town, the funds so raised, being in no sense derived from bounty or charity, in the most extensive sense of the word, are not charitable funds to be administered by the ct.—A.-G. *v.* M'CARTHY (1885), 12 V. L. R. 535. —AUS.

1 ii. ——.]—The charitable objects enumerated in 43 Eliz. c. 4, are not the only objects of charity but are given as examples only.—*Re* MCCLELLAN'S WILL, ROBINSON *v.* MCCLELLAN (1919), 46 N. B. R. 161.—CAN.

1 iii. ——.]—Scotch trusts, *ejusdem generis* with trusts falling within 43 Eliz. c. 4, are governed by the rules applicable to charitable trusts in England. Charity is not limited to relief of physical wants of the poor, but includes their intellectual & moral culture; & purposes which concern others than the poor may nevertheless be charitable purposes in Scotch law. —INCOME TAX COMRS. *v.* PEMSEL (1891), 61 L. J. Q. B. 265, H. L.—SCOT.

1 iv. ——.]—The law of Scotland does not attach such technical meaning to the word "charitable" as is given to it in England under 43 Eliz. c. 4.—BLAIR *v.* DUNCAN (1901), 86 L. T. 157, H. L.—SCOT.

1 v. —— *Sydney Corporation Act*, 1902, *s.* 110 (5).]—The word "charitable" in above sect. is used in the

Sect. 1.—*In general. Sect.* 2: *Sub-sect.* 1.]

the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly (LORD MACNAGHTEN).—INCOME TAX SPECIAL PURPOSES COMRS. *v.* PEMSEL, [1891] A. C. 531; 61 L. J. Q. B. 265; 65 L. T. 621; 55 J. P. 805; 7 T. L. R. 657; 3 Tax Cas. 53, H. L.

Annotations :—*As to* (1) **Consd.** I. R. Comrs. *v.* Scott, *Re* Bootham Ward Strays, York, [1892] 2 Q. B. 152. **Distd.** Maughan *v.* Free Church of Scotland (1893), 3 Tax Cas. 207. **Consd.** Southwell *v.* Royal Holloway College, Egham, Governors, [1895] 2 Q. B. 487. **Apprvd.** Blair *v.* Duncan, [1902] A. C. 37. **Consd.** Grimond *v.* Grimond (1904), [1905] A. C. 603, Appendix. **Apld.** R. *v.* Income Tax Special Comrs., *Ex p.* University College of North Wales (1909), 78 L. J. K. B. 576. **Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26. **Refd.** L. C. C. *v.* South Metropolitan Gas Co., [1903] 2 Ch. 532; Lord Advocate *v.* Moray, [1905] A. C. 531; R. *v.* Income Tax Comrs. (1911), 80 L. J. K. B. 788. *As to* (2) **Consd.** Southwell *v.* Royal Holloway College, Egham, Governors, [1895] 2 Q. B. 487; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; *Re* Perry Almshouses, *Re* Ross' Charity, [1899] 1 Ch. 21; *Re* Good, Harington *v.* Watts, [1905] 2 Ch. 60; R. *v.* Income Tax Special Comrs., *Ex p.* University College of North Wales (1908), 24 T. L. R. 491. **Apld.** *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** *Re* Nottage, Jones *v.* Palmer, [1895] 2 Ch. 649; *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501; Cunnack *v.* Edwards, [1896] 2 Ch. 679; *Re* Buck, Bruty *v.* Mackey, [1896] 2 Ch. 727; Blair *v.* Duncan, [1902] A. C. 37; Grimond *v.* Grimond (1904), [1905] A. C. 603, Appendix; *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643; *Re* Manser, A.-G. *v.* Lucas, [1905] 1 Ch. 68; *Re* Sidney, Hingeston *v.* Sidney (1908), 98 L. T. 625; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113; Houston *v.* Burns, [1918] A. C. 337; *Re* Bennett, Gibson *v.* A.-G., [1920] 1 Ch. 305. *Generally*, **Mentd.** G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414; Bourne *v.* Keane, [1919] A. C. 815; Rotunda Hospital, Dublin, Governors *v.* Coman (1920), 7 Tax Cas. 517.

2. How ascertained — Whether capable of being administered by Court of Chancery.]—It is no criterion of the invalidity of a charity bequest that it is not capable of being administered in the Ct. of Ch., for that is the case in every charity gift which is administered by the sign manual: but it is a criterion where the question is whether the gift be charitable or not.—NIGHTINGALE *v.* GOULBOURN (1848), 2 Ph. 594; 17 L. J. Ch. 296; 11 L. T. O. S. 169; 12 Jur. 317; 41 E. R. 1072, L. C.

Annotations :—**Consd.** Whicker *v.* Hume (1851), 14 Beav. 509. **Refd.** Income Tax Special Purposes Comrs *v.* Pemsel, [1891] A. C. 531; *Re* Friends' Free School, Clibborn *v.* O'Brien, [1909] 2 Ch. 675.

3. —— Purpose, not source.]—The question whether funds are dedicated to a charitable use within 43 Eliz. c. 4, depends, not on the source from which the funds are derived, but on the purpose to which they are to be applied.—A.-G. *v.* EASTLAKE (1853), 11 Hare, 205; 2 Eq. Rep. 145; 22 L. T. O. S. 20; 18 J. P. 262; 17 Jur. 801; 1 W. R. 323; 68 E. R. 1249.

Annotations :—**Consd.** *Re* St. Bride's, Fleet Street, Church or Parish Estate (1877), 35 Ch. D. 147, n. **Refd.** A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933; *Re* St. Botolph-without-Bishopsgate Parish Estates (1887), 35 Ch. D. 142; Smith *v.* Kerr (1902), 71 L. J. Ch. 369. **Mentd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; A.-G. *v.* West Hartlepool Improvement Comrs. (1870), L. R. 10 Eq. 152; Elias *v.* Griffith (1878), 8 Ch. D. 521.

4. —— Intention to benefit community.]—*Re* FOVEAUX, CROSS *v.* LONDON ANTI-VIVISECTION SOCIETY, No. 206, *post*.

5. Bequest for proper purposes of charity—Valid charitable bequest.]—*Re* MARIETTE, MARIETTE *v.* ALDENHAM SCHOOL GOVERNING BODY, No. 57, *post*.

Must not be irreligious or immoral.]—*See* Nos. 71, 94, *post*.

Must not be contrary to public policy.]—*See* Sect. 7, *post*.

6. Public charity — What is.]—Each particular object may be private, but it is the extensiveness which will constitute it a public charity.—A.-G. *v.* PEARCE (1740), 2 Atk. 87; Barn. Ch. 208; 26 E. R. 454, L. C.

Annotations :—**Consd.** Nash *v.* Morley (1842), 5 Beav. 177. **Apld.** Hall *v.* Derby Sanitary Authority (1885), 16 Q. B. D. 163. **Refd.** Shaw *v.* Halifax Corpn., [1915] 2 K. B. 170. **Mentd.** Brummell *v.* M'Pherson (1826), 5 L. J. O. S. Ch. 57.

—— —— **Under specific statutes.**]—*See* Nos. 21, 26, *post*; PARTICULAR TITLES.

SECT. 2.—RELIEF OF THE INDIGENT AND DESERVING.

SUB-SECT. 1.—PARTICULAR PERSONS OR CLASSES OF PERSONS.

7. Poor persons — Valid.]—A.-G. *v.* RANCE (1728), cited in Amb. 422; 27 E. R. 282.

Annotation :—**Consd.** A.-G. *v.* Clarke (1762), Amb. 422.

8. —— Limited in number — Valid.]—BALDWIN *v.* BALDWIN (No. 1) (1856), 22 Beav. 413; 26 L. J. Ch. 121; 28 L. T. O. S. 29; 20 J. P. 659; 2 Jur. N. S. 773; 4 W. R. 774; 52 E. R. 1167.

9. —— Poorest of testator's kindred — Valid.]—GOFF *v.* WEBB (1602), Toth. 30; 21 E. R. 114.

10. —— Poor relations of testator—Valid.]—WHITE *v.* WHITE (1802), 7 Ves. 423; 32 E. R. 171.

11. —— —— Discretion of widow—Widows or children of poor clergy.]—WALDO *v.* CALEY (1809), 16 Ves. 206; 33 E. R. 962, L. C.

Annotations :—**Folld.** Horde *v.* Suffolk (1833), 2 My. & K. 59. **Consd.** Ellis *v.* Selby (1835), 7 Sim. 352; Williams *v* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84. **Refd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286; *Re* Lea, Lea *v.* Cooke (1887), 34 Ch. D. 528. **Mentd.** Willan *v.* Willan (1809), 16 Ves. 216; Walburne *v.* Ingilby (1833), 3 L. J. Ch. 21; Suisse *v.* Lowther (1843), 7 Jur. 808.

12. —— —— Discretion of trustees—Beneficiaries living in specified county.]—A.-G. *v.* PRICE (1810), 17 Ves. 371; 34 E. R. 143.

Annotations :—**Folld.** Gillam *v.* Taylor (1873), L. R. 16 Eq. 581. **Consd.** A.-G. *v.* Northumberland (1877), 7 Ch. D. 745.

13. —— —— —— Good charitable trust.]—HALL *v.* A.-G. (1829), cited in Jarman on Wills, 6th ed. 220.

14. —— —— —— ——.]—GILLAM *v.* TAYLOR (1873), L. R. 16 Eq. 581; 42 L. J. Ch. 674; 28 L. T. 833; 21 W. R. 823.

Annotation :—**Consd.** A.-G. *v.* Northumberland (1878), 38 L. T. 245.

See, also, Part III., Sect. 4, sub-sect. 3, C., *post*.

15. —— Poor housekeepers — Valid.]—A.-G. *v.* PEARCE (1740), 2 Atk. 87; Barn. Ch. 208; 26 E. R. 454, L. C.

Annotations :—**Distd.** Brummell *v.* M'Pherson (1826), 5 L. J. O. S. Ch. 57. **Consd.** Nash *v.* Morley (1842), 5 Beav. 177; Hall *v.* Derby Sanitary Authority (1885), 16 Q. B. D. 163. **Refd.** Shaw *v.* Halifax Corpn., [1915] 2 K. B. 170.

16. —— Apprenticing children — Valid.]—R. *v.* CLIFTON-UPON-DUNSMORE (INHABITANTS) (1772), Burr. S. C. 697.

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sense of affording relief to persons in necessitous or helpless circumstances; &, at all events if required, gratuitously. —SYDNEY MUNICIPAL COUNCIL *v.* KELLY (1920), 21 S. R. N. S. W. 113. —AUS.

3 i. *How ascertained — Source not purpose.*]—A charitable trust means an object of public utility, & is permanent in character. It is the source whence funds are derived, & not the mere purpose to which they are dedicated, which constitutes the use charitable.—A.-G. *v.* M'CARTHY (1885), 12 V. L. R. 535.—AUS.

PART I. SECT. 2, SUB-SECT. 1.

10 i. *Poor persons — Poor relations, dependents & servants.*]—A direction to executors to distribute a specific sum among testator's "poor relations, dependants & servants," is a valid charitable bequest.—MANORAMA DASSI *v.* KALI CHARAN BANERJEE (1904), I. L. R. 31 Calc. 616.—IND.

16 i. —— *Advances to apprentices —& poor debtors.*]—A bequest for the relief of poor debtors, & to assist young men at the conclusion of their apprenticeship: *Held*: valid.—A.-G. *v.* LINERICK (Br.) (1870), IR. W. R. 1102.—IR.

17. —— Clergymen to be selected—Legacies not charitable.]—THOMAS *v.* HOWELL (1874), L. R. 18 Eq. 198 ; 43 L. J. Ch. 799 ; 30 L. T. 244 ; 38 J. P. 693 ; 22 W. R. 676.

Annotations :—**Mentd.** Halse *v.* Rumford (1878), 47 L. J. Ch. 559 ; *Re* Corcoran, Corcoran *v.* Riddell (1892), 62 L. J. Ch. 267 ; Nickall *v.* Fawkes (1905), 50 Sol. Jo. 126.

18. —— Members of religious community—Valid.]—A.-G. *v.* LAWES (1849), 8 Hare, 32 ; 19 L. J. Ch. 300 ; 14 Jur. 77 ; 68 E. R. 261.

Annotations :—**Mentd.** Martineau *v.* Rogers (1856), 25 L. J. Ch. 398 ; Fraser *v.* Murdoch (1881), 6 App. Cas. 855 ; Robinson *v.* Murdoch (1881), 30 W. R. 162 ; *Re* Hall-Dare, Le Marchant *v.* Lee Warner, [1916] 1 Ch. 272.

Gifts for religious purposes. *See* Sect. 4, *post.*

19. —— In foreign town—Valid.]—A charitable bequest of a discretionary private nature in favour of the deserving & necessitous poor persons of a foreign [German] town, which can be carried out according to the law of the country in which such town is situated, is not void on the ground of public policy, nor is it contrary to 1888 Act.—*Re* GECK, FREUND *v.* STEWARD (1893), 69 L. T. 819, C. A.

20. —— Of regiment—Valid.]—*Re* DONALD, MOORE *v.* SOMERSET, No. 919, *post.*

21. —— Ladies in reduced circumstances—Preference given to natives of particular parish—"Public charity."]—Trustees under a will founded & endowed in 1876 out of moneys bequeathed by the testator for the purpose, augmented by smaller gifts & bequests from a few other persons, a perpetual charity. There were no public subscriptions. The primary objects of the charity were declared by the deed of foundation to be (*a*) to provide a home for ladies by birth & education (called lady occupants) who had become reduced in circumstances, (*b*) to pay annuities to lady occupants, & (*c*) to pay annuities to ladies in reduced circumstances who were not lady occupants (called lady recipients). The annuities were not to exceed £52 a year. The deed provided that the governors of the charity were to erect houses not exceeding twenty-four in number on land purchased by them for the charity, that they were from time to time to elect as lady occupants such persons, being not less than fifty years of age & being either spinsters or widows, as they should consider most deserving of the charity ; & that every candidate for election as a lady occupant must satisfy the governors that she was possessed in her own right of not less than £20 a year. A preference in the election of lady occupants & lady recipients was to be given, all other circumstances being equal, to any candidate born in the parish of H. or resident therein for a period of five years in the aggregate. No candidate was to be ineligible on account of her religious opinion, & a lady occupant or lady recipient upon marrying was to cease to be entitled to any benefit under the charity. Every lady occupant was to be entitled to the exclusive use of one house free of rent, the governors to pay all rates & taxes & to keep the house in repair. The home was erected within the borough of H., & consisted of twelve houses, & each house was occupied by a lady occupant. The parish of H. covered an area of fifteen miles in length by fifteen miles in breadth, & had a population of about 205,000. The corpn. of H. having rated the occupiers of the houses to the borough & general district rates :—*Held :* (1) the charity by reason of its extensiveness was a "public charity," (2) the houses were "buildings exclusively used for the purposes of public charity" within Towns Improvement Clauses Act, 1847 (c. 34), s. 168, & the occupiers were exempt from rates in respect thereof.—SHAW *v.* HALIFAX CORPN., [1915] 2 K. B. 170 ; 84 L. J. K. B. 761 ; 112 L. T. 921 ; 79 J. P. 257 ; 59 Sol. Jo. 315 ; 13 L. G. R. 316, C. A.

Annotation :—*As to* (1) **Refd.** Rotunda Hospital, Dublin, Governors *v.* Coman (1920), 7 Tax Cas. 517.

See, also, Nos. 26, 156, *post.*

Home of rest for ladies or gentlemen of limited means.]—*See* No. 1189, *post.*

22. Intent to relieve distress—Single women over certain age—Valid.]—A testator gave the remainder of his estate to trustees upon trust for conversion, & to pay the proceeds to the rector & churchwardens of a parish, who should invest them & pay the income amongst respectable single women of good character above the age of sixty years, to be paid by monthly instalments, but so that no recipient should receive more than £10 *per annum* :—*Held :* the intention must be taken to have been the relief of distress, & the gift was good as a charitable bequest.—*Re* DUDGEON, TRUMAN *v.* POPE (1896), 74 L. T. 613 ; 12 T. L. R. 465.

Annotation :—**Follo.** *Re* Elliott, Raven *v.* Nicholson (1910), 102 L. T. 528.

23. —— Blind persons—Valid.]—A testator, by his will, after dealing with certain pecuniary bequests, bequeathed the residue of his real & personal property to his trustees on trust to sell, & invest the residue after payment of legacies & all other expenses, & to hold it on trust to pay & apply the income of the trust funds exclusively for the maintenance, support, education or otherwise for the benefit of blind persons resident in the city of N. or the county borough of G., & only to such blind persons as, in the opinion of the trustees, intended to be honest and industrious, his intention being that the payment or application of the income should not take away the self-respect of those blind persons deriving benefit therefrom, but should tend to make them fit for work & capable of earning an independent living :—*Held :* the intention must be taken to have been the relief of distress & the gift was a good charitable bequest.—*Re* ELLIOTT, RAVEN *v.* NICHOLSON (1910), 102 L. T. 528 ; 54 Sol. Jo. 426.

24. Decayed freeman of City Company—In consideration of company executing trusts of will—Valid.]—A.-G. *v.* IRONMONGERS' CO. (1837), Coop. Pr. Cas. 283 ; 47 E. R. 506.

25. Named families—In need of assistance—Gift not charitable.]—LILEY *v.* HEY (1842), 1 Hare, 580 ; 11 L. J. Ch. 415 ; 66 E. R. 1162 ; *sub nom.* LILLEY *v.* HEY, 6 Jur. 756.

Annotation :—**Consd.** Gillam *v.* Taylor (1873), L. R. 16 Eq. 581.

26. Railway orphanage—"Public charity."]—*Held :* a railway orphanage supported partly by subscription from railway servants but mainly by donations from the public, was open to such an extensive class of the community of the kingdom that the premises were used & occupied exclusively for the purposes of "public charity," within a local Improvement Act, & exempt from ratability under it.—HALL *v.* DERBY SANITARY AUTHORITY (1885), 16 Q. B. D. 163 ; 55 L. J. M. C. 21 ; 54 L. T. 175 ; 50 J. P. 278 ; 2 T. L. R. 81, D. C.

Annotations :—**Consd.** Seal *v.* British Orphan Asylum (1911), 104 L. T. 424 ; Shaw *v.* Halifax Corpn., [1915] 2 K. B. 170. **Refd.** Royal Masonic Institution for Boys *v.* Parkes, [1912] 3 K. B. 212.

See, also, No. 21, *ante.*

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a. —— *Children of donor's tenantry —Not charitable trust.*]—BROWNE *v.* KING (1885), 17 L. R. Ir. 488.—IR.

b. —— *Orphans—Sons of parents in straitened circumstances—New Zealand Exemption Act*, 1883, *s.* 3.]—A gift by will, for the maintenance & education of boys who are orphans or the sons of parents in straitened circumstances, is "charitable" within above sect.—DILWORTH *v.* STAMPS COMR., DILWORTH *v.* LAND & INCOME TAX COMR., [1899] A. C. 99, P. C.—N.Z.

Sect. 2.—Relief of the indigent and deserving: Sub-sects. 1, 2 & 3. Sect. 3: Sub-sect. 1.]

27. Employees of firm—Valid.]—A gift to form a fund for the purpose of pensioning off the old & worn-out clerks of a firm is a good charitable bequest, & the ct. will direct a scheme for its administration.—*Re* GOSLING, GOSLING *v.* SMITH (1900), 48 W. R. 300; 16 T. L. R. 152; 44 Sol. Jo. 196.

Annotation: **Folld.** *Re* Rayner, Cloutman *v.* Regnart (1920), 89 L. J. Ch. 369.

28. —— Contribution towards holiday expenses —Void.]—A testator gave a legacy for the purposes of contribution to the holiday expenses of work-people employed in a business in such manner as the directors should think fit; & he gave the residue of his estate to a club, & by a codicil declared that he desired the money to be utilised by the club for such purposes as the committee might determine:—*Held:* (1) the gift to the workpeople was not a good charitable gift either as being for poor persons or for general public purposes, & was void as infringing the rule against perpetuities; (2) the gift to the club was a good gift for such purposes as the committee might determine.—*Re* DRUMMOND, ASHWORTH *v.* DRUMMOND, [1914] 2 Ch. 90; 83 L. J. Ch. 817; 111 L. T. 156; 30 T. L. R. 429; 58 Sol. Jo. 472.

Annotation:—**Consd.** *Re* Rayner, Cloutman *v.* Regnart (1920), 89 L. J. Ch. 369.

See, also, Nos. 70, 262, *post.*

29. Unitarians not under fifty years of age—Attending particular chapels—Tablet to be put up with information of gift—Valid.]—Testator directed that the interest of a fund should be for ever divided into annuities of £10 each, & be paid half-yearly "to an equal number of men & women not under fifty years of age, Unitarians, who attend M. Unitarian chapel or chapels in B.; a tablet to be placed in M. chapel to give the information of gift, otherwise how should the deserving know of it":—*Held:* a good charitable gift for the benefit of "aged" persons, within 43 Eliz. c. 4.—*Re* WALL, POMEROY *v.* WILLWAY (1889), 42 Ch. D. 510; 59 L. J. Ch. 172; 61 L. T. 357; 37 W. R. 779.

Annotation:—**Refd.** *Re* Gosling, Gosling *v.* Smith (1900), 48 W. R. 300.

30. Jewish girls—Marriage portion—Valid.]—A bequest for the benefit of deserving Jewish girls on their marriage is a good charitable gift.—*Re* COHEN, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. *v.* COHEN (1919), 36 T. L. R. 16.

Gifts to Jews generally, *see* Sect. 4, sub-sect. 9, *post.*

SUB-SECT. 2.—OF PARTICULAR PLACE.

31. Parish—Valid.]—A.-G. *v.* PEARCE (1740), 2 Atk. 87; Barn. Ch. 208; 26 E. R. 454, L. C.

Annotations:—**Consd.** Hall *v.* Derby Sanitary Authority (1885), 16 Q. B. D. 163. **Refd.** Nash *v.* Morley (1842), 5 Beav. 177; Shaw *v.* Halifax Corpn., [1915] 2 K. B. 170. **Mentd.** Brummell *v.* M'Pherson (1826), 5 L. J. O. S. Ch. 57.

32. —— Legacy to poor inhabitants—Valid.]—A.-G. *v.* CLARKE (1762), Amb. 422; 27 E. R. 282.

33. —— Widows & orphans—Valid.]—A.-G. *v.* COMBER (1824), 2 Sim. & St. 93; 57 E. R. 281.

Annotations:—**Folld.** Thompson *v.* Corby (1860), 27 Beav. 649; *Re* Dudgeon, Truman *v.* Pope (1896), 74 L. T. 613. **Refd.** *Re* Gosling, Gosling *v.* Smith (1900), 48 W. R. 300.

34. —— Aged widows & spinsters—Word "poor" supplied.]—THOMPSON *v.* CORBY (1860), 27 Beav. 649; 3 L. T. 73; 24 J. P. 581; 8 W. R. 267; 54 E. R. 257.

Annotations:—**Folld.** *Re* Dudgeon, Truman *v.* Pope (1896), 74 L. T. 613. **Refd.** *Re* Gosling, Gosling *v.* Smith (1900), 48 W. R. 300.

—— Whether persons in receipt of parochial relief entitled to benefit.]—*See* Part III., Sect. 4, sub-sect. 6, *post.*

35. Testatrix's estate—Valid.]—BRISTOW *v.* BRISTOW (1842), 5 Beav. 289; 49 E. R. 589.

Annotation:—**Mentd.** Lee *v.* Pain (1844), 4 Hare, 201.

See, also, No. 262, *post.*

36. Town—Waterworks for use of inhabitants —Public charitable use.]—JONES *v.* WILLIAMS (1767), Amb. 651; 27 E. R. 422, L. C.

Annotations:—**Refd.** Mitford *v.* Reynolds (1842), 1 Ph. 185; Nightingale *v.* Goulburn (1847), 5 Hare, 484; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Mentd.** Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633.

37. —— Widows & children of seamen—Valid.]—POWELL *v.* A.-G. (1817), 3 Mer. 43; 36 E. R. 19.

Annotation:—**Refd.** *Re* Gosling, Gosling *v.* Smith (1900), 48 W. R. 300.

38. —— Payment to be made by specified time —Valid.]—A.-G. *v.* COWPERTHWAITE (1837), DONNELLY, 184; 47 E. R. 308.

39. —— "Charitable purposes"—Valid.]—A corpn. by a deed of feoffment made in 1599 granted certain lands upon the special trust & confidence that [the grantees] should permit & suffer the corpn. to have & enjoy the premises, & to receive the rent thereof, for & towards the repairing of the church & conduits of the town, the relief of the poor, the maintenance of the bulwarks & fortifications, & other charitable, needful, & necessary uses for the town, as to the corpn. should seem meet:—*Held:* (1) "charitable" was not equivalent to "benevolent" but meant the purposes enumerated in 43 Eliz. c. 4, or those analogous thereto; (2) the four purposes specifically mentioned in the deed, & "other charitable, needful, & necessary uses" were all clearly "charitable" within the Act; (3) the corpn. were not at liberty to apply the rents to purposes of general utility for the town, because those purposes were not *ejusdem generis* with those specifically mentioned in the deed of feoffment; (4) the deed was not sufficiently ambiguous to entitle the corpn. to bring in contemporaneous or subsequent usage to

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27 i. *Employees of firm—Families—Benefit & maintenance.*]—A direction by a testator to trustees to apply the balance of interest, on a sum bequeathed to them, for the benefit & maintenance of, & to enable the families of his late workmen at B., or their children, to become apprenticed, or to emigrate abroad:—*Held:* the bequest could not be sustained as a charitable trust.—*Re* CULLIMORE'S TRUSTS (1891), 27 L. R. Ir. 18.—**IR.**

PART I. SECT. 2, SUB-SECT. 2.

31 i. *Parish—For poor & distressed inhabitants.*]—A bequest to the Sisters of Charity for the poor & distressed inhabitants of a parish as they should think fit & proper:—*Held:* valid.—DILLON *v.* REILLY (1873), I. R. 10 Eq. 152.—**IR.**

31 ii. —— *For oldest & poorest inhabitants—Valid.*]—*Re* SHORT (1914), 7 O. W. N. 525.—**CAN.**

35 i. *Donor's tenantry.*]—BROWNE *v.* KING, *supra.*—**IR.**

c. *Town — Children of certain age —Valid.*]—*Re* BATTERSHALL (1907), 10 O. W. R. 933.—**CAN.**

d. —— *Those endeavouring to uplift the needy.*]—A bequest for the benefit of those who are endeavouring to uplift the needy in C., such as J., United Charities, & whatever may seem to require assistance, is a charitable bequest.—*Re* ORR (1917), 40 O. L. R. 567; 13 O. W. N. 154.—**CAN.**

e. *Municipality — Three oldest & poorest people.*]—A bequest to the three oldest & poorest people in R. municipality:—*Held:* valid.—LAW *v.* ACTON (1902), 14 Man. L. R. 246.—**CAN.**

f. *County — Luxuries for inmates of poor house.*]—A bequest to the treasurer of B. county poor house to be expended in luxuries for the inmates:—*Held:* a good charitable use within R. S. O., 1897, c. 112.—*Re* BROWN, BROWN *v.* BROWN (1900), 32 O. R. 323.—**CAN.**

g. *School of convent—Poor children attending—Valid.*]—CARBERY *v.* COX (1852), 3 I. Ch. R. 231.—**IR.**

explain its meaning; (5) 1 Edw. 6, c. 14, had no application to this case, to support the plea advanced under it by the corpn.; (6) as charitable trusts were disclosed by the deed of 1599, there must be the usual inquiry as to the property comprised in the deed, & a scheme for its application; (7) the corpn. would have no costs up to judgment. —A.-G. *v.* DARTMOUTH CORPN. (1883), 48 L. T. 933.

See, also, No. 29, *ante,* No. 70, *post.*

SUB-SECT. 3.—HOSPITALS, PUBLIC INSTITUTIONS, ETC.

40. Hospital—Charitable use.]—LONDON CORPN. CASE (1639), Duke, 83.

41. —— ——.]—A.-G. *v.* KELL (1840), 2 Beav. 575; 9 L. J. Ch. 389; 48 E. R. 1305.

42. —— ——.]—HARRIS *v.* DU PASQUIER (1872), 26 L. T. 689; 20 W. R. 668.

43. Orphanage — Public charity — 6 Geo. 4, c. cxxxii.]—HALL *v.* DERBY SANITARY AUTHORITY, No. 26, *ante.*

44. —— **Already existing—Another to be founded—Relief houses to be founded—Good charitable gift.**]—*Re* DE ROSAZ, RYMER *v.* DE ROSAZ (1889), 5 T. L. R. 606.

45. Home—Lady teachers—Valid.]—A testator bequeathed money & two leasehold houses to establish a Home of Rest for Lady Teachers:—*Held:* the bequest was a valid charitable gift as being beneficial to the community.—*Re* ESTLIN, PRICHARD *v.* THOMAS (1903), 72 L. J. Ch. 687; 89 L. T. 88; 47 Sol. Jo. 691.

46. —— **Ladies of limited means—Charitable bequest.**]—By her will made in Mar., 1900, testatrix, who died in 1911, devised & bequeathed her real & personal estate to pltfs., L. P. & his daughter W. P., upon trust to sell & convert into money such portions as should be necessary upon trust for the maintenance of a temporary house of residence for ladies of limited means; if, at any time, such house should be considered unnecessary the money thus set apart was to be distributed by the trustees in yearly payments to such ladies as they might consider worthy of such assistance. Testatrix then appointed L. P. & W. P. exors. of her will, & directed that they should "expend all or any of the residue of my estate in such manner as they know to be most in agreement with my desires":—*Held:* the primary trust in the will was a good charitable trust of so much of the estate as might be necessary for the maintenance of the house, & the subsequent alternative bequests did not render it void for uncertainty.—*Re* GARDOM, LE PAGE *v.* A.-G., [1914] 1 Ch. 662; 83 L. J. Ch. 681; 108 L. T. 955; *revsd.* without affecting this point, *sub nom.* LE PAGE *v.* GARDOM (1915), 84 L. J. Ch. 749, H. L.

Annotation:—**Mentd.** *Re* Gardner, Huey *v.* Cunnington, [1920] 2 Ch. 523.

47. —— **Ladies in reduced circumstances—Public charity.**]—SHAW *v.* HALIFAX CORPN., No. 21, *ante.*

See, also, No. 1457, *post.*

48. Religious institution—Formed for personal sanctification—Not performing external works—Gift not charitable.]—COCKS *v.* MANNERS (1871), L. R. 12 Eq. 574; 40 L. J. Ch. 640; 24 L. T. 869; 36 J. P. 244; 19 W. R. 1055.

Annotations:—**Consd.** *Re* White, White *v.* White, [1893] 2 Ch. 41; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110; *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567. **Folld.** *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937. **Refd.** *Re* Dutton (1878), 4 Ex. D. 54; Purday *v.* Johnson (1888), 5 T. L. R. 117; *Re* Delany, Conoley *v.* Quick, [1902] 2 Ch. 642; *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604; *Re* Clifford, Mallam *v.* McFie (1911), 81 L. J. Ch. 220; Dunne *v.* Byrne, [1912] A. C. 407; Bourne *v.* Keane, [1919] A. C. 815.

49. —— —— **& performance of external works of piety & charity—Gift charitable.**]—COCKS *v.* MANNERS (1871), L. R. 12 Eq. 574; 40 L. J. Ch. 640; 24 L. T. 869; 36 J. P. 244; 19 W. R. 1055.

Annotations:—**Folld.** *Re* Delany, Conoley *v.* Quick, [1902 2 Ch. 642. **Refd.** Purday *v.* Johnson (1888), 5 T. L. R. 117; *Re* White, White *v.* White, [1893] 2 Ch. 41; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110; *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567; Dunne *v.* Byrne, [1912] A. C. 407; *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** *Re* Dutton (1878), 4 Ex. D. 54; *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604; *Re* Clifford, Mallam *v.* McFie (1911), 81 L. J. Ch. 220.

50. —— —— —— ——.]—Testator, who died in 1886, gave the rents of his freehold & leasehold estates to his wife for life, & after her death he directed his trustees to sell the property & to divide the proceeds in (amongst others) the following legacies: "To M., H., A., Nazareth House, Hammersmith, or their successors £400, to E. & L. of the Convent of the Assumption, Bromley-by-Bow or their successors, £300"

At the date of the will & of the death of testator M., H., & A. were members & officials of a religious community known as the Poor Sisters of Nazareth; & E. & L. were members & officials of a religious community known as the Little Sisters of the Assumption. Both of these communities were societies of Roman Catholic ladies living together in a state of celibacy for the purpose of sanctifying their souls by prayer & pious contemplation; & also, as to the Poor Sisters of Nazareth with the object of affording permanent homes for aged & infirm persons of both sexes; & as to the Little Sisters of the Assumption with the object of gratuitously nursing the sick of the poorest classes in their own homes:—*Held:* (1) the bequests were not gifts to the named individuals for their own personal benefit, but to them as holders of offices & for the benefit of the associations in which they respectively held office; (2) as the objects of the associations were charitable the gifts were void under Charitable Uses Act, 1735 (c. 36).—*Re* DELANY, CONOLEY *v.* QUICK, [1902] 2 Ch. 642; 71 L. J. Ch. 811; 87 L. T. 46; 51 W. R. 27; 18 T. L. R. 741.

Annotations:—*As to* (1) **Refd.** *Re* Garrard, Gordon *v.* Craigie, [1907] 1 Ch. 382. *Generally,* **Refd.** *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567.

Friendly society.]—*See* Sect. 6, sub-sect. 2, *post.*

Private associations & institutions.]—*See* Sect. 6, sub-sect. 2, *post.*

Gift of personalty—Involving acquisition of land.]—*See* Part II., Sect. 3, *post.*

SECT. 3.—EDUCATIONAL PURPOSES.

SUB-SECT. 1.—SCHOOLS.

51. Establishment—Conditional gift—23 Hen. 8, c. 10—Valid.]—PORTER'S CASE, A.-G. *v.* PORTER

PART I. SECT. 2, SUB-SECT. 3.

40 i. *Hospital—Charitable use.*]—A. appointed his exor. to distribute his estate of whatever nature among R. C. charities & hospitals:—*Held:* a valid charitable legacy.—*Re* GAVACAN (DECEASED), O'MEARA *v.* A.-G., [1913] 1 I. R. 276.—**IR.**

40 ii. —— *Public benefit.*]—A bequest for a govt. hospital being for public benefit is a valid charitable bequest, notwithstanding that the hospital is supported wholly or in part out of public funds.—ROBISON *v.* STUART (1891), 12 N. S. W. Eq. 47.—**AUS.**

h. Inebriate home — Charge for admission of patient.]—The mere fact that a charge is made for the admission of patients to an inebriate retreat, does not make it the less a public charity.—A.-G. *v.* M'CARTHY (1885), 12 V. L. R. 535.—**AUS.**

Sect. 3.—Educational purposes: Sub-sects. 1, 2, 3, 4 & 5.]

(1592), 1 Co. Rep. 16 b, 22 b; 76 E. R. 36, 50.

Annotations:—**Folld.** Martidale *v.* Martin (1592), Cro. Eliz. 288. **Refd.** Magdalen College Cambridge Case (1616), 11 Co. Rep. 66 b.; A.-G. *v.* Downing (1767), Wilm. 1; A.-G. *v.* Bowyer (1798), 3 Ves. 714; A.-G. *v.* Bowyer (1800), 5 Ves. 300. **Mentd.** Foster's Case (1615), 11 Co. Rep. 56 b; Coke's Case (1623), Benl. 117; Brookham's Case (1628), Litt. 128; R. *v.* Patrick (1667), 2 Keb. 164; Thomas *v* Sorrel (1673), 3 Keb. 223; Barker *v.* Keete (1678), Freem. K. B. 249; R. *v.* Beeby (1839), 8 L. J. M. C. 38; A.-G. *v.* Hallett (1847), 1 Exch. 211.

52. Erection—& house for schoolmaster—Devise of land—Valid.]—GIBBONS *v.* MALTYARD (1592), Poph. 6; 79 E. R. 1129; *sub nom.* GIBONS *v.* MARLTIWARD, Moore, K. B. 594; *subsequent proceedings, sub nom.* THETFORD SCHOOL CASE (1609), 8 Co. Rep. 130 b.

53. Building—Education of children—Relief of poor.]—WILKINSON *v.* MALIN (1832), 2 Cr. & J. 636; 2 Tyr. 544; 1 L. J. Ex. 234; 149 E. R. 268.

Annotations:—**Refd.** *Re* Campden Charities (1881), 18 Ch. D. 310; *Re* Whiteley, London *v.* Whiteley, [1910] 1 Ch 600. **Mentd.** Smith *v.* Keating (1848), 6 C. B. 136; Perry *v.* Shipway (1859), 1 Giff. 1.

54. Maintenance & endowment—Promotion of Christian knowledge—Devise of personalty & house—Devise of personalty valid.]—A.-G. *v.* STEPNEY (1804), 10 Ves. 22; 32 E. R. 751, L. C.

Annotations:—**Consd.** Thomson *v.* Shakespear (1860), 1 De G. F. & J. 399. **Refd.** Morice *v.* Durham (1805), 10 Ves. 522; Baker *v.* Sutton (1836), 1 Keen, 224; A.-G. *v.* Hodgson (1846), 15 Sim. 146; Hoare *v.* Hoare (1886), 56 L. T. 147.

55. —— Bequest of leasehold—Valid.]—(1) A bequest to trustees of a leasehold house, where testatrix had established a school for religious teaching & elementary education, the expenditure on which exceeded the fees, with a direction to the trustees to carry on the school:—*Held:* a good charitable gift.

(2) A bequest to trustees of a leasehold house, which had been used by testatrix & which was to be used by the trustees for the storage of books, written by certain persons, the house being in the occupation of a person who lived there rent free in consideration of his distributing the books to the publishers when required for sale, with a direction to the trustees to pay the rent of the house:—*Held:* not a good charitable gift.—*Re* HAWKINS, WALROND *v.* NEWTON (1906), 22 T. L. R. 521.

56. Maintenance of master—Valid.]—INGLEBY *v.* DOBSON (1828), 3 Russ. 342; 38 E. R. 834.

Schools for Roman Catholic children.]—*See* Sect. 4, sub-sect. 9, *post*.

Gifts involving acquisition of land.]—*See* Part II., Sect. 3, *post*.

57. Promotion of athletic sports—Building fives or racquet court—Valid.]—Testator by his will gave £1,000 free of duty to the Governing Body of A. School for the purpose of building fives courts or squash racquet courts or for some similar purpose that should be decided on by a majority of the house masters at the time of his death. He also gave £100 free of duty to the headmaster for the time being of A. School upon trust to use the interest to provide a prize for some event in the school athletic sports every year to be agreed upon by the committee of the athletic sports. A. School was founded in 1597 as a grammar school, & by a scheme approved by the Endowed Schools Comrs. in 1875, became a secondary school, partly supported out of the funds of the original foundation. By the scheme the Governors might receive donations or endowments for special objects directed by the donors provided that the Charity Comrs. certified such objects to be for the benefit of the trust, & not calculated to impede the working of the scheme. The Board of Education, who now stood in the place of the Charity Comrs., had given the necessary certificate in respect of the £1,000 legacy. It was proposed to build the fives courts on land belonging to the trust:—*Held:* (1) A. School was a charity within 43 Eliz., c. 4; (2) a bequest to a charity for its proper purposes was a valid charitable bequest; (3) the object of the charity was the education of the boys in its widest sense, & this must include their bodies as well as their minds, & to provide for this games must be organised, & both bequests were valid charitable bequests.—*Re* MARIETTE, MARIETTE *v.* ALDENHAM SCHOOL GOVERNING BODY, [1915] 2 Ch. 284; 84 L. J. Ch. 825; 113 L. T. 920; 31 T. L. R. 536; 59 Sol. Jo. 630.

SUB-SECT. 2.—COLLEGES AND UNIVERSITIES.

58. Scholarships — For kinsman — Valid.] — FLOOD'S CASE (1616), Hob. 136; 80 E. R. 285; *sub nom.* JESUS COLLEGE, OXFORD, CASE, Duke, 78.

Annotations:—**Folld.** R. *v.* Newman (1670), 1 Lev. 284. **Consd.** A.-G. *v.* Downing (1767), Wilm. 1.

59. —— Devise of copyholds—To Master & Fellows of college—Valid.]—PLATE *v.* ST. JOHN'S COLLEGE, CAMBRIDGE (1638), Duke, 77.

Annotations:—**Refd.** A.-G. *v.* Downing (1767), Wilm. 1; A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407.

60. —— Devise of lands—Valid.]—R. *v.* NEWMAN (1670), 1 Lev. 284; 83 E. R. 409.

Annotation:—**Refd.** A.-G. *v.* Downing (1767), Wilm. 1.

61. —— Gift of impure personalty—Valid.] — *Re* LEVITT (DECEASED) (1885), 1 T. L. R. 578.

—— For Roman Catholic divinity students.]—*See* No. 132, *post*.

62. Home for fellows—Intention to make house inalienable—Void.]—A.-G. *v.* WHORWOOD (1750), 1 Ves. Sen. 534; 27 E. R. 1188, L. C.

Annotations:—**Consd.** Cary *v.* Abbot (1802), 7 Ves. 490; Morice *v.* Durham (1805), 10 Ves. 522. **Expld.** A.-G. *v.* Haberdashers' Co. (1834), 1 My. & K. 420.

63. Endowment—& to build — Valid.]—A.-G. *v.* DOWNING (LADY) (1766), Amb. 550; 27 E. R. 353, L. C.; *subsequent proceedings* (1769), Amb. 571, L. C.

Annotations:—**Refd.** Henshaw *v.* Atkinson (1818), 3 Madd. 306; Giblett *v.* Hobson (1834), 3 My. & K. 517; Tyre *v.* Gloucester Corpn. (1851), 14 Beav. 173; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338.

64. —— To use & education of testator's kindred—Valid.]—A.-G. *v.* SIDNEY SUSSEX COLLEGE, CAMBRIDGE (1865), 31 Beav. 651; 55 E. R. 788; *on appeal* (1866), 15 L. T. 518, L. C.

Gifts involving acquisition of land.]—*See* Part II., Sect. 3, *post*.

PART I. SECT. 3, SUB-SECT. 1.

52 i. *Erection—House for schoolmaster.*]—Land was devised to trustees of a common school section, on which a teacher's residence might be erected:—*Held:* a charitable purpose.—SILLS *v.* WARNER (1896), 27 O. R. 266.—CAN.

PART I. SECT. 3, SUB-SECT. 2.

61 i. *Scholarship—Gift of impure personalty—Void.*]—FERGUSON *v.* GIBSON (1875), 22 Gr. 36.—CAN.

k. —— *Residuary gift.*]—A. left the residue of his estate "to the Bursary Fund of the University of A., to help in the education of poor & struggling youths of merit":—*Held:* the bequest was valid.—MILNE'S EXECUTORS *v.* ABERDEEN UNIVERSITY COURT (1905), 7 F. (Ct. of Sess.) 642.—SCOT.

64 i. *Endowment—To use & education of testator's kindred.*]—A bequest to a college of a specified sum, the interest on which was to go for ever towards the education of his relations in that college, with preference of the most eligible & best conducted:—*Held:* a valid charitable bequest.—*Re* LAVELLE, CONCANNON *v.* A.-G., [1914] 1 I. R. 194.—IR.

65. Baptist college—Pupils boarded & educated free—Principal taking boarders attending classes—Not charitable institution—House Tax Act, 1808 (c. 55).]—ASSESSED TAX CASE No. 2471 (1857), 22 J. P. 421.

66. Instruction in all branches of liberal education except theology—Charitable purpose—Income Tax Act, 1842 (c. 35).]—The University College of North Wales was incorporated in 1885 with the object of giving instruction in all branches of a liberal education except theology, & to promote higher education generally. The sources of income were, first, voluntary donations; secondly, devises & bequests; thirdly, a Govt. grant of £4,000 *per annum*; & fourthly, payment of pupils:—*Held:* the property of the college was "vested in trustees for charitable purposes" & exempted from income tax as well under Schedule A as under Schedules C & D.—R. *v.* INCOME TAX SPECIAL COMRS., *Ex p.* UNIVERSITY COLLEGE OF NORTH WALES (1909), 78 L. J. K. B. 576; 100 L. T. 585; 25 T. L. R. 368; 53 Sol. Jo. 320; 5 Tax Cas. 408.

Annotations:—**Refd.** Rotunda Hospital, Dublin, Governors *v.* Coman (1920), 7 Tax Cas. 517. **Mentd.** Northumberland *v.* I. R. Comrs., [1911] 2 K. B. 343.

See, now, Income Tax Act, 1918 (c. 40), s. 37, &, *generally*, INCOME TAX.

SUB-SECT. 3.—SOCIETIES AND MUSEUMS.

See Sect. 6, sub-sect. 4, *post*.

SUB-SECT. 4.—EDUCATION IN PARTICULAR SUBJECTS.

67. Economic & sanitary science—Valid.]—A testator by his will gave £200,000 to trustees, to be paid exclusively out of such part of his personal estate as might by law be bequeathed for charitable purposes, & he directed that his trustees should stand possessed of the said legacy upon trust to apply the same for the advancement & propagation of education in economic & sanitary science in Great Britain:—*Held:* a perfectly valid charitable bequest.—*Re* BERRIDGE, BERRIDGE *v.* TURNER (1890), 63 L. T. 470, C. A.

68. Religious & mental improvement—Furtherance of political principles—Valid.]—The vicar of a parish by his will dated in 1897 devised to the vicar for the time being a building used as a village club & reading-room "to be maintained for the furtherance of Conservative principles & religious & mental improvement & to be kept free from intoxicants & dancing":—*Held:* a good charitable gift.—*Re* SCOWCROFT, ORMROD *v.* WILKINSON, [1898] 2 Ch. 638; 67 L. J. Ch. 697; 79 L. T. 342; 15 T. L. R. 4; 43 Sol. Jo. 11.

69. Law—Inns of Chancery—Valid.]—The Society of Clifford's Inn was one of the Inns of Ch. which were established to provide for the legal education of students of the law. In 1618 by an indenture of feoffment the messuages & premises occupied by the society were assured to certain members thereof as trustees, in consideration of the payment of a sum of money, & the reservation of certain rents. The indenture declared that the intention of the grantors was that the messuage commonly called Clifford's Inn, which was stated to have been for many years used & employed as an Inn of Ch. for the study & practice of the common laws of the realm, & to have been governed to the good of the Commonwealth & the honour of the grantors & their ancestors, "shall & may hereafter continue to be employed as an Inn of Ch. for the furtherance of the practisers & students of the Common Law of the Realm as aforesaid," & that the society should from thenceforth be assured of a certain state therein, & the operative part of the deed declared that the true intent & meaning thereof & of the parties thereto, was that "Clifford's Inn shall for ever hereafter be continued & employed as an Inn of Ch. for the good of the gentlemen of the society & for the benefit of the Commonwealth as aforesaid & not otherwise." The property had long been dealt with by the society as its own, & for its own purposes, & the surviving members contended that it was not now subject to or affected by any charitable trust, but belonged to the individual members for their own personal benefit, to be divided & disposed of as they might think fit:—*Held:* the property vested in the present trustees was held by them upon trust for charitable purposes.—SMITH *v.* KERR, [1902] 1 Ch. 774; 71 L. J. Ch. 369; 86 L. T. 477; 18 T. L. R. 456, C. A.; *subsequent proceedings* (1905), 74 L. J. Ch. 763.

70. Nature study—Annual field day for children—Valid.]—Testratrix bequeathed the income of a fund in trust to provide an annual treat or field day for the schoolchildren of T., or as many of such children as the same would provide for, the selection to rest with the vicar of St. A.'s Church, T., & the trustees of the fund. The income was not sufficient to provide a treat or field day for all the schoolchildren of T., who numbered about 600:—*Held:* the bequest was a good charitable gift on two grounds: (1) as tending to the advancement of education by giving the children an opportunity of observing objects of the countryside & of nature about which they had been taught at school, & also by affording an incentive to regular attendance & industry in order to be selected as participants, & (2) as being for purposes beneficial to a particular section of the community, namely, the schoolchildren resident or being educated at T.—*Re* MELLODY, BRANDWOOD *v.* HADEN, [1918] 1 Ch. 228; 87 L. J. Ch. 185; 118 L. T. 155; 82 J. P. 128; 62 Sol. Jo. 121; *sub nom Re* MELODY, BRANDWOOD *v.* HADEN, 34 T. L. R. 122.

In Roman Catholic faith.]—*See* Sect. 4, sub-sect. 9, *post*.

Gifts involving acquisition of land.]—*See* Part II., Sect. 3, *post*.

SUB-SECT. 5.—OTHER CASES.

71. Bequest to literary men—To spread doctrines in which testator interested—Valid if consistent with religion & morality.]—THOMPSON *v.* THOMPSON (1844), 1 Coll. 381; 8 Jur. 839; 63 E. R. 464.

Annotations:—**Consd.** Bowman *v.* Secular Soc., [1917] A. C. 406. **Refd.** Marsh *v.* Means (1857), 3 Jur. N. S. 799; Thomson *v.* Shakespeare (1859), John. 612; Sinnett *v.* Herbert (1872), 7 Ch. App. 232. **Mentd.** Myers *v.* Perigal (1849), 16 Sim 533; *Re* Sanderson's Trust (1857), 3 K. & J. 497.

72. Prize for essay on particular subjects—With reference to testator's writings—Valid.]—THOMPSON *v.* THOMPSON (1844), 1 Coll. 381; 8 Jur. 839; 63 E. R. 464.

Annotations:—**Refd.** Bowman *v.* Secular Soc., [1917] A. C. 406. **Mentd.** Myers *v.* Perigal (1849), 16 Sim. 533; Marsh *v.* Means (1857), 30 L. T. O. S. 89; *Re* Sanderson's Trusts (1857), 3, K. & J. 497; Thomson *v.* Shakespeare (1859), John. 612; Sinnett *v.* Herbert (1872), 7 Ch. App. 232.

1. *Promotion of knowledge of Erse—Void.*]—A.-G. *v.* FLOOD (1816), Hayes & Jo. App. XXI.—IR.

Sect. 3.—*Educational purposes: Sub-sect.* 5. *Sect.* 4: *Sub-sects.* 1, 2, 3, 4 & 5.]

73. Advancement of education—All over world—Valid.]—WHICKER *v.* HUME (1858), 7 H. L. Cas. 124; 28 L. J. Ch. 396; 31 L. T. O. S. 319; 22 J. P. 591; 4 Jur. N. S. 933; 6 W. R. 813; 11 E. R. 50, H. L.

Annotations:—**Consd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451. **Refd.** *Re* Berridge, Berridge *v.* Turner (1890), 62 L. T. 365. **Mentd.** Crookenden *v.* Fuller (1859), Sea. & Sm. 3; Lord *v.* Colvin (1859), 4 Drew. 366; Tardrew *v.* Howell, Parry *v.* Howell (1861), 9 W. R. 296; Moorhouse *v.* Lord (1863), 10 H. L. Cas. 273; Drevon *v.* Drevon (1864), 34 L. J. Ch. 129; Jopp *v.* Wood (1865), 4 De G. J. & Sm. 616; Thurburn *v.* Steward (1871), L. R. 3 P. C. 478; Bradford *v.* Young (1884), 26 Ch. D. 656; *Re* Patience, Patience *v.* Main (1885), 29 Ch. D. 976; Concha *v.* Concha (1886), 11 App. Cas. 541; Jex *v.* McKinney (1889), 14 App. Cas. 77; Canterbury Corpn. *v.* Wyburn & Melbourne Hospital, [1895] A. C. 89; Winans *v.* A.-G., [1904] A. C. 287.

See, also, No. 262, *post*.

Storage of books written by particular persons.]—*See* No. 55, *ante*.

Gifts involving acquisition of land.]—*See* Part II., Sect. 3, *post*.

SECT. 4.—RELIGIOUS PURPOSES.

SUB-SECT. 1.—IN GENERAL.

74. Religious purpose paramount—Capable of being effected by non-charitable application of funds.]—A bequest for religious purpose is a valid charitable bequest, although the paramount religious object might, possibly, be effected by an application of part of the fund to a purpose which, separately taken, would not be strictly charitable. —TOWNSEND *v.* CARUS (1844), 3 Hare, 257; 13 L. J. Ch. 169; 8 Jur. 104; 67 E. R. 378.

Annotations:—**Consd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531. **Refd.** Whicker *v.* Hume (1858), 7 H. L. Cas. 125; *Re* White, White *v.* White, [1893] 2 Ch. 41.

See, also, No. 89, *post*.

75. Must benefit public.] — *Semble:* religious purposes are charitable only when religious services tend directly or indirectly towards the instruction or edification of the public.—COCKS *v.* MANNERS (1871), L. R. 12 Eq. 574; 40 L. J. Ch. 640; 24 L. T. 869; 36 J. P. 244; 19 W. R. 1055.

Annotations:—**Consd.** *Re* White, White *v.* White, [1893] 2 Ch. 41; *Re* Delany, Conoley *v.* Quick, [1902] 2 Ch. 642; *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567. **Refd.** Purday *v.* Johnson (1888), 5 T. L. R. 117; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110; Dunne *v.* Byrne, [1912] A. C. 407; *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937. **Mentd.** *Re* Dutton (1878), 4 Ex. D. 54; *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604; *Re* Clifford's Estates, Mallam *v.* McFie (1911), 56 Sol. Jo. 91; Bourne *v.* Keane, [1919] A. C. 815.

SUB-SECT. 2.—ENDOWMENT AND MAINTENANCE OF CHURCHES, CHURCHYARDS AND BURIAL GROUNDS.

76. Endowment—Money given for good of particular church—Valid.]—*Re* WINGFIELD (1606), Toth. 30; 21 E. R. 114.

See, also, Nos. 216, 262, *post*.

77. Repair of church—Ornamentation—Valid.]—HART *v.* BREWER (1595), Cro. Eliz. 449; 78 E. R. 688.

78. —— —— ——.]—HOARE *v.* OSBORNE (1866), L. R. 1 Eq. 585; 35 L. J. Ch. 345; 14 L. T. 9; 30 J. P. 309; 12 Jur. N. S. 243; 14 W. R. 383.

Annotations:—**Folld.** *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147. **Apld.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Distd.** *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252. **Refd.** Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96; Champney *v.* Davy (1879), 11 Ch. D. 949.

79. —— **Valid.**]—A.-G. *v.* DARTMOUTH CORPN. (1883), 48 L. T. 933.

See, also, No. 900, *post*.

—— **Whether rebuilding permissible.**]—*See* Part III., Sect. 4, sub-sect. 5, *post*.

80. Upkeep of churchyard — Valid.] — *Re* VAUGHAN, VAUGHAN *v.* THOMAS (1886), 33 Ch. D. 187; 55 L. T. 547; 51 J. P. 70; 35 W. R. 104; 2 T. L. R. 725.

Annotations:—**Folld.** *Re* Manser, A.-G. *v.* Lucas, [1905] 1 Ch. 68. **Apld.** *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184. **Refd.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715.

Upkeep of particular vault or tomb.]—*See* Sect. 6, sub-sect. 1, *post*.

81. Upkeep of burial ground—Advancement of religion—Valid.]—(1) A gift of money for the purpose of providing or of keeping in good order a burial ground, although that burial ground may not be a parish churchyard, & although it may be connected with the meeting-house of or for the benefit of members of a particular religious community, may be supported as a good charitable gift as being one for the advancement of religion.

(2) A bequest of money for the purpose of keeping in good order certain burial-grounds provided for the Society of Friends, & in particular the grave of testator's late wife, which was in one of the grounds, is a good charitable gift. The direction as to the grave of the testator's wife only imposes a special obligation ancillary to the repair of the graveyards, & does not create a separate trust.—*Re* MANSER, A.-G. *v.* LUCAS, [1905] 1 Ch. 68; 74 L. J. Ch. 95; 92 L. T. 79; 53 W. R. 261.

Annotation:—**Apld.** *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184.

Gifts to private associations.]—*See* Sect. 6, sub-sect. 2, *post*.

Erection of building—Involving acquisition of land.]—*See* Part II., Sect. 3, *post*.

82. Erection & maintenance of headstones in churchyard—Graves of pensioners in almshouses—Valid.]—Testatrix bequeathed (1) £200 to the vicar & churchwardens of A., the income to be distributed annually at Christmas as to the sum of £1 to the ringers of the church who should ring a peal of bells on the anniversary of the restoration of the monarchy in commemoration of that event; (2) £700 to the vicar & churchwardens of B., the income to be applied in (among other things) the erection & maintenance of headstones to the graves of pensioners in the almshouses at B. who should be buried in the churchyard of B. Church; (3) the residue to trustees in trust to pay & distribute the same amongst such public charities & institutions or for such charitable purposes for the public advantage as the trustees should think fit: —*Held:* all the gifts were effectual charitable bequests.—*Re* PARDOE, MCLAUGHLIN *v.* A.-G., [1906] 2 Ch. 184; 75 L. J. Ch. 455; 94 L. T. 567; 54 W. R. 561; 22 T. L. R. 452.

Annotation:—**Mentd.** *Re* Charlesworth, Robinson *v.* Cleveland (1910), 101 L. T. 908.

PART I. SECT. 4, SUB-SECT. 2.

m. *Improvement of chapel—Bequest of annuity—Void.*]—CARBERY *v.* COX (1852), 3 I. Ch. R. 231; 4 Ir. Jur. 274.—IR.

n. *Decoration or improvement of Roman Catholic Church.*]—A bequest for the decoration or improvement of a Roman Catholic Church:—*Held:* a valid charitable bequest.—*Re* GREENE (DECEASED), FENNELLY *v.* CHEATOR, [1914] 1 I. R. 305; 49 I. L. T. 9.—IR.

o. *Window.*]—A. directed money to be given to a cathedral chapter for a window. There was no general charitable intention disclosed by the will:—*Held:* the trust was a valid charitable gift.—MUIR *v.* ARCHDALL (1919), 19 S. R. N. S. W. 10.—AUS.

31 i. *Upkeep of burial plots—Void.*]—A gift for keeping burial plots in a neat, tidy, & orderly condition is not for a charity.—*Re* HARDING (1904), 4 O. W. R. 316.—CAN.

Maintenance of private chapels, tombs, & monuments.]—*See* Sect. 6, sub-sect. 1, *post.*

SUB-SECT. 3.—PROVISION AND MAINTENANCE OF BELLS, ORGANS, CHOIRS, ETC.

83. Organ — Organist — Valid.]—A.-G. *v.* OAKAVER (1736), cited in 1 Ves. Sen. 536; 27 E. R. 1189, L. C.

Annotation :—**Refd.** A.-G. *v.* Whorwood (1750), 1 Ves. Sen. 534.

84. Choir — Chimes — Charitable purpose.]—TURNER *v.* OGDEN (1787), 1 Cox, Eq. Cas. 316; 29 E. R. 1183; *subsequent proceedings* (1794), cited in 3 Ves. 333.

Annotations :—**Consd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531. **Mentd.** Pickering *v.* Stamford (1797), 3 Ves. 332; Dawson *v.* Clark (1809), 15 Ves. 409.

85. Bell-ringing — In commemoration of the Restoration—Valid.]—*Re* PARDOE, MCLAUGHLIN *v.* A.-G., No. 82, *ante.*

86. —— In memory of testator — Void.]—Testator devised land to the vicar & churchwardens of a parish upon trust, after making certain payments, that the residue of the income should be given yearly to the ringers of the parish church in consideration of their ringing the bells half muffled upon the anniversary of his death in every year for ever :—*Held :* this was an endeavour on the part of the testator to commemorate his own memory, & there was no charity in the gift at all.—*Re* ARBER, TAYLOR *v.* SHELTON (1919), *Times*, Dec. 13th.

Gifts to perpetuate memory of testator & his family.]—*See* Sect. 6, sub-sect. 1, *post.*

SUB-SECT. 4.—SOCIETIES AND INSTITUTIONS.

87. "Societies, subscriptions or purposes having regard to the glory of God"—Valid.]—TOWNSEND *v.* CARUS (1844), 3 Hare, 257; 13 L. J. Ch. 169; 8 Jur. 104; 67 E. R. 378.

Annotations :—**Consd.** *Re* White, White *v.* White, [1893] 2 Ch. 41. **Refd.** Whicker *v.* Hume (1858), 7 H. L. Cas. 124; Stewart *v.* Greene (1871), 19 W. R. 396; Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

88. Missions among heathens — Valid.]—INCOME TAX SPECIAL PURPOSES COMRS. *v.* PEMSEL, No. 1, *ante.*

89. Religious societies — Valid.]—(1) A bequest to a religious institution or for a religious purpose is *primâ facie* a bequest for a "charitable" purpose, & the law applicable to "charitable" bequests, as distinguished from ordinary bequests, should be applied.

A gift "to the following religious charities" (the names being left blank) :—*Held :* to show a general charitable intention, which the ct. would execute.

(2) Scheme directed as to such part of the estate as was at the testator's death pure personalty.—*Re* WHITE, WHITE *v.* WHITE, [1893] 2 Ch. 41; 62 L. J. Ch. 342; 68 L. T. 187; 41 W. R. 683; 37 Sol. Jo. 249; 2 R. 380, C. A.

Annotations :—*As to* (1) **Consd.** *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451. **Foll.** *Re* Forester, Jervis *v.* Forester (1897), 13 T. L. R. 555. **Consd.** Dunne *v.* Byrne, [1912] A. C. 407. **Refd.** Grimond, MacIntyre *v.* Grimond (1904), [1905] A. C. 603, Appendix; *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567.

See, also, No. 160, *post.*

90. College for promoting religion — Erection of —Valid.]—(1) It is contrary to the established practice of the ct. to permit deft. to an action for the administration of the trusts of a settlement not void on the face of it to impeach the settlement in his defence to that action.

Where the Crown, as party deft. to a suit for the administration of a charitable trust, obtained from the ct. below an order that the trust was void & that the land & money in suit had become its property :—*Held :* the suit was not one in which the order could properly be made.

Certain Maori chiefs had, in 1848, ceded 500 acres of land, part of the native reserves with the consent of the Crown, which waived its right of pre-emption thereof, to the Bishop of New Zealand in trust for a college to be erected thereon for the general purpose of promoting religion, & no college had been erected, the land having in course of time become an unsuitable site, while the accumulations of its rent had amounted to a considerable sum :—*Held :* (2) there had been an express gift of land & money for charitable purposes; (3) such a gift is not invalidated by the fact that the particular application directed cannot immediately take effect, or will not of necessity take effect within any definite limit of time, & may never take effect at all; (4) the doctrine of *cy-près* was applicable.—WALLIS *v.* NEW ZEALAND SOLICITOR-GENERAL, [1903] A. C. 173; 72 L. J. P. C. 37; 88 L. T. 65; 19 T. L. R. 230, P. C.

91. Salvation Army — "Corps purposes" — Valid.]—Testatrix by her will directed her trustee to stand possessed of the residue of her estate in trust for the "General" of the Salvation Army for the time being, to be used for corps purposes in L. :—*Held :* the gift of residue was a good charitable bequest as the evidence showed that "corps purposes" meant the purposes of the religious branch of the Army.—*Re* FOWLER, FOWLER *v.* BOOTH (1914), 31 T. L. R. 102, C. A.

Public institutions.]—*See* Sect. 5, sub-sect. 3, *post.*

Private institutions.]—*See* Sect. 6, sub-sect. 2, *post.*

SUB-SECT. 5.—SERMONS AND PUBLICATIONS.

92. Yearly sermon—With annuities to clerk & sexton—Charitable use.]—DUROUR *v.* MOTTEUX (1749), 1 Ves. Sen. 320; 1 Sim. & St. 292, n.; 27 E. R. 1057, L. C.

Annotations :—**Consd.** Fletcher *v.* Ashburner (1779), 1 Bro. C. C. 497. **Dbtd.** Turner *v.* Ogden (1787), 1 Cox, Eq. Cas. 316. **Distd.** Hutcheson *v.* Hammond (1790), 3 Bro. C. C. 128. **Foll.** Kennell *v.* Abbott (1799), 4 Ves. 802. **Distd.** Williams *v.* Coade (1805), 10 Ves. 500. **Consd.** Maugham *v.* Mason (1813), 1 Ves. & B. 410; Jones *v.* Mitchell (1823), 1 Sim. & St. 290. **Foll.** Green *v.* Jackson (1828), 5 Russ. 35. **Dbtd.** Amphlett *v.* Parke (1831), 2 Russ. & M. 221. **Consd.** Phillips *v.* Phillips (1832), 1 My. & K. 649; Ackers *v.* Phipps (1835), 3 Cl. & Fin. 665; Green *v.* Jackson (1835), 2 Russ. & M. 238. **N. F.** *Re* London Bridge Acts, *Ex p.* Pring (1841), 4 Y. & C. Ex. 507. **Foll.** Salt *v.* Chattaway (1841), 3 Beav. 576. **Distd.** Taylor *v.* Taylor (1853), 1 Eq. Rep. 239. **Consd.** Spencer *v.* Wilson (1873), L. R. 16 Eq. 501. **Refd.** Cogan *v.* Stephens (1835), 5 L. J. Ch. 17. **Mentd.** Digby *v.* Legard (1774), Dick. 500.

93. —— Charitable use.]—TURNER *v.* OGDEN (1787), 1 Cox, Eq. Cas. 316; 29 E. R. 1183;

PART I. SECT. 4, SUB-SECT. 3.

83 i. *Organ — Organist — Valid.*]—CARBERY *v.* COX (1852), 3 I. Ch. R. 231; 4 Ir. Jur. 274.—IR.

PART I. SECT. 4, SUB-SECT. 4.

89 i. *Religious societies—Bible, tract, missionary societies & institutions.*]—ANDERSON *v.* KILBORN (1875), 22 Gr. 385.—CAN.

p. *Foreign missions — & in Ireland.*]—A. directed that trust funds should be "expended by his exors. in such charities in L., & in such foreign missions, as his exors., in their absolute discretion should think fit" :—*Held :* the direction constituted a valid charitable bequest.—DUNNE *v.* DUIGNAN, [1908] 1 I. R. 228.—IR.

q. ——.]—A bequest for the benefit of foreign missions :—*Held :* a bequest for charitable purposes.—ALLAN'S EXECUTORS *v.* ALLAN, [1908] S. C. 807.—SCOT.

Sect. 4.—Religious purposes: Sub-sects. 5, 6, 7 & 8.] subsequent proceedings (1794), cited in 3 Ves. 333.

Annotations :—**Consd.** Pickering *v.* Stamford (1797), 3 Ves. 332. **Expld. & Distd.** Dawson *v.* Clark (1809), 15 Ves. 409. **Expld.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

94. Publications—No distinction between sects—Unless irreligious or immoral.]—THORNTON *v.* HOWE (1862), 31 Beav. 14; 31 L. J. Ch. 767; 6 L. T. 525; 26 J. P. 774; 8 Jur. N. S. 663; 10 W. R. 642; 54 E. R. 1042.

Annotations :—**Distd.** *Re* Rickard, Rickard *v.* Robson (1862), 31 Beav. 244. **Consd.** *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501; Caldwell *v.* Caldwell (1921), 37 T. L. R. 953. **Reid.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1; *Re* Best, Jarvis *v.* Birmingham Corpn., [1904] 2 Ch. 354; Bowman *v.* Secular Soc., [1917] A. C. 406.

——— Contrary to public policy.]—*See* Sect. 7, *post*.

95. ——— Promotion of religion—Valid.]—A.-G. *v.* STEPNEY (1804), 10 Ves. 22; 32 E. R. 751, L. C.

Annotations :—**Consd.** Morice *v.* Durham (1805), 10 Ves. 522; Baker *v.* Sutton (1836), 1 Keen, 224; Thomson *v.* Shakespear (1860), 1 De G. F. & J. 399; Hoare *v.* Hoare (1886), 56 L. T. 147. **Reid.** A.-G. *v.* Hodgson (1846), 15 Sim. 146.

96. ——— Joanna Southcote's writings—Valid.]—THORNTON *v.* HOWE (1862), 31 Beav. 14; 31 L. J. Ch. 767; 6 L. T. 525; 26 J. P. 774; 8 Jur. N. S. 663; 10 W. R. 642; 54 E. R. 1042.

Annotations :—**Distd.** Rickard *v.* Robson (1862), 7 L. T. 87. **Consd.** *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501; Caldwell *v.* Caldwell (1921), 37 T. L. R. 953. **Reid.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1; *Re* Best, Jarvis *v.* Birmingham Corpn., [1904] 2 Ch. 354; Bowman *v.* Secular Soc., [1917] A. C. 406.

97. ——— "Ethics of the Future"—Exempt from legacy duty.]—TYRRELL *v.* WHINFIELD, [1877] W. N. 99.

98. ——— Missions—Valid.]—Testatrix, by her will, gave the residue of her estate upon trust to convert & hold the same "in trust for B. & S., or the survivor of them or other the editors of the missionary periodical called Echoes of Service, to be applied by them or him for the furtherance of missions in Central Africa in such manner as the editors in their uncontrolled discretion may think fit for the use of the Brethren labouring there." Echoes of Service was a Christian missionary periodical containing records of the work of "the Brethren" in foreign countries:—*Held:* the gift was a good charitable bequest.—*Re* REDISH, ARMFIELD-MARROW *v.* BENNET (1909), 26 T. L. R. 42.

SUB-SECT. 6.—SUPPORT OF CLERGY, MINISTERS AND ROMAN CATHOLIC PRIESTS.

99. Priest—Valid.]—LYON *v.* HEWE (*circa* 1465–83), 2 Cal. Proc. Ch. xliv.

See, also, No. 107, *post*.

100. Preaching minister—Valid.]—PEMBER *v.* KINGTON (INHABITANT) (1639), Toth. 84; Duke, 82; 21 E. R. 115.

101. Nonconformist ministers—Valid.]—A.-G. *v.* HUGHES (1689), 2 Vern. 105; 23 E. R. 677; *revsg.* S. C. *sub nom.* A.-G. *v.* BAXTER (1684), 1 Vern. 248.

Annotations :—**Expld.** De Costa *v.* De Paz (1743), 2 Swan. 487, n. **Consd.** Moggridge *v.* Thackwell (1792), 1 Ves. 464; Corbyn *v.* French (1799), 4 Ves. 418; Moggridge *v.* Thackwell (1803), 7 Ves. 36; Sinnett *v.* Herbert (1872), 7 Ch. App. 232. **Refd.** A.-G. *v.* Whorwood (1750), 1 Ves. Sen. 534; Cary *v.* Abbot (1802), 7 Ves. 490; Thomas *v.* Howell (1874), L. R. 18 Eq. 198; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Lake *v.* Cook (1753), 3 Keny. 54.

102. ——— ———.]—A.-G. *v.* HICKMAN (1732), Kel. W. 34; 2 Eq. Cas. Abr. 193, pl. 14; 25 E. R. 482, L. C.

Annotations :—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Refd.** A.-G. *v.* Downing (1767), Wilm. 1; White *v.* White (1778), 1 Bro. C. C. 12; West *v.* Shuttleworth (1835), 2 My. & K. 684.

103. Preacher of chapel—Charitable use—Within Mortmain Acts.]—GRIEVES *v.* CASE (1792), 4 Bro. C. C. 67; 2 Cox, Eq. Cas. 301; 1 Ves. 548; 29 E. R. 782, L. C.

Annotations :—**Distd.** Cogan *v.* Stephens (1835), 5 L. J. Ch. 17. **Refd.** Kirkbank *v.* Hudson (1819), Dan. 259; Howard *v.* Fingall (1853), 22 L. T. O. S. 12. **Mentd.** Morice *v.* Durham (1805), 10 Ves. 522.

104. Roman Catholic priest—Invalid.]—GATES *v.* JONES (1690), cited in 7 Ves. 496; 2 Vern. 266; 23 E. R. 773; *sub nom.* JONES' CASE (1690), [1893] 2 Ch. 49, n., H. L.

Annotations :—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** A.-G. *v.* Guise (1692), 2 Vern. 266; Cary *v.* Abbot (1802), 7 Ves. 490; Mills *v.* Farmer (1815), 1 Mer. 55. **Mentd.** Anon. (1702), Freem. Ch. 261.

105. ——— ———.]—A.-G. *v.* TODD (1837), 1 Keen, 803; 6 L. J. Ch. 205; 48 E. R. 516.

Annotations :—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** *Re* Blundell's Trusts (1861), 30 Beav. 360.

See, further, Sect. 7, *post*.

——— ——— Application of cy-près doctrine.]—*See* Part IV., Sect. 2, *post*.

Jewish reader.]—*See* Sub-sect. 10, *post*.

Whether gift personal or for benefit of office.]—*See* Part III., Sect. 4, sub-sect. 6, A., *post*.

SUB-SECT. 7.—MASSES, PRAYERS, OBITS AND CHANTRIES.

106. Masses & prayers—Valid.]—A bequest of personal estate for masses for the dead is not void as a gift to superstitious uses.

An Irish Roman Catholic testator, domiciled in England, bequeathed £200 to Westminster Cathedral for masses, & £200 & his residuary personal estate to "the Jesuit Fathers, Farm Street," for masses. The next of kin contended that the bequests to the Jesuit Fathers were void under Roman Catholic Relief Act, 1829 (c. 7), as gifts to a monastic order:—*Held:* (1) the bequests were not void as superstitious; (2) the contention of the next of kin as to the bequests

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PART I. SECT. 4, SUB-SECT. 6.

r. *Minister—Addition to salary.]*—A bequest of money to churchwardens of a church to be invested by them, & the interest arising therefrom to be paid to the incumbent of the church as a portion of his salary or stipend:—*Held:* the bequest would have been void if the investment had been directed to be made upon realty; but as the trust might be carried out by investing in personalty the bequest was valid if so invested.—STEWART *v.* GESNER (1881), 29 Gr. 329.—**CAN.**

s. *Pope—Use of the sacred office.]*—A bequest to "His Holiness . . . the Pope . . . to use and apply at his sole & absolute discretion in the carrying out of the sacred office:—*Held:* void, as being applicable to purposes not strictly charitable.—*Re* MOORE, MOORE *v.* His HOLINESS POPE BENEDICT XV., [1919] 1 I. R. 443; 53 I. L. T. 217.—**IR.**

PART I. SECT. 4, SUB-SECT. 7.

106 i. *Masses & prayers—Valid.]*—A legacy for masses for a testator's soul is not void as being to a superstitious use.—*In the Will of* PURSELL (1895), 21 V. L. R. 249.—**AUS.**

106 ii. *S. P. Re* HARNETT, CONDON *v.* HARNETT (1907), 7 S. R. N. S. W. 463.—**AUS.**

106 iii. *S. P.* NELAN *v.* DOWNES (1917), 23 C. L. R. 546.—**AUS.**

106 iv. *S. P.* CHARITABLE DONATIONS & BEQUESTS COMRS. *v.* WALSH (1823), 7 I. Eq. R. 34, n.—**IR.**

106 v. *S. P.* READ *v.* HODGENS (1844), 7 I. Eq. R. 17.—**IR.**

106 vi. *S. P.* BRENNAN *v.* BRENNAN (1868), I. R. 2 Eq. 321.—**IR.**

106 vii. *S. P.* PHELAN *v.* SLATTERY (1887), 19 L. R. Ir. 177.—**IR.**

106 viii. *S. P.* REICHENBACH *v.* QUIN (1888), 21 L. R. Ir. 138.—**IR.**

106 ix. *S. P.* CLUNE *v.* CRONER (1896), 30 I. L. T. Jo. 536.—**IR.**

106 x. *S. P.* CARRIGAN *v.* REDWOOD (1910), 30 N. Z. L. R. 244.—**N.Z.**

to the Jesuit Fathers failed (*per* LORD BIRKENHEAD, C., & LORD ATKINSON) for insufficiency of evidence as to the constitution of the community, & (*per* LORD BIRKENHEAD, C.) on the further ground that the point was not raised by the next of kin in their case & (*per* LORD BUCKMASTER & LORD PARMOOR) because these bequests were given, not to a monastic order, but to individual members of a particular order resident at a named place, & were impressed with no trust for the benefit of the order.—BOURNE *v.* KEANE, [1919] A. C. 815; 89 L. J. Ch. 17; 121 L. T. 426; 35 T. L. R. 560; 63 Sol. Jo. 606, H. L.; *revsg.* S. C. *sub nom. Re* EGAN, KEANE *v.* HOARE, [1918] 2 Ch. 350, C. A.

107. —— Gift to "find a priest"—Prayer for testator's soul & all Christian souls, so long as law permits—Gift to "poor"—Valid.]—ANON. (1561), Benl. 30, pl. 122; 73 E. R. 952.

108. —— —— Issuing out of land—Void.]—LANCELOT *v.* ALLEN (1632), Cro. Car. 248; W. Jo. 251; 79 E. R. 818.

109. —— —— —— ——.]—HUMPHREYS *v.* KNIGHT (1636), Cro. Car. 455; 79 E. R. 994; *sub nom.* KNIGHT *v.* HUMPHREYS, W. Jo. 387.

110. —— —— Valid.]—PAYNE'S CASE (*temp.* Eliz.), Duke, B. 154, L. C.

111. —— Gift to "pay a priest"—Valid.]—PELE *v.* CLOTHWORKERS OF LONDON (1602), cited in 4 Co. Rep. 113, b.; 76 E. R. 1103; *sub nom.* PILE *v.* CLOTHWORKERS OF LONDON, Duke, 95.

Annotation :—**Consd.** Heath *v.* Chapman (1854), 18 J. P. 693.

112. —— Gift to almshouse—Void.]—PITS *v.* JAMES (1616), Hob. 121; 80 E. R. 271; *sub nom.* PITTS *v.* JAMES, 1 Roll. Rep. 418.

Annotations :—**Consd.** A.-G. *v.* Fishmongers' Co. (1839), 2 Beav. 151. **Refd.** Waldern *v.* Ward (1657), 2 Sid. 46; *R. v.* Patrick (1667), 2 Keb. 164; A.-G. *v.* Downing (1767), Wilm. 1; Nevill *v.* Studdy (1906), 94 L. T. 391; Bourne *v.* Keane, [1919] A. C. 815.

113. —— Gift of almshouses—Void.]—PETER'S (SIMON) CASE (1678), Duke, B. 126.

Annotation :—**Consd.** Bourne *v.* Keane (1919), 89 L. J. Ch. 17.

114. —— Void.]—WEST *v.* SHUTTLEWORTH (1835), 2 My. & K. 684; 4 L. J. Ch. 115; 39 E. R. 1106.

Annotations :—**Consd.** Heath *v.* Chapman (1854), 2 Drew. 417; *Re* Michel's Trust (1860), 28 Beav. 39. **Folld.** *Re* Blundell's Trusts (1861), 30 Beav. 360; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594. **Expld.** Bowman *v.* Secular Soc., [1917] A. C. 406. **Dbtd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381.

115. —— ——.]—A.-G. *v.* FISHMONGERS' CO., KNESEWORTH'S WILL (1841), 5 My. & Cr. 11; 5 Jur. 285; 41 E. R. 276, L. C.

Annotations :—**Consd.** A.-G. *v.* Hospital of St. John, Bedford (1861), 10 L. T. 805; Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Jack *v.* Burnett (1846), 12 Cl. & Fin. 812; A.-G. *v.* Merchant Venturers' Co. of Bristol (1848), 17 L. J. Ch. 137.

116. —— ——.]—HEATH *v.* CHAPMAN (1854), 2 Drew. 417; 2 Eq. Rep. 1261; 23 L. J. Ch. 947; 24 L. T. O. S. 31; 18 J. P. 603; 2 W. R. 649; 61 E. R. 781.

Annotations :—**Consd.** *Re* Michel's Trust (1860), 28 Beav. 39. **Folld.** *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594. **Dbtd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1.

117. —— ——.]—REYNOLDS *v.* KORTRIGHT (1854), 18 Beav. 417; 2 Eq. Rep. 784; 24 L. T. O. S. 40; 2 W. R. 445; 52 E. R. 164.

118. —— ——.]—*Re* BLUNDELL'S TRUSTS (1861), 30 Beav. 360; 31 L. J. Ch. 52; 5 L. T. 337; 25 J. P. 820; 8 Jur. N. S. 5; 10 W. R. 34; 54 E. R. 928.

Annotations :—**Folld.** *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594. **Dbtd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1.

119. —— ——.]—*Re* FLEETWOOD, SIDGREAVES *v.* BREWER (1880), 15 Ch. D. 594; 49 L. J. Ch. 514; 29 W. R. 45.

Annotations :—**Folld.** *Re* Huxtable, Huxtable *v.* Crawfurd, [1902] 1 Ch. 214. **Disd.** *Re* Hetley, Hetley *v.* Hetley, [1902] 2 Ch. 866; Le Page *v.* Gardom (1915), 84 L. J. Ch. 749. **Dbtd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** *Re* Gardner, Huey *v.* Cunnington, [1920] 2 Ch. 523.

120. —— —— Gift to society in colony—Testator domiciled in England.]—A legacy to a superstitious use, given by a testator domiciled in England, is void, even although the legatee is resident abroad where such a legacy is good.

A testator, who was a domiciled Englishman, bequeathed to priests of the Society of Jesus at R., Victoria, one thousand pounds to be spent in masses for the repose of the soul of his late wife & his own :—*Held :* the legacy, being void by the law of testator's domicil as a gift to a superstitious use, was not rendered valid by the fact that the legatees were domiciled in the colony of Victoria, although by the law of that colony the legacy would be valid.—*Re* ELLIOTT, ELLIOTT *v.* JOHNSON (1891), 39 W. R. 297.

Annotation :—**Dbtd.** Bourne *v.* Keane, [1919] A. C. 815.

121. Obit—Void.]—HART *v.* BREWER (1595), Cro. Eliz. 449; 78 E. R. 688.

122. —— & prayers—To priests generally—Valid—To particular priest—Void.]—ANON. (1603), Cary, 39; 21 E. R. 15, L. C.

123. —— —— & Chantry priest—Gift before 1 Edw. 6, c. 14—Void.]—WALDERN *v.* WARD (1657), 2 Sid. 46; 82 E. R. 1248.

124. —— —— Gift before 1 Edw. 6, c. 14—Void.]—A.-G. *v.* FISHMONGERS' CO., KNESEWORTH'S WILL (1841), 5 My. & Cr. 11; 5 Jur. 285; 41 E. R. 276, L. C.

Annotations :—**Consd.** Jack *v.* Burnett (1846), 12 Cl. & Fin. 812. **Refd.** A.-G. *v.* Merchant Venturers' Co., Bristol (1848), 17 L. J. Ch. 137; A.-G. *v.* St. John's Hospital, Bedford (1865), 34 L. J. Ch. 441; Bourne *v.* Keane, [1919] A. C. 815.

125. To found chantry—Valid.]—ANON. (1603), Cary, 39; 21 E. R. 15, L. C.

126. —— Money to purchase land—Land not settled to superstitious use—Valid.]—HOLLOWAY *v.* WATKINS (1604), Cro. Jac. 51; 79 E. R. 43.

Annotations :—**Refd.** Thomas *v.* Sorrell (1673), Freem. K. B. 85; *R. v.* Butterworth (1826), 2 C. & P. 391.

See, further, Sub-sect. 11, *post.*

SUB-SECT. 8.—MONASTERIES AND CONVENTS.

127. In England—& in foreign country—Void.]—DE GARCIN *v.* LAWSON (1798), 4 Ves. 433, n.; 31 E. R. 222, L. C.

Annotations :—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Smart *v.* Prujean (1801), 6 Ves. 560; Cary *v.* Abbot (1802), 7 Ves. 490; West *v.* Shuttleworth (1835), 2 My. & K. 684.

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114 i. —— *Void.*]—DORRIAN *v.* GILMORE (1884), 15 L. R. Ir. 69.—IR.

114 ii. —— ——.]—SMALL *v.* TORLEY (1890), 25 L. R. Ir. 388.—IR.

114 iii. —— ——.]—HEALY *v.* A.-G., 9021 1 I. R. 342.—IR.

t. —— *To be celebrated publicly.*]—A bequest to a R. C. priest to be applied for masses to be celebrated publicly in a specified R. C. church in Ireland for the repose of the testator's soul is a valid charitable bequest.—A.-G. *v.* HALL, [1897] 2 I. R. 426.—IR.

a. —— —— *Or privately.*]—O'HANLON *v.* LOGUE, [1906] 1 I. R. 247.—IR.

b. —— *No direction for public celebration.*]—A bequest to the clergymen who for the time being should be parish priests of certain churches, for the celebration of one mass every month for the repose of "the souls of myself, my wife, my parents, relations, & friends" :—*Held :* the gift, being for the celebration of masses, & containing no direction that the masses were to be celebrated in public, was not a charitable gift.—FANNING *v.* FRICKER (1904), 38 I. L. T. 235.—IR.

Sect. 4.—Religious purposes: Sub-sects. 8, 9, 10, 11 & 12.]

128. Disposal at discretion of superior or successor—Void.]—SMART *v.* PRUJEAN (1801), 6 Ves. 560; 31 E. R. 1195, L. C.

Annotations:—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** *Re* Delany, Conoley *v.* Quick, [1902] 2 Ch. 642. **Mentd.** Wilkinson *v.* Adam (1812), 1 Ves. & B. 422; King *v.* Badeley (1834), 3 L. J. Ch. 206; *In the Goods of* Durham (1842), 1 Notes of Cases, 365; Morrice *v.* Morrice (1843), 2 Notes of Cases, 199; Croker *v.* Hertford (1844), 4 Moo. P. C. C. 339; Allen *v.* Maddock (1858), 11 Moo. P. C. C. 427; North Staffordshire Ry. *v.* Peek (1860), E. B. & E. 926; Dickinson *v.* Stidolph (1861), 11 C. B. N. S. 341; Van Straubenzee *v.* Monck (1862), 3 Sw. & Tr. 6; *In the Goods of* Sunderland (1866), L. R. 1 P. & D. 198; University College of North Wales *v.* Taylor, [1908] P. 140.

129. Voluntary association & convent—Valid.]—COCKS *v.* MANNERS (1871), L. R. 12 Eq. 574; 40 L. J. Ch. 640; 24 L. T. 869; 36 J. P. 244; 19 W. R. 1055.

Annotations:—**Consd.** *Re* White, White *v.* White, [1893] 2 Ch. 41. **Foll.** *Re* Delany, Conoley *v.* Quick, [1902] 2 Ch. 642. **Consd.** *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604; *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937. **Refd.** *Re* Dutton (1878), 4 Ex. D. 54; Purday *v.* Johnson (1888), 5 T. L. R. 117; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110; *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567; *Re* Clifford, Mallam *v.* McFie (1911), 81 L. J. Ch. 220. **Mentd.** Dunne *v.* Byrne, [1912] A. C. 407; Bourne *v.* Keane, [1919] A. C. 815.

130. Absolute immediate gift—Valid—Roman Catholic Relief Act, 1829 (c. 7).]—(1) A gift of residue in trust for "the society or institution known as the Franciscan Friars of C. in the County of S. absolutely":—*Held:* an absolute immediate gift to the individual friars composing the society or institution at the testator's death, & valid.

(2) The provisions of the Roman Catholic Relief Act, 1829, which are directed to the suppression & prohibition of religious orders, or members thereof, of the Church of Rome bound by monastic or religious vows, do not operate so as to render void an absolute immediate bequest to individuals ascertained at the death of testator.—*Re* SMITH, JOHNSON *v.* BRIGHT-SMITH, [1914] 1 Ch. 937; 83 L. J. Ch. 687; 110 L. T. 898; 30 T. L. R. 411; 58 Sol. Jo. 494.

Annotation:—**Refd.** Bourne *v.* Keane, [1919] A. C. 815.

See, also, No. 18, *ante.*

SUB-SECT. 9.—EDUCATION IN AND PROPAGATION OF ROMAN CATHOLIC DOCTRINE.

131. Relief of poor Recusants—Void.]—EGERTON'S (LADY) CASE (1606), Duke, 133.

Annotation:—**Consd.** Bourne *v.* Keane, [1919] A. C. 815.

132. Support of students—For Roman Catholic priesthood—Gift invalid.]—CROFT *v.* EVETTS (1606), Moore, K. B. 784; 72 E. R. 904, L. C.

Annotations:—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** R. *v.* Portington (1691), 12 Mod. Rep. 31.

133. Education of poor children—In Roman Catholic faith—Gift invalid.]—CARY *v.* ABBOT (1802), 7 Ves. 490; 32 E. R. 198.

Annotations:—**Consd.** West *v.* Shuttleworth (1835), 2 My. & K. 684; Bourne *v.* Keane, [1919] A. C. 815.

Application of cy-près doctrine.]—*See* Part IV., Sect. 2, *post.*

134. Roman Catholic Charities Act, 1832 (c. 115) retrospective—Gift to Roman Catholic schools—Valid.]—BRADSHAW *v.* TASKER (1834), 2 My. & K. 221; 3 L. J. Ch. 183; 39 E. R. 928, L. C.

Annotations:—**Consd.** West *v.* Shuttleworth (1835), 2 My. & K. 684. **Apld.** *Re* Michel's Trust (1860), 28 Beav. 39. **Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Shore *v.* Wilson (1842), 9 Cl. & Fin. 355.

135. Promotion of Catholic Christian religion—Among poor inhabitants of named district—Valid.]—WEST *v.* SHUTTLEWORTH (1835), 2 My. & K. 684; 4 L. J. Ch. 115; 39 E. R. 1106.

Annotations:—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Heath *v.* Chapman (1854), 2 Drew. 417; *Re* Michel's Trust (1860), 28 Beav. 39; *Re* Blundell's Trusts (1861), 30 Beav. 360; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594; Bowman *v.* Secular Soc., [1917] A. C. 406.

—— **Publications relating to.**]—*See* Sect. 7, *post.*

SUB-SECT. 10.—BENEFIT OF NONCONFORMISTS, UNITARIANS, JEWS, ETC.

136. Nonconformists—Assistance of congregation—Charitable use.]—A.-G. *v.* FOWLER (1808), 15 Ves. 85; 33 E. R. 687, L. C.

Annotations:—**Refd.** A.-G. *v.* Dudley (1815), Coop. G. 146; Milligan *v.* Mitchell (1835), 4 L. J. Ch. 281.

137. —— Building used as chapel—Demised to trustees at nominal rent—Covenant for perpetual renewal—Charitable purpose.]—BUNTING *v.* SARGENT (1879), 13 Ch. D. 330; 49 L. J. Ch. 109; 41 L. T. 643; 28 W. R. 123.

—— **Maintenance of ministers.**]—*See* Sub-sect. 6, *ante.*

138. Countess of Huntingdon's Connection—Lease of chapel for purpose of improvement—Charitable use.]—DOE d. WELLARD *v.* HAWTHORN (1818), 2 B. & Ald. 96; 106 E. R. 302.

Annotation:—**Consd.** Bourne *v.* Keane, [1919] A. C. 815.

139. Unitarians—Assistance of congregation—

PART I. SECT. 4, SUB-SECT. 8.

129 i. *Voluntary association & convent—Void.*]—WALSH *v.* WALSH (1869), I. R. 4 Eq. 396.—IR.

129 ii. —— ——.]—STEWART *v.* GREEN (1870), I. R. 5 Eq. 470.—IR.

129 iii. —— ——.]—LISTON *v.* KEEGAN (1881), 9 L. R. Ir. 531.—IR.

129 iv. —— ——.]—Testator bequeathed his property to his wife for life & after her death empowered his exors. to let his property & apply the profit rent, to the use & benefit of the R. C. convent of St. J.:—*Held:* the gift could not be sustained as a charitable gift.—MORROW *v.* MCCONVILLE (1883), 11 L. R. Ir. 236.—IR.

129 v. —— ——.]—CUSSEN *v.* HYNES, [1906] 1 I. R. 539.—IR.

129 vi. —— ——.]—Bequest for the use & benefit of a monastery, & the works of charity carried on by it:—*Held:* void as being a gift to an illegal community.—ELLARD *v.* PHELAN, [1914] 1 I. R. 76.—IR.

PART I. SECT. 4, SUB-SECT. 9.

132 i. *Support of students—For Roman Catholic priesthood.*]—A testator directed his exors. to sell his real estate within 3 years of his death, & out of the proceeds to pay to the Bishop of H. $500 for the education of young men for the priesthood:—*Held:* a charitable use.—MCMYLOR *v.* LYNCH (1894), 24 O. R. 632.—CAN.

132 ii. —— —— *Roman Catholic Relief Act, 1829—Void.*]—SIMS *v.* QUINLAN (1865), 17 I. Ch. R. 43; 17 Ir. Jur. 41.—IR.

132 iii. —— —— —— *Jesuits.*]—A. bequeathed to the Jesuits at M. in aid of the school there, for the training of pupils intended for the church, the sum of £500. The school was the property of, & managed by, the Jesuit Order, where students were educated for the church, some for the secular priesthood, & some (if they so elected) for the Jesuit or other Order, all these apostolic students being intended to act as missionaries in foreign parts. There was no pecuniary profit to the Jesuit Order from the school:—*Held:* the gift was not invalid as being contrary to the above Act, or as directly tending to train up students to be Jesuits.—ROCHE *v.* M'DERMOTT, [1901] 1 I. R. 394; 35 I. L. T. 238.—IR.

c. *For teaching purposes.*]—Bequest in trust for the establishment in C. of "a community of Christian Brothers for teaching purposes":—*Held:* void.—MACLAUGHLIN *v.* CAMPBELL, [1906] 1 I. R. 538.—IR.

d. —— *& support—Of children of particular name—& of particular age.*]—A. devised real & personal estate to trustees, upon trust "to pay towards the support & education in I. of any Roman Catholic boy or boys, man or men, of the surname of O'L. or L., being between the ages of eleven years complete & twenty-three years complete, until such boy or man shall have obtained a trade or profession, such sums as said trustees may think proper":—*Held:* the gift was not charitable, & failed.—LAVERTY *v.* LAVERTY, [1907] 1 I. R. 9.—IR.

PART I. SECT. 4, SUB-SECT. 10.

e. *"Brethren"—"Christian Brethren"—"Plymouth Brethren."*]—A. bequeathed money in trust for the "Brethren" or "Christian Brethren" or "Plymouth Brethren":—*Held:* a

Valid.]—SHREWSBURY *v.* HORNBY (1846), 5 Hare, 406 ; 67 E. R. 971.
Annotation :—**Refd.** Bowman *v.* Secular Soc., [1917] A. C. 406.

140. —— Support of at discretion of ministers —Valid.]—*Re* BARNETT (1860), 29 L. J. Ch. 871.

Whether gift for religious purposes is or is not denominational.]—*See* Part III., Sect. 4, sub-sect. 5, A., *post.*

141. Jews—Maintenance of Jesuba—Propagation of Jewish religion—Invalid.]—DA COSTA *v.* DE PAS (1754), Amb. 228 ; Dick. 258 ; 27 E. R. 150 ; *sub nom.* DE COSTA *v.* DE PAZ, 2 Swan. 487, n., L. C.
Annotations :—**Consd.** *Re* Bedford Charity (1819), 2 Swan. 470 ; Bowman *v.* Secular Soc., [1917] A. C. 406. **Refd.** A.-G. *v.* Cock (1751), 2 Ves. Sen. 273 ; A.-G. *v.* Downing (1767), Wilm. 1 ; A.-G. *v.* Herrick (1772), Amb. 712 ; Cary *v.* Abbot (1802), 7 Ves. 490 ; Moggridge *v.* Thackwell (1803), 7 Ves. 36 ; A.-G. *v.* Bristol (1820), 2 Jac. & W. 294 ; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19 ; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Hereford *v.* Adams (1802), 7 Ves. 324.

142. —— Maintenance of synagogue—Invalid.]—ISAAC *v.* GOMPERTZ (1786), cited in 7 Ves. 61 ; 32 E. R. 23, L. C.
Annotation :—**Consd.** Bowman *v.* Secular Soc., [1917] A. C. 406.

143. —— Observation of rites—Valid.]—STRAUS *v.* GOLDSMID (1837), 8 Sim. 614 ; 59 E. R. 243.
Annotation :—**Refd.** *Re* Bowman, Secular Soc. *v.* Bowman, [1915] 2 Ch. 447.

144. —— Education & prayers—Good charitable gift—Religious Disabilities Act, 1849 (c. 59) retrospective.]—*Re* MICHEL'S TRUST (1860), 28 Beav. 39 ; 29 L. J. Ch. 547 ; 2 L. T. 46 ; 24 J. P. 581 ; 6 Jur. N. S. 573 ; 8 W. R. 299 ; 54 E. R. 280.
Annotations :—**Refd.** *Re* Bowman, Secular Soc. *v.* Bowman, [1915] 2 Ch. 447 ; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594.

145. —— Recital of Cawdish—On anniversary of testator's death—Not superstitious use.]—*Re* MICHEL'S TRUST (1860), 28 Beav. 39 ; 29 L. J. Ch. 547 ; 2 L. T. 46 ; 24 J. P. 581 ; 6 Jur. N. S. 573 ; 8 W. R. 299 ; 54 E. R. 280.
Annotations :—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594 ; *Re* Bowman, Secular Soc. *v.* Bowman, [1915] 2 Ch. 447.

146. —— Maintenance of lecturer & reader—Valid.]—Testator directed that after the death of his wife his exors. should set aside and invest a sufficient sum to produce £100 a year to be applied in the manner therein directed for a charitable purpose, & he directed his exors. to stand possessed of the residue upon trust to pay & apply the income thereof for ever unto & equally between the lecturer & the reader of the L. old Hebrew congregation worshipping in S. St., L., but about to remove to a synagogue in course of erection in P. Rd., L., elected, & accepting office on the terms thereinafter expressed. The conditions were that the reader & lecturer should be born of British parents & elected & subject to rules not the same as those which had hitherto regulated the status of such officials. He directed that if any reader or lecturer did not accept office, he should not be entitled to any benefit of the trust, & that any dividend on that or any other account not so applied should fall into the residue. The members & governing body & lecturer & reader for the time being were willing to accept these conditions :—*Held :* the gift of the residue for the purpose of paying the income to the lecturer & reader of a well-known Hebrew congregation that had existed at L. for possibly some hundred years was a good charitable trust, &, as the conditions imposed by testator could be & would be fulfilled, it would take effect.—*Re* BRAHAM, DAW *v.* SAMUEL (1892), 36 Sol. Jo. 712.
See, also, No. 30, *ante.*

SUB-SECT. 11.—VALID GIFTS CONNECTED WITH GIFTS FOR SUPERSTITIOUS USES.

147. Whole gift void—General rule.]—Where a charitable use depends on an use which is void as superstitious the whole gift is void.—WHETSTON'S CASE (1555), Duke, 89.
Annotation :—**Refd.** Adams *v.* Lambert (1598), 4 Co. Rep. 96 a.

148. *S. P.* COLBORN *v.* DALE (1578), cited in 4 Co. Rep. 115 b ; Duke, 89 ; 76 E. R. 1105.
Annotations :—**Refd.** Adams *v.* Lambert (1598), 4 Co. Rep. 96 a ; Waldern *v.* Ward (1657), 2 Sid. 46 ; A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11.

149. —— Obit, church repairs & gifts to poor.]—GREGORY'S CASE (1465), cited in 4 Co. Rep. 114 a ; 76 E. R. 1103.
Annotations :—**Consd.** Adams *v.* Lambert (1598), 4 Co. Rep. 96 a. **Refd.** A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11 ; A.-G. *v.* Wax Chandlers Co. (1873), 21 W. R. 361.

150. —— Obit, mass & gifts to poor.]—CALEY'S CASE (1513), cited in 4 Co. Rep. 114 a ; 76 E. R. 1103.
Annotations :—**Consd.** Adams *v.* Lambert (1598), 4 Co. Rep. 96 a. **Refd.** A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11 ; A.-G. *v.* Wax Chandlers Co. (1873), 21 W. R. 361.

151. —— Obit, church repairs & priest's stipend.]—ADAMS *v.* STOKES (1588), cited in 4 Co. Rep. 116 a ; Duke, 89 ; 76 E. R. 1106.
Annotations :—**Refd.** Adams *v.* Lambert (1598), 4 Co. Rep. 96 a ; A.-G. *v.* Wax Chandlers Co. (1873), 21 W. R. 361.

152. —— Masses & other pious purposes.]—HEATH *v.* CHAPMAN (1854), 2 Drew. 417 ; 2 Eq. Rep. 1264 ; 23 L. J. Ch. 947 ; 24 L. T. O. S. 31 ; 18 J. P. 693 ; 2 W. R. 649 ; 61 E. R. 781.
Annotations :—**Consd.** *Re* Michel's Trust (1860), 28 Beav. 39. **Folld.** *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594. **Dbtd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. I.

153. Valid as to part not for superstitious use—General rule.]—Where part of a bequest is to a valid use, & part to a superstitious use, only the part devoted to the superstitious use passed to the Crown under 1 Edw. 6, c. 14.—PARTRIDGE *v.* TURK (1596), Moore, K. B. 693 ; 72 E. R. 845.

154. —— Obit & repair of church.]—HART *v.* BREWER (1595), Cro. Eliz. 449 ; 78 E. R. 688.

155. —— Prayers & masses & religious education of poor.]—WEST *v.* SHUTTLEWORTH (1835), 2 My. & K. 684 ; 4 L. J. Ch. 115 ; 39 E. R. 1106.
Annotations :—**Folld.** Heath *v.* Chapman (1854), 2 Drew. 417. **Consd.** *Re* Michel's Trust (1860), 28 Beav. 39. **Folld.** *Re* Blundell's Trusts (1861), 30 Beav. 360 ; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594. **Dbtd.** Bourne *v.* Keane (1919), 89 L. J. Ch. 17. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1 ; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381 ; Bowman *v.* Secular Soc., [1917] A. C. 406.

SUB-SECT. 12.—OTHER CASES.

156. "Poor & service of God"—Valid.]—A gift by will of residuary personal estate to "the poor & the service of God" :—*Held :* a good valid charitable gift.—*Re* BROWN, [1898] 1 I. R. 423.—IR.

i. Presbyterian missions & orphans.]—Testatrix gave her residuary estate to "Presbyterian missions & orphans" :—*Held :* a good charitable gift.—JACKSON *v.* A.-G., [1917] 1 I. R. 332.—IR.

PART I. SECT. 4, SUB-SECT. 12.

g. "Support of Christianity throughout the world"—Valid.]—ANDERSON *v.* KILBORN (1875), 22 Gr. 385.—CAN.

h. Furtherance of "cause of our Lord Jesus Christ."]—A. devised to trustees his estate to be used to further "the cause of our Lord Jesus Christ" :

Sect. 4.—Religious purposes: Sub-sect. 12. *Sect.* 5: *Sub-sect.* 1.]

charitable gift.—*Re* DARLING, FARQUHAR *v.* DARLING, [1896] 1 Ch. 50; 65 L. J. Ch. 62; 73 L. T. 382; 44 W. R. 75; 40 Sol. Jo. 11; 13 R. 834.

157. Purchase of advowsons.]—(1) A bequest to trustees to expend the income or any portion of the trust funds "in grants for or towards the purchase of advowsons or presentations" is not a good charitable bequest.

Testator by his will declared that his residuary estate or so much thereof as should be legally applicable to charitable purposes should be transferred by his general trustees to special trustees in trust to apply the income or any portion of the capital "in grants for or towards the purchase of advowsons or presentations, or in creating or contributing to the erection, improvement or endowment of churches, chapels or schools, or in paying or contributing to the salaries or income of rectors, vicars or incumbents, masters or teachers;" but upon certain conditions. The conditions were framed with a view to the promotion of "true Protestant & Church of England principles as held by those of her divines, clergy & members who are distinguished as Evangelical," & though applicable to the other purposes were not applicable to the purchase of advowsons or presentations:—*Held:* since upon the true construction of the will no trust, charitable or other, which the ct. could execute or control was annexed to the advowsons or presentations for the purchase of which the trustees had power to make grants, & there was no general trust for charity binding the whole fund, the whole gift failed & the residuary estate was undisposed of.

(2) Considering the fact that the A.-G. was made a deft., & in a public capacity as the guardian of a large charitable fund, as this was supposed to be, & that he had the judgment of the Ct. of Appeal which asserted that it was a charity, I think it would have been contrary to his duty, as A.-G., if he had not appeared in support of the judgment of the Ct. of Appeal which pronounced this to be a charity. I think the circumstance also that it is a very large estate ought not to be left out of account. For these reasons I am of opinion that he ought to have his costs; but I wish to guard myself against saying that it is to be established, as an absolute precedent, that in all cases the A.-G. ought to have his costs (HALSBURY, L.C.).—HUNTER *v.* A.-G., [1899] A. C. 309; 68 L. J. Ch. 449; 80 L. T. 732; 47 W. R. 673; 15 T. L. R. 384; 43 Sol. Jo. 530, H. L.; *revsg.* S. C. *sub nom. Re* HUNTER, HOOD *v.* A.-G., [1897] 2 Ch. 105, C. A.

Annotations:—as to (1) **Dbtd. & Distd.** *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643. **Apld.** *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567. **Refd.** *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 1 Ch. 41; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400; *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184; *Re* Sidney, Hingeston *v.* Sidney, [1908] 1 Ch. 126. *Generally* **Mentd.** Higgins *v.* Dawson, [1902] A. C. 1; *Re* Hinckes, Dashwood *v.* Hinckes, [1920] 2 Ch. 511.

158. Gift of advowson—Effect of restriction to clergy of particular type of religious thought]—Testatrix, who died on May 14, 1902, gave an advowson to such uses as her three sisters should within twenty-one years after her death, appoint for the purpose of carrying out the express wish of her late husband that the advowson should be made over to & vested in the Church Patronage Trust by all lawful means. In Feb. 1903, the advowson was conveyed to the trustees of the trust, & it was thereby agreed that they & the persons deriving title under them should stand possessed of the advowson upon the trusts & subject to the powers comprised in & forming the 9th schedule to a deed of 1871 which governed the trust. The trust declared by the schedule was to present to the vicarage & parish church from time to time "such fit & pious person of godly life & conversation being in holy orders, capable of accepting & holding the same as the trustees for the time being . . . should determine upon." By the same schedule a trustee was eligible for the appointment, & the trustees were required to be persons "well known or reputed to be of godly life & conversation" professing "themselves members of the Established Church of England & known to be zealously attached to the great principles of the Reformed Faith contained in the Liturgy & Articles of the said Established Church." On May 12, 1903, the trustees issued an originating summons, applying, under 1891 Act, s. 8, for the ct.'s sanction to the retention by them of the advowson. The A.-G. was the only deft. to the summons. The summons was not heard until more than a year after the death of testatrix:—*Held:* (1) the Official Trustee of Charity Lands must be made a party to the proceedings, but the Charity Comrs. were not necessary or proper parties; (2) inasmuch as the trust did not require the trustees to do any more than the duty required of any owner of an advowson—namely, to present a fit & proper person in holy orders, capable of accepting & holding the living—the advowson was not assured "to or for the benefit of any charitable use" within 1891 Act, s. 5, & 1891 Act, s. 8, had no application to the case.

Semble: (3) where the trust imposed in respect of an advowson is to present clergymen of a particular type of religious thought in the Church of England there is a charitable trust; (4) a certificate of the Charity Comrs. under 1853 Act, s. 17, is not required in the case of an application under 1891 Act, s. 8.—*Re* CHURCH PATRONAGE TRUST, LAURIE *v.* A.-G., [1904] 1 Ch. 41; 73 L. J. Ch. 77; 89 L. T. 505; 68 J. P. 64; 52 W. R. 106; 20 T. L. R. 52; 48 Sol. Jo. 68; *affd.*, [1904] 2 Ch. 643; 73 L. J. Ch. 712; 91 L. T. 705; 53 W. R. 85; 20 T. L. R. 713; 48 Sol. Jo. 672, C. A.

159. Place of worship under entire control of one person—Valid.]—*Re* MARCHANT, WEAVER *v.* ROYAL SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS, No. 900, *post.*

160. Religious society—Dinner expenses of members attending—Valid.]—A local clerical society, whose aims were religious, held meetings for the discussion of religious & educational matters, such meetings being succeeded by luncheons or dinners:—*Held:* a bequest for payment of the expenses of the dinners, formerly paid for by the members of the society themselves, was a valid charitable gift as tending to increase the attendance of members & incidentally advance the main religious objects of the society.—*Re* CHARLESWORTH, ROBINSON *v.* CLEVELAND (ARCHDEACON) (1910), 101 L. T. 908; 26 T. L. R. 214; 54 Sol. Jo 196.

—*Held:* not void.—PHELPS *v.* LORD (1894), 25 O. R. 259.—CAN.

k. "*To elevate community spiritually.*"]—A. gave her estate, real & personal, to trustees in trust "to be used only for such purposes as will elevate the community of B. spiritually":—*Held:* a good charitable bequest.—*Re* ORR (1917), 40 O. L. R. 567; 13 O. W. N. 154.—CAN.

l. "*Promoting the glory of God*"—*Advancement & spread of Roman Catholic religion*—*Valid.*] COPINGER *v.* CLARKANE (1877), 11 I. R. Eq. 429.—IR.

SECT. 5.—PUBLIC PURPOSES.

SUB-SECT. 1.—IN RELATION TO TOWNS AND PARISHES.

161. Repair of highways—Valid.]—COLLISON'S CASE (1617), Hob. 136; 80 E. R. 286; *sub nom.* ROLT'S CASE, Moore, K. B. 888, L. C.

Annotations :—**Consd.** A.-G. *v.* Downing (1767), Wilm. 1; A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407. **Refd.** A.-G. *v.* Rye (1703), 2 Vern. 453; A.-G. *v.* Tancred (1757), Amb. 351.

162. —— ——.]—ELTHAM (INHABITANTS) *v.* WARREYN (1634), Duke, 67.

Annotations :—**Refd.** A.-G. *v.* Magwood (1811), 18 Ves. 315; A.-G. *v.* Bristol (1820), 2 Jac. & W. 294.

163. Benefit of parish—Valid.]—WEST *v.* KNIGHT (1669), 1 Cas. in Ch. 134; 22 E. R. 729.

Annotations :—**Consd.** A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223. **Refd.** Nightingale *v.* Goulbourn (1848), 2 Ph. 594.

164. —— ——.]—A.-G. *v.* WEBSTER (1875), L. R. 20 Eq. 483; 44 L. J. Ch. 766.

Annotations :—**Expld.** *Re* St. Bride's, Fleet St. (1877), 35 Ch. D. 147, n. **Consd.** *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142; *Re* St. Stephen, Coleman Street, *Re* St. Mary the Virgin, Aldermanbury (1888), 39 Ch. D. 492. **Refd.** A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933; Fell *v.* Official Trustee of Charity Lands, [1898] 2 Ch. 44; *Re* Church Patronage Trust Laurie *v.* A.-G., [1904] 2 Ch. 643.

165. —— **Payment of fifteenths, relief of poor, expenses of soldiers & repair of bridge—Public purposes.**]—WILKINSON *v.* MALIN (1832), 2 Cr. & J. 636; 2 Tyr. 544; 1 L. J. Ex. 234; 149 E. R. 268.

Annotations :—**Folld.** *Re* Campden Charities (1880), 49 L. J. Ch. 676. **Mentd.** Smith *v.* Keating (1848), 6 C. B. 136; Perry *v.* Shipway (1859), 1 Giff. 1; *Re* Whiteley, London *v.* Whiteley, [1910] 1 Ch. 600.

166. —— **"Charity"—Charitable Trusts Act, 1853 (c. 137), s. 66.**]—Certain property of a London parish consisted of several freehold houses in the parish. As to some of them, the sources from which they were derived were unknown; as to others, the title deeds had been destroyed by the great fire. The leases of the houses had been usually granted by the vicar & churchwardens, & the income of the property was applied to parish purposes :—*Held :* the houses were held subject to charitable trusts & therefore were charities within Charitable Trusts Act, 1853, s. 66, & therefore under the control of the Charity Comrs.—*Re* ST. BRIDE'S, FLEET STREET (CHURCH OR PARISH ESTATE) (1877), 35 Ch. D. 147, n.; 56 L. J. Ch. 692, n.; 35 W. R. 689, n.; *affd.*, [1877] W. N. 149, C. A.

Annotation :—**Consd.** *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142.

167. —— **"Charity property"—City of London Parochial Charities Act, 1883 (c. 36).**]—Under 35 Geo. 3, c. 61, a piece of land was vested in trustees for the purpose of building a workhouse for the poor of a parish in the City of London, & power was given to raise £10,000, to pay for the land & the building, by the grant of annuities for lives or years, which were to be charged on rates which the Act authorised to be levied on the parishioners. The Act provided that the land should be held "for the use and benefit of the parish." The workhouse was built, & was used for many years for the poor of the parish. In 1837 a poor law union was formed, &, the workhouse being no longer required, the income of the property was thenceforth applied in aid of the poor-rates of the parish :—*Held :* the property was "charity property" within City of London Parochial Charities Act, 1883, & was subject to the jurisdiction of the Charity Comrs. under that Act.—*Re* ST. BOTOLPH WITHOUT BISHOPSGATE PARISH ESTATES (1887), 35 Ch. D. 142; 56 L. J. Ch. 691; 56 L. T. 884; 35 W. R. 688; 3 T. L. R. 522; *subsequent proceedings, Re* ST. BOTOLPH, BISHOPSGATE (SCHOOL, CHAPEL & CURATE'S RESIDENCE), 3 T. L. R. 553.

168. —— —— ——.]—Under a Crown grant in 1589 an impropriate rectory in the City of London, & also the parish church & the advowson, were vested in trustees for the benefit of the parish, the vicar being always chosen by the parishioners. A vicarage-house was provided by a benefaction in a will dated in 1722, & had since been held by trustees on trusts for the benefit of the parish :—*Held :* (1) the advowson and house were "charity property" within City of London Parochial Charities Act, 1883; & a petition presented as a test case under s. 10, by the several trustees for a declaration that they were not "charity property," was dismissed with costs, the ct. refusing to sanction an arrangement between the various parishes affected by the decision for payment of petitioners' costs out of the charity estates.

(2) "Special leave to appeal" under s. 10 was refused, on the ground that such leave should only be given where the judge considered the question raised by the petition to be doubtful.—*Re* ST. STEPHEN, COLEMAN STREET, *Re* ST. MARY THE VIRGIN, ALDERMANBURY (1888), 39 Ch. D. 492; 57 L. J. Ch. 917; 59 L. T. 393; 36 W. R. 837.

Annotations :—*As to* (1) **Refd.** Hunter *v.* A.-G., [1899] A. C. 309; *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 1 Ch. 41.

169. —— —— ——.]—A petition was presented by the parson, churchwardens & parishioners of a parish under City of London Parochial Charities Act, 1883 (c. 36), for a declaration that certain lands or property were not charity property within the Act, or, in the alternative, that petitioners had a vested interest in the land. Part of the property consisted of three houses built on the site of the north aisle of the church. The church was in 1536, by a private Act of Hen. 8, vested in the parson, churchwardens & parishioners, & their successors in free alms for ever. The remainder of the property was held by the parson, churchwardens & parishioners under a lease granted in 1587 for the relief & maintenance of poor, aged, impotent & diseased persons of the parish, & for the necessary reparations of the parish church of A. The rents of all the properties had been applied for general parish purposes :—*Held :* (1) assuming the houses were built on consecrated ground, a user of the rents for three hundred years for general parish purposes brought the property within City of London Parochial Charities Act, 1883, s. 5; (2) the parson, churchwardens & parishioners did not constitute a corpn., except for the purpose of taking the church granted by the Act of Hen. 8; (3) "vested interest" meant interests such as those of persons who received a remuneration out of charity property, & petitioners had no vested interest within City of London Parochial Charities Act, 1883.—*Re* ST. ALPHAGE, LONDON WALL (1888), 59 L. T. 614; 4 T. L. R. 756.

170. —— —— ——.]—Where the site of a church was vested by Act of Parliament in the Corpn. of the City of London in trust for a parish, & it appeared that for 200 years it had been treated as vested in the rector & churchwardens, a conveyance by the Corpn. to the rector & churchwardens in trust for the parish was assumed.

An application was made under City of London Parochial Charities Act, 1883, s. 10, by the rector of the united parishes of St. N. & St. E., for a declaration that certain property described as "parish estate" & scheduled in the statement of the Charity Comrs. under the provisions of that Act as "charity property" was not charity property; & that he, the rector, & his successors were

Sect. 5.—Public purposes: Sub-sects. 1, 2, 3 & 4.]

entitled to the freehold of the churchyard of the parish of St. N. & to all revenues, profits, & payments in respect thereof, free from any charitable trust, & to have the statement of the Charity Comrs. rectified accordingly. The property in question consisted principally of two pieces of land on the west side of N. Lane, said to have been formerly part of the churchyard, & of which one with the building thereon erected on the site of what was, in former times, the parish engine-house, had been let to a banking co. at a rent of £200 a year, & the other had been let with the building thereon as business premises. There was also other property consisting of sundry small rents for rights of light over the churchyard, & a sum of consols in court representing the balance of a sum of money paid on the compromise of an action by the late rector in respect of lights over the churchyard. St. N. was a City church existing before the Great Fire in 1666. It was then burnt down, & its actual site was unknown; but it had a churchyard connected with it, & it was in respect of this churchyard that the present question arose:—*Held:* (1) since the Great Fire the site of this churchyard had been treated by the rector & churchwardens as impressed with a trust for the benefit of the parish; by Rebuilding of London Act, 1666 (c. 8) & 22 Car. 2, c. 11, it was vested in the Corpn. of London for the benefit of the parish; &, when the Corpn. found that they did not require any part of the churchyard to be laid into streets as provided by those Acts, it was to be assumed that by some conveyance they conveyed it to the rector and churchwardens; (2) the rector had failed to make out that the churchyard belonged to him & was not a charitable trust.—*Re* ST. NICHOLAS ACONS (PARISH) (1889), 60 L. T. 532.

Annotation:—As to (2) **Refd.** *Re* St. Benet Sherehog, *Re* St. Nicholas Acons (1892), [1893] P. 66, n.

—— **Relief of rates & taxes.**]—*See* Sub-sect. 2, *post.*

171. Benefit of town—Funds supplied from gift of Crown or of Legislature or of private persons—For legal public or general purpose—Are charitable funds.]—A.-G. *v.* HEELIS (1824), 2 Sim. & St. 67; 2 L. J. O. S. Ch. 189; 57 E. R. 270.

Annotations:—**Consd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312; A.-G. *v.* Carlisle Corpn. (1828), 2 Sim. 437; A.-G. *v.* Eastlake (1853), 11 Hare, 205; Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933. **Refd.** A.-G. *v.* Compton (1842), 1 Y. & C. Ch. Cas. 417; Mitford *v.* Reynolds (1842), 1 Ph. 185; Nightingale *v.* Goulburn (1848), 2 Ph. 594; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142; Webster *v.* Southey (1887), 36 Ch. D. 9; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531. **Mentd.** Tredwell *v.* Byrch (1835), 1 Y. & C. Ex. 476; Ewing *v.* Glasgow Police Comrs. (1839), Macl. & Rob. 847.

172. —— Water supply—Public charitable use—Money to arise by sale of land Void.]—JONES *v.* WILLIAMS (1767), Amb. 651; 27 E. R. 422, L. C.

Annotations:—**Consd.** Mitford *v.* Reynolds (1842), 1 Ph. 185. **Refd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400.

173. —— Improvement—Charitable bequest—Void so far as consisting of land.]—HOWSE *v.* CHAPMAN (1799), 4 Ves. 542; 31 E. R. 278, L. C.

Annotations:—**Consd.** R. *v.* Bates (1816), 3 Price, 341; A.-G. *v.* Giles (1835), 5 L. J. Ch. 14; Eyre *v.* Marsden (1839), 4 My. & Cr. 231; Nightingale *v.* Goulburn (1847), 5 Hare, 484; Chandler *v.* Howell (1876), 4 Ch. D. 651. **Refd.** Mitford *v.* Reynolds (1842), 1 Ph. 185; Attree *v.* Hawe (1877), 47 L. J. Ch. 157; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; *Re* David, Buckley *v.* Royal National Life Boat Institution (1889), 41 Ch. D. 168; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Mentd.** Bunnett *v.* Foster (1846), 10 Jur. 1019; Christian *v.* Foster (1846), 2 Ph. 161; Hurst *v.* Hurst (1884), 28 Ch. D. 159.

174. —— —— Charitable uses.]—GORT (VISCOUNT) *v.* A.-G. (1817), 6 Dow. 136; 3 E. R. 1424, H. L.

175. —— —— Rents of common inclosed with consent of proprietors—Charity.]—A.-G. *v.* HEELIS (1824), 2 Sim. & St. 67; 2 L. J. O. S. Ch. 189; 57 E. R. 270.

Annotations:—**Consd.** A.-G. *v.* Carlisle Corpn. (1828), 2 Sim. 437. **Apld.** Tredwell *v.* Byrch (1835), 1 Y. & C. Ex. 476. Ewing *v.* Glasgow Comrs. of Police (1839), Macl. & Rob. 847; Mitford *v.* Reynolds (1842), 1 Ph. 185; Nightingale *v.* Goulburn (1847), 5 Hare, 484; A.-G. *v.* Eastlake (1853), 11 Hare, 205; Beaumont *v.* Oliveira (1869), 4 Ch. App. 309. **Refd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312; Nightingale *v.* Goulbourn (1848), 2 Ph. 594; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933; *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142; Webster *v.* Southey (1887), 36 Ch. D. 9; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

176. —— Defence—Charitable.]—A.-G. *v.* CARLISLE CORPN. (1828), 2 Sim. 437; 57 E. R. 851; *affd.* (1830), 8 L. J. O. S. Ch. 146, L. C.; *subsequent proceedings* (1831), 4 Sim. 275.

Annotations:—**Refd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520.

177. —— —— Repair of walls & bridges—Charitable.]—A.-G. *v.* SHREWSBURY CORPN. (1843), 6 Beav. 220; 12 L. J. Ch. 465; 1 L. T. O. S. 106; 7 J. P. 703; 7 Jur. 757; 49 E. R. 810.

178. —— —— Repair of conduits—Charitable.]—A.-G. *v.* DARTMOUTH CORPN. (1883), 48 L. T. 933.

179. —— Charitable, beneficial & public works—Valid.]—MITFORD *v.* REYNOLDS (1842), 1 Ph. 185; 12 L. J. Ch. 40; 7 Jur. 3; 41 E. R. 602, L. C.; *subsequent proceedings* (1846), 1 Ph. 706, L. C.; (1848), 16 Sim. 105.

Annotations:—**Consd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484; Trimmer *v.* Danby (1856), 25 L. J. Ch. 424. **Apld.** Ewan *v.* Morgan (1858), 32 L. T. O. S. 19. **Consd.** Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521. **Refd.** Nightingale *v.* Goulbourn (1848), 2 Ph. 594; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538; *Re* Dean, Cooper Dean *v.* Stevens (1889), 41 Ch. D. 552; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Mentd.** Gaskell *v.* Holmes (1844), 3 Hare, 438; Say *v.* Creed (1844), 3 Hare, 455; Fowler *v.* Fowler (1864), 33 Beav. 616.

180. —— At discretion of trustees—Valid.]—Testator gave a reversionary interest in personal estate to the corpn. of F., to be applied by them in such manner & for such purposes as they should judge to be most for the benefit & ornament of the town:—*Held:* this was a good charitable gift, although the discretion given to the trustees might extend to an application of the fund in violation of Charitable Uses Act, 1736 (c. 36), the presumption being that where trustees of a testamentary gift for charitable purposes have, by the terms of the gift, a discretion to apply the benefit of the gift either in a way which the law allows or which the law disallows, they will act in a lawful manner.—FAVERSHAM CORPN. *v.* RYDER (1854), 5 De G. M. & G. 350; 2 Eq. Rep. 749; 23 L. J. Ch. 905; 23 L. T. O. S. 282; 18 J. P. 455; 18 Jur. 587; 2 W. R. 573; 43 E. R. 905, L. JJ.

Annotations:—**Refd.** Martin *v.* Wellsted (1854), 23 L. J. Ch. 927; Dunn *v.* Bownas (1855), 1 K. & J. 596; *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565.

m. *Benefit of town—Public park—Devise of land—Public Parks Act, 1897—Mortmain & Charitable Uses Act, 1902—Valid.*]—*Re* BATTERSHALL (1907), 10 O. W. R. 933.—**CAN.**

n. —— *Grant of tolls de novo by Crown—Repair of walls & pavements—Not charitable use.*]—A.-G. *v.* GALWAY CORPN. (1829), 1 Mol. 95.—**IR.**

181. —— —— ——.]—WREXHAM CORPN. *v.* TAMPLIN (1873), 28 L. T. 761 ; 21 W. R. 768.
Annotation :—**Follo.** *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400.

182. —— **Named institute—Trust not already in existence.**]—Testatrix gave £3000 to trustees to be applied at their discretion for the benefit of the M. Institute. The M. Institute had been erected by testatrix for the general benefit of the inhabitants of H. The building had never been conveyed to trustees, nor had any charitable trust thereof been created. It remained in testatrix's own control, & had been used for purposes beneficial to the inhabitants :—*Held :* the bequest of £3000 was a good charitable gift, & a scheme must be directed for its application.—*Re* MANN, HARDY *v.* A.-G., [1903] 1 Ch. 232 ; 72 L. J. Ch. 150 ; 87 L. T. 734 ; 51 W. R. 165.
Annotation :—**Consd.** *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427.

183. —— **Hospital—Grammar school—Free library—Valid.**]—Testator bequeathed money to trustees upon trust for such charitable, educational, or other institutions of the town of K., & also for such other general purposes for the benefit of the town of K. or any of the inhabitants thereof as his trustees should in their absolute uncontrolled discretion think fit ; he desired, without in any way binding his trustees, that the following institutions should be carefully considered by them in such distribution : (*a*) the K. Memorial Hospital ; (*b*) the K. Grammar School ; (*c*) the K. Free Library :—*Held :* on the construction of the clause the purposes to which the money could be applied were all limited to general or public purposes for the benefit of the town of K. & its inhabitants, & therefore it was a good charitable bequest.—*Re* ALLEN, HARGREAVES *v.* TAYLOR, [1905] 2 Ch. 400 ; 74 L. J. Ch. 593 ; 93 L. T. 597 ; 54 W. R. 91 ; 21 T. L. R. 662 ; 49 Sol. Jo. 671.
Annotations :—**Consd.** *Re* Pardoe, McLaughlin *v.* A.-G. (1906), 94 L. T. 567 ; *Re* Bennett, Gibson *v.* A.-G., [1920] 1 Ch. 305.

See, also, No. 212, *post.*

184. Prevention of sea encroachment—Parliamentary grant of duty on coal—Charitable use.]—A.-G. *v.* BROWN (1818), 1 Swan. 265 ; 1 Wils. Ch. 323 ; 36 E. R. 384, L. C.
Annotations :—**Consd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312 ; A.-G. *v.* Eastlake (1853), 11 Hare, 205. **Refd.** A.-G. *v.* Heelis (1824), 2 Sim. & St. 67 ; A.-G. *v.* Carlisle Corpn. (1828), 2 Sim. 437 ; A.-G. *v.* Compton (1842), 1 Y. & C. Ch. Cas. 417 ; Nightingale *v.* Goulburn (1848), 11 L. T. O. S. 169 ; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223 ; *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142. **Mentd.** Meux *v.* Maltby (1818), 2 Swan. 277 ; A.-G. *v.* Wilson (1840), Cr. & Ph. 1 ; George *v.* Chambers (1843), 7 Jur. 836 ; Macintyre *v.* Connell (1851), 1 Sim. N. S. 252 ; A.-G. *v.* Mid Kent Ry. & S. E. Ry. (1867), 3 Ch. App. 100 ; A.-G. & Spalding Rural Council *v.* Garner, [1907] 2 K. B. 480.

185. —— **Grant of wood by Crown to copyhold tenants—Charity.**]—WILSON *v.* BARNES (1886), 38 Ch. D. 507, C. A.
Annotation :—**Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

SUB-SECT. 2.—RELIEF OF RATES AND TAXES.

186. Gift for benefit of poor rate—Is conveyance for charitable use.]—DOE d. PREECE *v.* HOWELLS (1831), 2 B. & Ad. 744 ; 9 L. J. O. S. K. B. 332 ; 109 E. R. 1320.
Annotation: —**Refd.** Webster *v.* Southey (1887), 36 Ch. D. 9.

Construction of gifts for benefit of poor & in aid of rates.]—*See* Part III., Sect. 4, sub-sect. 6, *post.*

Gifts to towns & parishes generally, *see* Sub-sect. 1, *ante.*

SUB-SECT. 3.—ADVANCEMENT OF KNOWLEDGE, SCIENCE AND ART.

187. British Museum—Devise of land upon trust for sale for—Void.]—BRITISH MUSEUM *v.* WHITE (1826), 2 Sim. & St. 594 ; 4 L. J. O. S. Ch. 206 ; 57 E. R. 473.
Annotations :—**Distd.** Carne *v.* Long (1858), 27 L. J. Ch. 589. **Consd.** R. *v.* Income Tax Comrs. (1911), 80 L. J. K. B. 788 ; *Re* Verrall, National Trust for Places of Historic Interest or National Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309 ; Income Tax Special Comrs. *v.* Pemsel (1891), 3 Tax. Cas. 53.

188. Smithsonian Institution—Foundation of—Valid.]—UNITED STATES PRESIDENT *v.* DRUMMOND (1838), cited in 7 H. L. Cas. 155 ; 11 E. R. 62.
Annotations :—**Consd.** Whicker *v.* Hume (1858), 7 H. L. Cas. 125 ; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451. **Refd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309. **Mentd.** U.S.A. *v.* Wagner (1867), 36 L. J. Ch. 624.

189. Public library—Botanical gardens—Observatory—Valid.]—HARRISON *v.* SOUTHAMPTON CORPN. (1854), 2 Sm. & G. 387 ; 23 L. J. Ch. 919 ; 23 L. T. O. S. 330 ; 18 J. P. 488 ; 18 Jur. 669 ; 2 W. R. 659 ; 65 E. R. 448.
Annotations :—**Refd.** Carne *v.* Long (1858), 31 L. T. O. S. 229 ; *Re* Nottage, Jones *v.* Palmer (1895), 64 L. J. Ch. 695.

190. Museum—Valid.]—HARRISON *v.* SOUTHAMPTON CORPN. (1854), 2 Sm. & G. 387 ; 23 L. J. Ch. 919 ; 23 L. T. O. S. 330 ; 18 J. P. 488 ; 18 Jur. 669 ; 2 W. R. 659 ; 65 E. R. 448.
Annotations :—**Refd.** Carne *v.* Long (1858), 31 L. T. O. S. 229 ; *Re* Nottage, Jones *v.* Palmer (1895), 64 L. J. Ch. 695.

191. —— ——.]—*Re* HOLBURNE, COATES *v.* MACKILLOP (1885), 53 L. T. 212 ; 1 T. L. R. 517.

192. —— **Charitable purpose—Legacy payable out of real estate—Void.**]—*Re* ALLSOP, GELL *v.* CARVER (1884), 1 T. L. R. 4.
Annotations :—**Refd.** *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604. **Mentd.** *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937.

193. Royal Society—Royal Geographical Society—Charitable Institutions.]—BEAUMONT *v.* OLIVEIRA (1869), 4 Ch. App. 309 ; 38 L. J. Ch. 239 ; 20 L. T. 53 ; 33 J. P. 391 ; 17 W. R. 269, L. JJ.
Annotations :—**Refd.** *Re* Royal Soc. of London & Thompson (1881), 50 L. J. Ch. 344. **Mentd.** *Re* Pitt, Lacy *v.* Stone (1885), 53 L. T. 113 ; *Re* Arnold, Ravenscroft *v.* Workman (1888), 37 Ch. D. 637 ; *Re* Develingne, Layton *v.* Royal Earlswood Institution for Mental Defectives, [1916] W. N. 235.

194. Sacred Harmonic Society—Not a charity.]—*Re* ALLSOP, GELL *v.* CARVER (1884), 1 T. L. R. 4.
Annotations :—**Consd.** *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937. **Refd.** *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604.

195. School of art—Charitable purpose—Legacy payable out of real estate—Void.]—*Re* ALLSOP, GELL *v.* CARVER (1884), 1 T. L. R. 4.
Annotations :—**Refd.** *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604. **Mentd.** *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937.

Private institutions.]—*See* Sect. 6, sub-sect. 2, *post.*

Institutions for relief of indigent.]—*See* Sect. 2, sub-sect. 3, *ante.*

SUB-SECT. 4.—IN RELATION TO ROYAL FORCES.

196. Volunteer corps—Charity—1888 Act, s. 13.]—Testator by his will gave an annuity of £100 to

PART I. SECT. 5, SUB-SECT. 3.

c. Scientific research — Founding institution.]—A. gave his residuary estate on trust to apply the property towards the advancement of scientific research generally, & the founding, endowing, or assisting any existing scientific institutions or any scientific institution which might thereafter be founded :—*Held :* a valid charitable gift.—TAYLOR *v.* TAYLOR (1910), 10 C. L. R. 218.—**AUS.**

p. Institution for preservation & promotion of health—Validity of bequest.]—*Re* MCCLELLAN'S WILL, ROBINSON *v.* MCCLELLAN (1919), 46 N. B. R. 161.—**CAN.**

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be provided to a certain volunteer corps "on the appointment of the next lieutenant-colonel." The officer who was lieutenant-colonel at the date of testator's will was so still at the commencement of the action. In an action to have the gift declared valid:—*Held:* (1) a gift to a volunteer corps is a gift to a charity within 1888 Act, s. 13; (2) as the gift in question was contingent on an event which might never happen, it infringed the rule against perpetuities, & was void.—*Re* STRATHEDEN & CAMPBELL (LORD), ALT *v.* STRATHEDEN & CAMPBELL (LORD), [1894] 3 Ch. 265; 63 L. J. Ch. 872; 71 L. T. 225; 42 W. R. 647; 10 T. L. R. 574; 38 Sol. Jo. 602; 8 R. 515.

Annotations:—As to (1) **Consd.** *Re* Nottage, Jones *v.* Palmer, [1895] 2 Ch. 649. **Refd.** *Re* Good, Harington *v.* Watts, [1905] 2 Ch. 60. *Generally*, **Consd.** Worthing Corpn. *v.* Heather, [1906] 2 Ch. 532.

197. Officers' mess—Maintenance of library & purchase of plate—Valid.]—Testator gave his residuary personalty upon trust for the officers' mess of his regiment, to be invested & the income to be applied in maintaining a library for the officers' mess for ever, any surplus to be expended in the purchase of plate for the mess. He then directed that two houses, part of the residue, should be for the use of old officers of the regiment at a small rent during their lives:—*Held:* (1) the gift of residue to maintain a library & to purchase plate for the officers' mess being for a general public purpose tending to increase the efficiency of the army & aid taxation, was a good charitable bequest; (2) the gift might be supported as a "setting out of soldiers" within 43 Eliz. c. 4; (3) the gift of the houses was void for perpetuity, & (4) the houses did not fall back into the residue, but were undisposed of.—*Re* GOOD, HARINGTON *v.* WATTS, [1905] 2 Ch. 60; 74 L. J. Ch. 512; 92 L. T. 796; 53 W. R. 476; 21 T. L. R. 450; 49 Sol. Jo. 445.

Annotation:—As to (1) **Folld.** *Re* Donald, Moore *v.* Somerset, [1909] 2 Ch. 410.

198. —— Militia—Valid.]—*Re* DONALD, MOORE *v.* SOMERSET, No. 919, *post*.

199. Regimental institute—Prizes for competition—Valid.]—Testatrix bequeathed to the Dean & Chapter of St. Paul's Cathedral £200 upon trust to apply the income thereof in the maintenance & upkeep of a memorial tablet in the crypt of the Cathedral. She also bequeathed £1,800 to the trustees of the Royal Engineers' Institute to apply one-third of the income thereof towards the maintenance of her son's tomb in Middleburg Cemetery, & as to the remaining two-thirds upon trust to apply the same in providing prizes for competition among Royal Engineer cadets or officers. She also declared that the legacy of £1,800 was conditional upon the trust for the one-third of the income being applied to the upkeep of her son's tomb being faithfully observed, & in the event of the condition being broken the legacy was to pass to the trustees or treasurers of the Union Jack Club for the upkeep of bedrooms & attendance for the use of men of the Royal Engineers:—*Held:* (1) the bequest for the maintenance & upkeep of the memorial tablet in the crypt of St. Paul's Cathedral was valid as a good charitable bequest; (2) the bequest of two-thirds of the income of the £1,800 was a good charitable bequest; (3) the bequest of the remaining one-third of the income of the £1,800 for the maintenance of testatrix's son's tomb was void; (4) it was not forfeitable to the trustees of the Union Jack Club, but fell into the residue. (5) *Semble:* the gift to the Union Jack Club would have been a good charitable gift on the ground that the club tended to improve the condition of soldiers.—*Re* BARKER, SHERRINGTON *v.* ST. PAUL'S CATHEDRAL (DEAN & CHAPTER) (1909), 25 T. L. R. 753.

Rifle association.]—*See* No. 213, *post*.

SUB-SECT. 5.—IN RELATION TO ANIMALS.

200. "Sanatory institution" — Valid.] — LONDON UNIVERSITY *v.* YARROW (1857), 1 De G. & J. 72; 26 L. J. Ch. 430; 29 L. T. O. S. 172; 21 J. P. 596; 3 Jur. N. S. 421; 5 W. R. 543; 44 E. R. 649, L. C. & L. JJ.

Annotations:—**Apld.** *Re* Douglas, Obert *v.* Barrow (1887), 35 Ch. D. 472. **Distd.** *Re* Joy, Purday *v.* Johnson (1888), 60 L. T. 175. **Consd.** *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113; **Refd.** Tatham *v.* Drummond (1864), 3 New Rep. 706; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212; Income Tax Special Purposes Comrs. *v.* Pemsel (1891), 61 L. J. Q. B. 265. **Mentd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565.

201. Prevention of cruelty to animals—Establishment of slaughter-houses—Charitable use.]—TATHAM *v.* DRUMMOND (1864), 4 De G. J. & Sm. 484; 5 New Rep. 24; 34 L. J. Ch. 1; 11 L. T. 324; 10 Jur. N. S. 1087; 13 W. R. 61; 46 E. R. 1006, L. C.

Annotations:—**Consd.** *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113. **Mentd.** Cresswell *v.* Cresswell (1868), L. R. 6 Eq. 69; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272; Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597.

202. —— Promotion of prosecutions—Valid.]—A legacy was left to trustees on trust to promote therewith prosecutions for cruelty to animals:—*Held:* valid, & not void on the ground of champerty.—*Re* VALLANCE (1876), 2 Seton's Judgments, 7th ed. 1304.

Annotations:—**Refd.** *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113.

203. —— "By united prayer" — Void.] — *Re* JOY, PURDAY *v.* JOHNSON, No. 898, *post*.

204. —— In foreign country — Valid.] — *Re* JACKSON, BELL *v.* ADLAM (1910), *Times*, June 11.

205. Anti-vivisection society—Whether charity.]—(1) *Semble:* the Society for the Protection of Animals liable to Vivisection & the Home for Lost Dogs, are charities within 43 Eliz. c. 4.

(2) *Qu.:* whether the Society for the Total Suppression of Vivisection is a charity within the same statute.—*Re* DOUGLAS, OBERT *v.* BARROW

PART I. SECT. 5, SUB-SECT. 5.

202 i. *Prevention of cruelty to animals—Promotion of prosecutions.]*—A. bequeathed money to be invested as a fund to reward policemen for reporting to the proper authorities & helping to bring to justice cases of cruelty to animals:—*Held:* a good charitable gift.—*Re* HERRICK, COLOHAN *v.* A.-G. (1918), 52 I. L. T. 213.—**IR.**

204 i. —— *In foreign country.]*—A. bequeathed the residue of his property to the Society of Carlsruhe for the protection of Animals, to prevent the tormenting & ill-treating of animals, & of protecting all useful animals, especially birds, & whenever necessary of providing them with food. The society was not incorporated:—*Held:* the legacy was charitable.—ARMSTRONG *v.* REEVES (1890), 25 L. R. Ir. 325.—**IR.**

q. —— *Reward to police—For convictions.]*—A. bequeathed money to be invested, & directed that two-thirds of the income was to be given to the B. constable who secured the highest number of convictions for cruelty to animals in any one year, the other one-third share to be given to the constable whose record came next:—*Held:* the bequest was not charitable.—*Re* HOLLYWOOD, SMYTH *v.* A.-G. (1917), 52 I. L. T. 51.—**IR.**

205 i. *Anti-vivisection Society—Whether charity.]*—A. gave a legacy to the Society for the Abolition of Vivisection; the object of the society was to procure by legislative enactment the entire suppression of vivisection & to enforce by legal process any statute prohibiting or regulating the practice of vivisection. The society was not incorporated:—*Held:* the legacy was charitable.—ARMSTRONG *v.* REEVES (1890), 25 L. R. Ir. 325.—**IR.**

(1887), 35 Ch. D. 472 ; 56 L. J. Ch. 913 ; 56 L. T. 786 ; 35 W. R. 740 ; 3 T. L. R. 589, C. A.

Annotations :—As to (1) **Refd.** *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501. *Generally,* **Mentd.** *Re* Piercy, Whitwham *v.* Piercy (1898), 67 L. J. Ch. 297 ; Hunter *v.* A.-G., [1899] A. C. 309 ; *Re* Freeman, Shilton *v.* Freeman (1908), 98 L. T. 429; *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44.

206. —— Charity.]—(1) The intention to benefit the community by lawful means, irrespective of whether or not that object will be achieved, is enough to constitute a charitable purpose.

(2) A gift to societies having for their object the total suppression of vivisection :—*Held :* a valid exercise of a power to appoint " for some charitable purpose."—*Re* FOVEAUX, CROSS *v.* LONDON ANTI-VIVISECTION SOCIETY, [1895] 2 Ch. 501 ; 64 L. J. Ch. 856 ; 73 L. T. 202 ; 43 W. R. 661 ; 11 T. L. R. 540 ; 39 Sol. Jo. 671 ; 13 R. 730.

Annotations :—As to (1) **Consd.** *Re* Gosling, Gosling *v.* Smith (1900), 48 W. R. 300 ; *Re* Verrall, National Trust for Places of Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** *Re* Macduff, Macduff *v.* Macduff (1896), 65 L. J. Ch. 709. *As to* (2) **Apprvd.** *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113.

207. Home for lost dogs—Whether charity.]—*Re* DOUGLAS, OBERT *v.* BARROW, No. 205, *ante.*

208. Trust for "protection & benefit of animals" —Valid.]—Testatrix appointed W. to be one of her exors. & trustees, & bequeathed the residue of her estate to him absolutely. It appeared, however, that testatrix had in her lifetime stated to W. that she wished him to apply the residue for the protection & benefit of animals ; & that as it would be difficult to draft a will giving him the latitude that she desired, the best method of carrying out her wishes would be to bequeath the residue to W. absolutely, leaving the spending thereof, both capital & income, in the way intimated to W.'s absolute discretion, relying upon his love of animals :—*Held :* (1) the bequest was not an absolute gift to W. beneficially, but was subject to a secret trust ; (2) a good & valid charitable trust, on the ground that it was calculated to promote public morality by checking the innate tendency to cruelty.—*Re* WEDGWOOD, ALLEN *v.* WEDGWOOD, [1915] 1 Ch. 113 ; 84 L. J. Ch. 107 ; 112 L. T. 66 ; 31 T. L. R. 43 ; 59 Sol. Jo. 73, C. A.

Maintenance of specific animals.]—*See* Sect. 6, sub-sect. 4, *post.*

SUB-SECT. 6.—OTHER CASES.

209. Reduction of National Debt — Charitable use.]—ASHTON *v.* LANGDALE (LORD) (1851), 4 De G. & Sm. 402 ; 20 L. J. Ch. 234 ; 17 L. T. O. S. 175 ; 15 Jur. 868 ; 64 E. R. 888.

*Annotations :—***Expld.** Thornton *v.* Kempson (1854), Kay, 592. **Apprvd. & Foll.** Alexander *v.* Brame (1861), 30 Beav. 153. **Consd.** Imperial Mercantile Credit Assocn. *v.* Newry & Armagh Ry. (1868), 16 W. R. 1070 ; Attree *v.* Hawe (1878), 9 Ch. D. 337 ; Jervis *v.* Lawrence (1882), 22 Ch. D. 202. **Dbtd.** *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Refd.** *Re* Langham's Will (1853), 1 Eq. Rep. 118 ; Ware *v.* Cumberlege (1855), 20 Beav. 503 ; Chandler *v.* Howell (1876), 4 Ch. D. 651 ; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185 ; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655 ; *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 15 Ch. D. 561 ; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Mentd.** Robinson *v.* London Hospital Governors (1853), 10 Hare, 19.

210. Chancellor of Exchequer—Benefit of country — Valid.] — NIGHTINGALE *v.* GOULBOURN (1848), 2 Ph. 594 ; 17 L. J. Ch. 296 ; 11 L. T. O. S. 169 ; 12 Jur. 317 ; 41 E. R. 1072, L. C.

*Annotations :—***Consd.** Whicker *v.* Hume (1858), 7 H. L. Cas. 124. **Refd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531 ; *Re* Friends' Free School, Clibborn *v.* O'Brien, [1909] 2 Ch. 675.

211. Lifeboat — Good as to personalty.] — JOHNSTON *v.* SWANN (1818), 3 Madd. 457 ; 56 E. R. 573.

*Annotations :—***Consd.** Giblett *v.* Hobson (1834), 5 Sim. 651 ; Ellis *v.* Selby (1836), 1 My. & Cr. 286. **Apld.** Hartshorne *v.* Nicholson (1853), 26 Beav. 58. **Expld.** *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212. **Dbtd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Refd.** A.-G. *v.* Hodgson (1846), 15 Sim. 146 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173.

212. Statutory power to levy rates for street improvements, lighting, watching, etc.—Public, charitable purpose.]—A.-G. *v.* EASTLAKE (1853), 11 Hare, 205 ; 2 Eq. Rep. 145 ; 22 L. T. O. S. 20 ; 18 J. P. 262 ; 17 Jur. 801 ; 1 W. R. 323 ; 68 E. R. 1249.

*Annotations :—***Foll.** A.-G. *v.* West Hartlepool Improvement Comrs. (1870), L. R. 10 Eq. 152. **Consd.** *Re* St. Bride's, Fleet St. (1877), 35 Ch. D. 147, n. ; *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142. **Refd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309 ; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933 ; Smith *v.* Kerr (1902), 71 L. J. Ch. 369. **Mentd.** Elias *v.* Griffith (1878), 8 Ch. D. 521.

See, also, Sub-sect. 1, *ante.*

213. Encouragement of rifle shooting — Charitable.]—A bequest to encourage skill in rifle shooting " to prevent, as far as possible, a catastrophe similar to that at Majuba Hill " :—*Held :* valid as a charitable gift.—*Re* STEPHENS, GILES *v.* STEPHENS (1892), 8 T. L. R. 792 ; 36 Sol. Jo. 713.

*Annotation :—***Refd.** *Re* Good, Harington *v.* Watts, [1905] 2 Ch. 60.

214. Furtherance of vegetarianism—Charitable.] —A gift by will of a sum of money to certain persons, to be applied as they might in their absolute discretion think best in furtherance of the principles of food reform as advocated by the vegetarian societies of M. & L. :—*Held :* a good charitable gift.—*Re* SLATTER, HOWARD *v.* LEWIS (1905), 21 T. L. R. 295 ; 49 Sol. Jo. 314.

215. Emigration — Not charitable.] — Testator gave his residuary estate in trust for such charitable uses or for such emigration uses, or partly for such charitable uses & partly for such emigration uses as the trustees " should in their absolute & uncontrolled discretion think fit " :—*Held :* (1) as emigration was not necessarily confined to the poor nor necessarily a matter of public utility, the trust for emigration uses was not charitable ; (2) as the gift comprised a charitable purpose & one which might or might not be charitable, it failed as being vague & indefinite.—*Re* SIDNEY, HINGESTON *v.* SIDNEY, [1908] 1 Ch. 488 ; 77 L. J. Ch. 296 ; 98 L. T. 625 ; 52 Sol. Jo. 262, C. A.

Annotation :—Generally, **Mentd.** *Re* Davidson, Minty *v.* Bourne (1908), 78 L. J. Ch. 437.

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207 i. *Home for cats.*]—A. bequeathed consols on "trust to apply the income for the exclusive maintenance of the D. home for starving & forsaken cats . . . including the maintenance of any painless method of putting an end to cases of hopeless suffering, & the maintenance of the boarding department " :—*Held :* the bequest was a valid charitable gift.—SWIFTE *v.* A.-G. FOR IRELAND (No. 2), [1912] 1 I. R. 133.—**IR.**

PART I. SECT. 5, SUB-SECT. 6.

214 i. *Furtherance of vegetarianism—Valid.*]—*Re* CRANSTON, WEBB *v.* OLDFIELD, [1898] 1 I. R. 431.—**IR.**

215 i. *Emigration.*]—A direction by will that a portion of the annual proceeds of testator's estate should be expended in paying the passage money from a specified town in E. to V. of immigrants of good character, to be selected by a specified person, is a valid charitable trust.—*Re* WALLACE, TRUSTEES, EXECUTORS & AGENCY CO., LTD. *v.* FATT, [1908] V. L. R. 636.—**AUS.**

215 ii. ——.]—A gift to an institution aiding emigrant girls coming to C., to be used in awarding annual prizes to domestics who have gone through that institution, & who have remained in one place for three years, giving satisfaction to her employer, is a gift for charitable purposes.—*Re* FITZGIBBON (1916), 27 O. W. R. 207.—**CAN.**

r. *Promotion of temperance.*]—A. bequeathed money upon trust " to apply the same in order to promote the adoption of legislation prohibiting totally the manufacture or sale in C. of intoxicating liquor to be used as a beverage " :—*Held :* a good charitable legacy, being for a lawful public or general purpose.—FAREWELL *v.*

Sect. 5.—Public purposes: Sub-sect. 6. Sect. 6: Sub-sects. 1 & 2.]

216. Police pension fund—Not wholly a charity.]—Testator who died in 1914 by his will gave £50 to the vicar of C. & his successors to be invested in trust security, & committed to their care & charge certain graves in the churchyard of C., to be kept in good order & repair, with a gift over of the trust fund if the vicar & his successors should at any time fail to comply with those directions to "the superannuation fund of the C. Constabulary." There was no such fund, but testator, as a retired member of the C. Constabulary, had for many years received a pension paid by the C. County Council under Police Act, 1890 (c. 45), which (ss. 1, 2 & 16) established a "pension fund" for the members of every police force or their dependants on retirement of a member or on his death whilst in the force; s. 22 provides for the application of surplus funds to other purposes, & s. 33 & Schedule III. define the "police authority" of a county:—*Held:* (1) the C. County Council sufficiently represented the police authority of that county for the purposes of the summons; (2) there was a good gift of the income of the £50 to the vicar & his successors as an accretion to the endowment of the living; (3) testator had not sufficiently described the police "pension fund" as the object of the gift over; (4) if he had, that fund was not wholly a charity, & the gift over on failure to repair the graves was void under the rule against perpetuities.—*Re* DAVIES, LLOYD *v.* CARDIGAN COUNTY COUNCIL, [1915] 1 Ch. 543; 84 L. J. Ch. 493; 112 L. T. 1110; 79 J. P. 291; 59 Sol. Jo. 413; 13 L. G. R. 437.

217. Preservation of places of historic interest or natural beauty—Valid.]—Pltfs. were incorporated by a private Act for the purposes (s. 4 (1)) of promoting the permanent preservation "for the benefit of the nation" of land & tenements (including buildings) of beauty or historic interest, & as regards lands for the preservation (so far as possible) of their natural aspect, features, & animal & plant life:—*Held:* these purposes were charitable purposes.

(2) S. 3 incorporated pltfs. for these purposes, with power to purchase, take, hold, deal with, & dispose of lands & other property without licence in mortmain:—*Held:* this sect. merely gave pltfs. a licence in mortmain, with possibly a power of sale without the consent of the Charity Comrs. under Charitable Trusts Amendment Act, 1855 (c. 124), s. 29.

(3) S. 21 (2) provided that pltfs.' council might by resolution determine that any lands vested in pltfs. after the Act were proper to be held for the benefit of the nation, & thereupon such lands should be inalienable:—*Held:* devised lands made inalienable by a resolution within a year of testator's death were not liable to be sold under 1891 Act.

(4) *Semble:* lands not made inalienable within that period must be sold unless an extension of time or retention order was obtained.

(5) *Held:* with the above exceptions pltfs. were subject to all the provisions of 1888 & 1891 Acts.—*Re* VERRALL, NATIONAL TRUST FOR PLACES OF HISTORIC INTEREST OR NATURAL BEAUTY *v.* A.-G., [1916] 1 Ch. 100; 85 L. J. Ch. 115; 113 L. T. 1208; 80 J. P. 89; 60 Sol. Jo. 141; 14 L. G. R. 171.

Publication of books.]—*See* Sect. 4, sub-sect. 5, *ante*.

Bell-ringing to celebrate the Restoration.]—*See* No. 82, *ante*.

SECT. 6.—PRIVATE CHARITIES OR SPECIFIED INDIVIDUALS.

SUB-SECT. 1.—MONUMENTS, TOMBS AND MEMORIALS.

218. Maintenance of tombs—Of testator—Charitable use.]—DUROUR *v.* MOTTEUX (1749), 1 Ves. Sen. 320; 1 Sim. & St. 292, n.; 27 E. R. 1057, L. C.

Annotations:—**Dbtd.** Turner *v.* Ogden (1787), 1 Cox, Eq. Cas. 316; Amphlett *v.* Parke (1831), 2 Russ. & M. 221. **Follid.** Green *v.* Jackson (1835), 2 Russ. & M. 238. **Refd.** Ackers *v.* Phipps (1835), 3 Cl. & Fin. 665; Cogan *v.* Stephens (1835), 5 L. J. Ch. 17. **Mentd.** Digby *v.* Legard (1774), Dick. 500; Fletcher *v.* Ashburner (1779), 1 Bro. C. C. 497; Hutcheson *v.* Hammond (1790), 3 Bro. C. C. 128; Kennell *v.* Abbott (1799), 4 Ves. 802; Williams *v.* Coade (1805), 10 Ves. 500; Maugham *v.* Mason (1813), 1 Ves. & B. 410; Jones *v.* Mitchell (1823), 1 Sim. & St. 290; Phillips *v.* Phillips (1832), 1 My. & K. 649; *Re* London Bridge Acts, *Ex p.* Pring (1841), 4 Y. & C. Ex. 507; Salt *v.* Chattaway (1841), 3 Beav. 576; Taylor *v.* Taylor (1853), 17 Jur. 583; Spencer *v.* Wilson (1873), L. R. 16 Eq. 501.

219. —— Family vault—Annuity out of land—Void.]—GRAVENOR *v.* HALLUM (1767), Amb. 643; 27 E. R. 417, L. C.

Annotations:—**Consd.** Turner *v.* Ogden (1787), 1 Cox, Eq. Cas. 316. **Refd.** Tregonwell *v.* Sydenham (1815), 3 Dow. 194; Henchman *v.* A.-G. (1834), 3 My. & K. 485; Doe d. Chidgey *v.* Harris (1847), 16 M. & W. 517. **Mentd.** Hayford *v.* Benlows (1716), Amb. 581; Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262; *Re* Cooper's Trusts (1853), 23 L. J. Ch. 27, n.; Lainson *v.* Lainson (1854), 24 L. J. Ch. 46; Smith *v.* Lomas (1864), 4 New Rep. 318.

220. —— —— Pure personalty—Void.]—*Re* VAUGHAN, VAUGHAN *v.* THOMAS (1886), 33 Ch. D. FAREWELL (1892), 22 O. R. 573.—**CAN.**

s. For best results of specified mode of agriculture—Impure personalty.]—A. directed his exors. to invest $2,000 & pay over the yearly interest to an agricultural society, to be applied as a premium for the best results in a specified mode of agriculture. The legacy was payable out of a mixed fund consisting in part of impure personalty:—*Held:* so far as the bequest consisted of impure personalty, it was void.—KINSEY *v.* KINSEY (1894), 26 O. R. 99.—**CAN.**

t. American citizens of African descent.] A. devised lands in O. in trust "to promote, aid, & protect citizens of the U.S.A. of African descent in the enjoyment of their civil rights":—*Held:* (1) void; (2) the fact that the trust was to be executed in a foreign country made no difference.—LEWIS *v.* DOERLE (1898), 25 A. R. 206.—**CAN.**

u. "Purposes of healthy recreation."] A. directed that the balance of the income of his estate should be applied by his trustees "for the purpose of fostering, encouraging, & providing the means of healthy recreation, including the teaching of singing in classes or choruses for the residents of the town of P. & the surrounding districts, & for the purpose of providing music and instruments for the town band":—*Held:* this was a valid charitable bequest.—SHILLINGTON *v.* PORTADOWN URBAN COUNCIL, [1911] 1 I. R. 247.—**IR.**

b. Afforestation — Public park.]—A. directed his trustees "to apply the whole of his residuary estate for the purpose of afforestation on the making of domains or national parks in New Zealand":—*Held:* the gift, being for a sufficiently definite purpose of public utility was a good charitable gift.—*Re* BRUCE, SIMPSON *v.* BRUCE & A.-G., [1918] N. Z. L. R. 16.—**N.Z.**

c. Fire prevention.]—On the disbanding of a volunteer fire brigade for which land was held in trust it was resolved to hand over the land to a borough council which accepted the offer. The trustees then conveyed & assured the land to the corpn. "to hold unto the corpn. & its assigns for municipal fire purposes":—*Held:* the conveyance had created a trust which imposed on the corpn. the obligation to hold the land for the purposes of fire prevention; & that the trust, being of a public nature, was a charitable trust.—WANGANUI BOROUGH *v.* WANGANUI FIRE BOARD, [1919] N. Z. L. R. 763.—**N.Z.**

PART I. SECT. 6, SUB-SECT. 1.

218 i. *Maintenance of tombs — Of testator.*]—Testator gave a legacy to the Church of E. trustee at S. Cemetery to keep testator's grave in order, the interest only to be used:—*Held:* a non-charitable object.—MUIR *v.* ARCHDALL (1919), 19 S. R. N. S. W. 10.—**AUS.**

218 ii. —— —— —— *Valid.*]—*Re* CRONIN (1910), 15 O. W. R. 819.—**CAN.**

218 iii. —— —— —— *& of certain relations—Valid—Cemetery Act, 1914, s. 14.*]—*Re* HAGERMAN (1918), 13 O. W. N. 106.—**CAN.**

d. —— *Of specified graves.*]—

187 ; 55 L. T. 547 ; 51 J. P. 70 ; 35 W. R. 104 ; 2 T. L. R. 725.

Annotations :—**Folld.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715. **Consd.** *Re* Manser, A.-G. *v.* Lucas, [1905] 1 Ch. 68. **Refd.** *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184.

221. —— —— Not charitable use.]—DOE d. THOMPSON *v.* PITCHER (1815), 6 Taunt. 359 ; 2 Marsh. 61 ; 128 E. R. 1074.

Annotation :—**Mentd.** Hopkins *v.* Prescott (1847), 16 L. J. C. P. 259.

222. —— —— Void—Not within Gifts to Churches Act, 1803 (c. 108).]—*Re* RIGLEY'S TRUSTS (1866), 36 L. J. Ch. 147 ; 15 L. T. 499 ; 15 W. R. 190.

Annotations :—**Consd.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Refd.** Champney *v.* Davy (1879), 11 Ch. D. 949.

223. —— —— & certain relations—Void.]—*Re* RICKARD, RICKARD *v.* ROBSON (1862), 31 Beav. 244 ; 31 L. J. Ch. 897 ; 7 L. T. 87 ; 26 J. P. 709 ; 8 Jur. N. S. 665 ; 10 W. R. 657 ; 54 E. R. 1132.

Annotations :—**Folld.** Fowler *v.* Fowler (1864), 28 J. P. 707 ; Hoare *v.* Osborne (1866), 30 J. P. 309. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1 ; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187 ; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252.

224. —— Family graves—Void—As tending to perpetuity.]—FOWLER *v.* FOWLER (1864), 33 Beav. 616 ; 33 L. J. Ch. 674 ; 10 L. T. 682 ; 28 J. P. 707 ; 10 Jur. N. S. 648 ; 12 W. R. 972 ; 55 E. R. 507.

Annotations :—**Folld.** Hoare *v.* Osborne (1866), 30 J. P. 309 ; *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1 ; *Re* Williams (1877), 5 Ch. D. 735.

225. —— Of testator's mother — Void.]—HOARE *v.* OSBORNE (1866), L. R. 1 Eq. 585 ; 35 L. J. Ch. 345 ; 14 L. T. 9 ; 30 J. P. 309 ; 12 Jur. N. S. 243 ; 14 W. R. 383.

Annotations :—**Folld.** *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147. **Consd.** Champney *v.* Davy (1879), 11 Ch. D. 949 ; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1 ; Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96 ; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252.

226. —— Of testator's wife—Obligation ancillary to repair of graveyard — Valid.] — *Re* MANSER, A.-G. *v.* LUCAS, No. 81, *ante*.

227. —— Of testator's son — Void.] — *Re* BARKER, SHERRINGTON *v.* ST. PAUL'S CATHEDRAL (DEAN & CHAPTER), No. 199, *ante*.

228. —— Inhabitants of specified almshouses—Valid.]—*Re* PARDOE, MCLAUGHLIN *v.* A.-G., No. 82, *ante*.

229. —— During life of annuitant—Valid.]—LLOYD *v.* LLOYD (1852), 2 Sim. N. S. 255 ; 21 L. J. Ch. 596 ; 19 L. T. O. S. 84 ; 16 Jur. 306 ; 61 E. R. 338.

Annotations :—**Consd.** *Re* Rickard, Rickard *v.* Robson (1862), 31 Beav. 244. **Refd.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Mentd.** West *v.* Kerr (1853), 23 L. T. O. S. 24 ; Newton *v.* Marsden (1862), 2 John. & H. 356 ; Bellairs *v.* Bellairs (1874), L. R. 18 Eq. 510.

230. —— "So long as law permits"—Valid for twenty-one years — Not charitable.] — (1) Testator, after expressing his wish to be buried in the inclosure in which his child lay in the churchyard of E., bequeathed to the rector & churchwardens for the time being of the parish church £800 Consols, to be invested in their joint names, the interest & dividends to be applied, so long as the law for the time being permitted, in keeping up the inclosure & decorating it with flowers :—*Held* : the gift was valid for at least a period of twenty-one years from testator's death.

(2) *Semble* : it was not charitable.—PIRBRIGHT *v.* SALWEY, [1896] W. N. 86.

231. —— "For longest period allowed by law"—Void for uncertainty.]—(1) Testatrix bequeathed the sum of £500 New Consols to trustees, upon trust to apply the dividends in maintaining & keeping in repair the tomb of her brother in Africa "for the longest period allowed by law, that is to say, until the period of twenty-one years from the death of the last survivor of all persons who shall be living at my death" :—*Held* : the gift was void for uncertainty.

(2) *Qu.* : whether it was void as a perpetuity.—*Re* MOORE, PRIOR *v.* MOORE, [1901] 1 Ch. 936 ; 70 L. J. Ch. 358 ; 84 L. T. 501 ; 49 W. R. 484 ; 17 T. L. R. 356.

See, also, No. 216. *ante*.

—— Gift over of residue.]—*See* Part III., Sect. 2, sub-sect. 3, *post*.

232. Erection of monument—To testator's memory—Not charitable use.]—MELLICK *v.* ASYLUM PRESIDENT, ETC. (1821), Jac. 180 ; 37 E. R. 818.

Annotation :—**Consd.** Trimmer *v.* Danby (1856), 20 J. P. 709.

233. —— —— Valid.]—TRIMMER *v.* DANBY (1856), 25 L. J. Ch. 424 ; 20 J. P. 709 ; 2 Jur. N. S. 367 ; 4 W. R. 430.

234. —— To first husband of testator's wife—Valid.]—MUSSETT *v.* BINGLE, [1876] W. N. 170.

235. —— To inhabitants of specified almshouses—Valid.]—*Re* PARDOE, MCLAUGHLIN *v.* A.-G., No. 82, *ante*.

236. Repair of monument—In church—Not within Mortmain Acts.]—WILLIS *v.* BROWN (1838), 2 Jur. 987.

237. Maintenance of family burial ground—Void—Erection of house for religious ceremonies in memory of testator's husband & herself—Void for perpetuity.]—YEAP CHEAH NEO *v.* ONG CHENG NEO (1875), L. R. 6 P. C. 381, P. C.

Annotations :—**Refd.** *Re* Manser, A.-G. *v.* Lucas (1904), 74 L. J. Ch. 95 ; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Elliott *v.* Totnes Union (1892), 57 J. P. 151 ; *Re* Howell, *Re* Buckingham, Liggins *v.* Buckingham (1914), 84 L. J. Ch. 209.

238. Ornamental window—In memory of testator's mother—Valid.]—HOARE *v.* OSBORNE (1866), L. R. 1 Eq. 585 ; 35 L. J. Ch. 345 ; 14 L. T. 9 ; 30 J. P. 309 ; 12 Jur. N. S. 243 ; 14 W. R. 383.

Annotations :—**Folld.** *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147. **Consd.** Champney *v.* Davy (1879), 11 Ch. D. 949 ; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. 1 ; Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96 ; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252.

239. Memorial tablet—In cathedral crypt—Valid.]—*Re* BARKER, SHERRINGTON *v.* ST. PAUL'S CATHEDRAL (DEAN & CHAPTER), No. 199, *ante*.

—— Recording gift.]—*See* No. 29, *ante*.

Bell-ringing—In memory of testator.]—*See* No. 86, *ante*.

Gifts void for perpetuity, generally, *see* Part III., Sect. 6, sub-sect. 4, *post*.

SUB-SECT. 2.—PRIVATE ASSOCIATIONS AND INSTITUTIONS.

240. Friendly society—Donations by non-members—Treated as fund devoted to charity.]—SPILLER *v.* MAUDE (1864), 5 New Rep. 30 ; 11 L. T. 329 ;

A direction to trustees to look after & keep in proper repairs certain graves & to pay for the expenses of such repairs in perpetuity out of the estate, was not for charitable uses, & void & inoperative.—ADMINISTRATOR-GENERAL OF BENGAL *v.* HUGHES (1912), I. L. R. 40 Calc. 192.—**IND.**

e. —— ——.]—Bequest of money to be invested & the dividends applied in keeping the enclosure round a grave in repair :—*Held* : void.—TOOLE *v.* HAMILTON, [1901] 1 I. R. 383.—**IR.**

f. *Erection of statues of testator's family.*]—A. directed that the revenue of his heritable estate should be used for the purpose of erecting monuments & statues of himself, his brothers, sisters, father, & mother on his estates :—*Held* : not a charitable bequest.—M'CAIG *v.* GLASGOW UNIVERSITY, [1907] S. C. 231.—**SCOT.**

Sect. 6.—Private charities or specified individuals: Sub-sects. 2 & 3.]

28 J. P. 804; 10 Jur. N. S. 1089; 13 W. R. 69; *subsequent proceedings* (1881), 32 Ch. D. 158, n.

Annotation:—**Consd.** Braithwaite *v.* A.-G., [1909] 1 Ch. 510.

241. —— Poverty not necessary to entitle member to benefits—Not charity.]—*Re* CLARK'S TRUST (1875), 1 Ch. D. 497; 45 L. J. Ch. 194; 24 W. R. 233.

Annotations:—**Apld.** *Re* Dutton (1878), 4 Ex. D. 54. **Consd.** Pease *v.* Pattinson (1886), 32 Ch. D. 154. **Distd.** *Re* Buck, Bruty *v.* Mackey, [1896] 2 Ch. 727. **Apprvd.** Cunnack *v.* Edwards, [1896] 2 Ch. 679. **Reid.** *Re* White, White *v.* White, [1893] 2 Ch. 41; *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110; Braithwaite *v.* A.-G., [1909] 1 Ch. 510. **Mentd.** *Re* Amos, Carrier *v.* Price, [1891] 3 Ch. 159.

242. —— —— —— Society formed to provide annuities to members' widows.]—A society formed for the sole purpose of raising by the subscription of its members, & the fines & forfeitures imposed by its rules, a fund to provide annuities for the widows of deceased members of the society, & subsequently brought under Friendly Societies Act, 1829 (c. 56), is not a charity, & its funds cannot, on the failure of the objects of the society, be administered *cy-près*.—CUNNACK *v.* EDWARDS, [1896] 2 Ch. 679; 65 L. J. Ch. 801; 75 L. T. 122; 61 J. P. 36; 45 W. R. 99; 12 T. L. R. 614, C. A.

Annotations:—**Distd.** *Re* Buck, Bruty *v.* Mackey, [1896] 2 Ch. 727. **Consd.** *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149. **Folld.** Braithwaite *v.* A.-G., [1909] 1 Ch. 510. **Mentd.** *Re* Higginson & Dean, *Ex p.* A.-G., [1899] 1 Q. B. 325; *Re* Printers & Transferrers Amalgamated Trades Protection Soc., [1899] 2 Ch. 184; Bowman *v.* Secular Soc., [1917] A. C. 406; *Re* Customs & Excise Officers & Mutual Guarantee Fund, Robson *v.* A.-G., [1917] 2 Ch. 18.

Distribution of funds on winding up, *see* FRIENDLY SOCIETIES.

243. —— —— ——.]—A benefit society duly established in 1808 & registered under Friendly Societies Act, 1793 (c. 54), consisted of honorary members & benefited members, the former being subscribers & not entitled to receive any benefit from its funds, & the latter being members of a school of industry who as such received instruction, paid fees according to its rules, & became entitled to receive certain specified benefits from its funds in sickness & in old age, poverty not being a necessary qualification. In 1845, the school was closed, & no new members of the society were admitted, but the existing members continued their subscriptions & the benefited members still received their benefits. Its funds comprised an honorary members' fund, half of which was appropriated to a fund called the children's fund, & the other half to a fund called the private members' fund for relief in extraordinary cases not coming within any other fund, & a benefited members' fund subscribed by the benefited members. In course of time there were no children to receive the children's fund & only two benefited members, one of whom died before the case was decided, who were entitled to annuities from the benefited members' fund. There was nothing in the rules to entitle benefited members to the capital of the funds of the society. On an action by the trustees of the society for the determination of the question who was entitled to the surplus funds:—*Held:* the funds were not subject to any charitable trust.—BRAITHWAITE *v.* A.-G., [1909] 1 Ch. 510; 78 L. J. Ch. 314; 100 L. T. 599; 73 J. P. 209; 25 T. L. R. 333.

Annotation:—**Distd.** *Re* Customs & Excise Officers Mutual Guarantee Fund, Robson *v.* A.-G., [1917] 2 Ch. 18.

244. —— —— May be charity—Fund raised by voluntary subscriptions.]—PEASE *v.* PATTINSON (1886), 32 Ch. D. 154; 55 L. J. Ch. 617; 54 L. T. 209; 34 W. R. 361; 2 T. L. R. 306.

Annotations:—**Distd.** Cunnack *v.* Edwards, [1896] 2 Ch. 679. **Reid.** *Re* Amos, Carrier *v.* Price (1891), 39 W. R. 550.

245. —— Poverty necessary to entitle member to benefits—Is charity.]—SPILLER *v.* MAUDE (1881), 32 Ch. D. 158, n.

Annotations:—**Distd.** Cunnack *v.* Edwards, [1896] 2 Ch. 679. **Consd.** *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149; Braithwaite *v.* A.-G., [1909] 1 Ch. 510. **Reid.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; *Re* Buck, Bruty *v.* Mackey (1896), 65 L. J. Ch. 881.

246. —— —— ——.]—(1) A friendly society formed to provide a fund for sick & distressed members, their widows & children, & receiving voluntary donations, is a charity, where the rules show that poverty is a necessary ingredient in the qualification of appcts. for the benefits of the society.

(2) If a legacy is given to such a society which has not ceased to exist at the date of testator's death, but which has only one amply secured annuitant with a claim upon its funds, such legacy will not lapse, but will be applied *cy-près*.—*Re* BUCK, BRUTY *v.* MACKEY, [1896] 2 Ch. 727; 65 L. J. Ch. 881; 75 L. T. 312; 60 J. P. 775; 45 W. R. 106; 40 Sol. Jo. 729.

Annotation:—*As to* (1) **Consd.** Braithwaite *v.* A.-G., [1909] 1 Ch. 510.

247. Mutual benefit society—Poverty necessary to entitle member to benefits—Benefits at discretion of directors—Not charitable institution—Customs & Inland Revenue Act, 1885 (c. 51), s. 11.]—*Re* LINEN & WOOLLEN DRAPERS, ETC. INSTITUTION, *Re* CUSTOMS & INLAND REVENUE ACT, 1885 (1887), 58 L. T. 949; 4 T. L. R. 345; 2 Tax Cas. 651, D. C.

248. Guarantee society—Surplus funds—Not subject to charitable trust.]—Society A. was formed to raise a fund from the annual subscriptions of its members to guarantee the fidelity bonds into which such members were required to enter by the Crown. Society B. was formed with a similar object. Both societies had a rule under which members were entitled to be guaranteed by the fund, & on death, retiring, or dismissal from their employment, to be repaid their subscriptions with interest. Society B. had in addition a rule under which the surplus, over what was required for guarantee purposes, was paid over to a benevolent fund for the benefit of members. The rules of Society A. gave no power to alter the rules. The two societies having amalgamated, the rules of Society B. were with the consent of the then members made the rules of the new society. The Crown ceasing to require fidelity bonds, the members were repaid their subscriptions with interest, & a surplus remained:—*Held:* (1) the surplus was distributable among the subscribers to the amalgamated society living at the date when fidelity bonds were no longer required, & the representatives of any since deceased, in proportion to their subscriptions; (2) there was no resulting trust in favour of the representatives of deceased members of Society A. who died before the amalgamation; (3) the fund did not pass to the Crown as *bona vacantia;* (4) the provision in the rules for handing over any surplus to a benevolent fund only applied while the society was a going concern; (5) the surplus was not subject to a charitable trust, & should not be applied *cy-près*.—*Re* CUSTOMS & EXCISE OFFICERS MUTUAL GUARANTEE FUND, ROBSON *v.* A.-G., [1917] 2 Ch. 18; 86 L. J. Ch. 457; 117 L. T. 86; 33 T. L. R. 311.

249. Royal General Theatrical Fund Association—Is charity.]—The Royal General Theatrical Fund Assocn. is a charity.—*Re* LACY, ROYAL GENERAL THEATRICAL FUND ASSOCN. *v.* KYDD,

[1899] 2 Ch. 149 ; 68 L. J. Ch. 488 ; 80 L. T. 706 ; 47 W. R. 664.

Annotations :—**Mentd.** *Re* Blow, St. Bartholomew's Hospital *v.* Cambden, [1914] 1 Ch. 233 ; *Re* Richardson, Pole *v.* Pattenden, [1919] 2 Ch. 50.

250. Voluntary association—Corps of commissionaires—How far a charity.]—The Corps of Commissionaires is a voluntary association with a somewhat special constitution for the benefit of able-bodied & disabled soldiers & sailors alike, which is mainly supported by the subscriptions of the members & intended for their benefit ; & although there are funds appropriated to the benefit of the corps which, taken separately, may be considered as charities, the corps as at present constituted would not appear to be a charity within the legal meaning of that expression.

(2) A gift to a perpetual institution not charitable is not necessarily bad. The gift is good if it is not subject to any trust that will prevent the existing members of the assocn. from dealing with it as they please, or if it can be construed as a gift to or for the benefit of the individual members of the assocn. If the gift is one which by the terms of it, or which by reason of the constitution of the assocn. in whose favour it is made tends to a perpetuity, the gift is bad.

A gift to the committee for the time being of the corps " to aid in the purchase of their barracks or in any other way beneficial to that corps " is good on the ground either that some of the objects of the corps are charitable, or else that it does not tend to a perpetuity, inasmuch as the committee for the time being of the corps can deal with it in any way they please for the benefit of the corps.—*Re* CLARKE, CLARKE *v.* CLARKE, [1901] 2 Ch. 110 ; 70 L. J. Ch. 631 ; 84 L. T. 811 ; 49 W. R. 628 ; 17 T. L. R. 479 ; 45 Sol. Jo. 484.

Annotations :—*As to* (1) **Consd.** *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937. *As to* (2) **Apld.** *Re* Clifford, Mallam *v.* McFie (1911), 81 L. J. Ch. 220. **Folld.** *Re* Drummond, Ashworth *v.* Drummond, [1914] 2 Ch. 90. **Refd.** Kennedy *v.* Kennedy, [1914] A. C. 215 ; *Re* Customs & Excise Officers Mutual Guarantee Fund, Robson *v.* A.-G., [1917] 2 Ch. 18.

251. —— Angling—Not charity.]—(1) A gift to a society having for its immediate object the preservation & improvement of angling in certain parts of the river T. for the benefit of its members : —*Held :* not to be a good charitable bequest, although some benefit might enure from its operations to the public generally.

(2) Where the object of an unincorporated society is non-charitable, the fact that the society is a voluntary association will not enable it to take the gift if the gift is coupled with words which impose a continuing trust as to its user.—*Re* CLIFFORD, MALLAM *v.* MCFIE (1911), 81 L. J. Ch. 220 ; 106 L. T. 14 ; 28 T. L. R. 57 ; 56 Sol. Jo. 91.

252. Private burial ground for Society of Friends.]—*Re* MANSER, A.-G. *v.* LUCAS, No. 81, *ante*.

Public institutions—Promotion of knowledge, science & art.]—*See* Sect. 5, sub-sect. 3, *ante*.

—— **Relief of indigent.**]—*See* Sect. 2, sub-sect. 3, *ante*.

Educational purposes.]—*See* Sect. 3, *ante*.

Gift void for remoteness.]—*See* Part III., Sect. 6, sub-sect. 4, *post*.

SUB-SECT. 3.—CITY OF LONDON LIVERY COMPANIES.

253. Leathersellers—Devise to—Valid.] — HELLAM'S CASE (1632), Duke, 80.

254. Haberdashers—Gifts of money for increase of stock of corn—Not charities.]—A.-G. *v.* HABERDASHERS' CO. (1834), 1 My. & K. 420 ; 39 E. R. 741, L. C.

Annotations :—**Consd.** Bowman *v.* Secular Soc., [1917] A. C. 406. **Refd.** *Re* Gosling, Gosling *v.* Smith (1900), 48 W. R. 300.

255. Vintners—Gift of portrait & legacy on acceptance of picture—For benefit of certain individuals without reference to age or poverty—Legacy invalid.]—Testator made the following gifts : " I bequeath to the Vintners' Co. . . . the portrait of " a named person " to be hung up by them in a conspicuous part of their common hall & always retained in that position, & upon condition that they accept the said bequest of the portrait with the obligation aforesaid I bequeath to the said co. the sum of £4,000 . . . enjoining the said co. out of the income of the said sum of £4,000 to keep in due & proper repair the portrait, cleaning & re-gilding its frame not less than once in every four years, the surplus of the income to be applied . . . for the benefit of individuals " answering a particular description without any reference to age or poverty, " & if applied by way of annuity, no single annuity to exceed £50 *per annum* " :—*Held :* (1) the gift of the picture was valid, the condition imposed being a condition subsequent ; (2) no part of the gift of the £4,000 legacy could be supported as a charitable gift, & it failed wholly, as infringing the rule against perpetuity.—*Re* GASSIOT, FLADGATE *v.* VINTNERS' CO. (1901), 70 L. J. Ch. 242 ; 17 T. L. R. 216.

256. Painter Stainers—Bequest to give annual dinners—Not charitable.]—Testator, a member of the Painter Stainers' Co. of the City of London, by his will, gave all his property to trustees upon trust to convert & out of the proceeds to pay certain legacies, & he bequeathed the residue to the Painter Stainers' Co. upon trust (*inter alia*) to give a livery dinner on each anniversary of his birthday & to apply the remainder of the trust moneys " in or towards the general benevolent objects or purposes of the Painter Stainers' Co.," & if the Painter Stainers' Co. should fail to comply with two specified conditions in his will, the residue was to go to the National Debt Comrs. The Painter Stainers' Co. was a guild for the protection of the particular trade, & held funds for charitable & other purposes :—*Held :* (1) the gift for the dinners was not a good charitable gift ; (2) the gift having failed, the money fell into the residue ; (3) the gift of the residue, being for benevolent purposes, was not a gift for charitable purposes, & was bad ; (4) upon the construction of the gift over, & so far as the fund was not held

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PART I. SECT. 6, SUB-SECT. 2.

g. *Voluntary association — Sisters of Mercy—Conducting private hospital.*]—Testator gave the residue of his property to an institution, conducted by Sisters of Mercy, which received & tended patients for payment, & sick poor who could make no payments : —*Held :* a good charitable gift.—QUEENSLAND TRUSTEES, LTD. *v.* R., [1911] St. R. Qd. 105.—**AUS.**

h. —— *Carrying out charitable works.*]—Where a voluntary association exists to carry on & is carrying out charitable works a devise to them may be valid as a charitable gift.—GLEESON *v.* PHELAN (1914), 15 S. R. N. S. W. 30.—**AUS.**

k. *Home—Mentally afflicted, sick & convalescent persons.*]—A. gave property upon trust " for the purpose of founding, endowing or assisting private institutions or homes in T. or V. for the care & treatment of mentally afflicted persons & of sick or convalescent persons in cases where such persons could not be treated in their own homes " : —*Held :* a valid charitable gift.—TAYLOR *v.* TAYLOR (1910), 10 C. L. R. 218.—**AUS.**

l. *Masonic home or orphanage.*]—W. gave residuary trust funds upon trust to pay the same to the trustees of the District Grand Masonic Lodge of Q. " for the purpose of providing a fund for a Masonic home or orphanage " : —*Held :* the gift was valid.—QUEENSLAND TRUSTEES, LTD. *v.* WOODWARD, [1912] St. R. Qd. 291.—**AUS.**

Sect. 6.—Private charities or specified individuals: Sub-sects. 3 & 4. Sect. 7. Part II. Sect. 1.]

on charitable trusts, there was an intestacy.—*Re* BARNETT, WARING *v.* PAINTER STAINERS' CO. (1908), 24 T. L. R. 788.

257. Butchers—Devise for general purposes of company—Not charitable gift.]—(1) Property was devised to trustees in fee simple, upon trust for & to be held by the Masters, Wardens, & Commonalty of the Butchers' Co. of the City of London for the general purposes of the co. Testator authorised the co. or the trustees "to make & formulate any scheme, rules, regulations, bye-laws or trusts for the temporary or permanent administration of the charity hereby created," & gave other directions applicable to a charitable bequest:—*Held:* the gift was not a charitable gift, & the co. was entitled, subject to obtaining the proper licence, to have the property conveyed for the general purposes of the co. free from any charitable trust.

(2) Livery cos. of the City of London are not, unless there is something special in their charter, charities in any legal sense of the word.—*Re* MEECH'S WILL, BUTCHERS' CO. *v.* RUTLAND, [1910] 1 Ch. 426; 79 L. J. Ch. 209.

SUB-SECT. 4.—OTHER CASES.

258. For specific animals—Annuity—Valid.]—PETTINGALL *v.* PETTINGALL (1842), 11 L. J. Ch. 176.
Annotation:—**Mentd.** *Re* Moore, Prior *v.* Moore (1901), 84 L. T. 501.

259. —— —— ——.]—(1) A trust for the maintenance of horses & dogs so long as they shall live is not a perpetuity.

Testator devised his freehold estates subject to & charged (*inter alia*) with an annuity of £750 thereinafter mentioned to his trustees, & to a term of fifty years thereinafter granted to them, to the use of the pltf. for life, with remainder to the use of his first & other sons successively in tail male, & he gave to his trustees his eight horses & ponies, & also his hounds, & he charged his freehold estates thereinbefore devised with the payment to his trustees, for the term of fifty years commencing from his death, if any of the horses & hounds should so long live, of an annual sum of £750, & he declared that his trustees should apply the annual sum in the maintenance of the horses & hounds for the time being living, & in maintaining the stables, kennels, & buildings inhabited by the animals in such condition of repair as his trustees might deem fit; but this condition should not imply any obligation on his trustees to leave the stables, kennels & buildings in a state of repair at the determination of the term; but he declared that his trustees should not be bound to render any account of the application or expenditure of the £750, & any part thereof remaining unapplied should be dealt with by them at their sole discretion, & in consideration of the maintenance of his horses, ponies, & hounds so being a charge upon his estate, he gave all his personal estate not otherwise disposed of to pltf. absolutely:—*Held:* (2) the £750 annuity was not given to the trustees beneficially, but a trust was created for the maintenance of the animals; (3) such a trust was valid, although it was not a charity, & its execution could not be enforced by any one; (4) the surplus of the £750 not employed in the maintenance of the animals belonged either to the devisee of the freehold estates or to testator's heir-at-law.—*Re* DEAN, COOPER-DEAN *v.* STEVENS (1889), 41 Ch. D. 552; 58 L. J. Ch. 693; 60 L. T. 813; 5 T. L. R. 404.

260. —— —— ——.]—Testator devised & bequeathed his real & personal estate to his exors. upon trust out of the residue to pay to each of his servants C. & H. an annuity of £26 10*s.* 0*d.* during their respective lives, & he directed that his two dogs & parrot should not be given away or sold & that C. & H. might have the care of them during their lives & the life of the survivor of the dog & parrot & receive an annuity of £10 a year for their keep. The dogs had died but the parrot was still living:—*Held:* there was a good gift of the annuity of £10 to C. & H. during their lives & the life of the survivor, if the parrot should so long live, upon trust to apply the annuity for the maintenance of the parrot.—*Re* HOWARD (1908), *Times*, Oct. 30th.

Gifts for animals, generally, *see* Sect. 5, sub-sect. 5, *ante*.

261. To found museum — Void.] — THOMSON *v.* SHAKESPEAR (1860), 1 De G. F. & J. 399; 29 L. J. Ch. 276; 2 L. T. 479; 24 J. P. 309; 6 Jur. N. S. 281; 8 W. R. 265; 45 E. R. 413, L. C. & L. JJ.
Annotations:—**Folld.** Carne *v.* Long (1860), 2 De G. F. & J. 75. **Consd.** *Re* Rickard, Rickard *v.* Robson (1862), 31 Beav. 244; Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212. **Distd.** *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110. **Refd.** *Re* Dutton (1878), 4 Ex. D. 54; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; Hoare *v.* Hoare (1886), 56 L. T. 147; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; *Re* St. Stephen's Coleman Street, *Re* St. Mary the Virgin Aldermanbury (1888), 39 Ch. D. 492; Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252; *Re* Nottage, Jones *v.* Palmer, [1895] 2 Ch. 649; *Re* Jones, Parker *v.* Lethbridge (1898), 79 L. T. 154; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100.

Gifts to public museums, *see* Sect. 5, sub-sect. 3, *ante*.

262. Endowment of private chapel—Almshouses for estate labourers—Education of estate children—Void.]—HOARE *v.* HOARE (1886), 56 L. T. 147.
Annotation:—**Consd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

See, also, No. 35, *ante*.

Endowment of churches, generally, *see* Sect. 4, sub-sect. 2, *ante*.

263. Bequest of house for storage & distribution of certain books.]—*Re* HAWKINS, WALROND *v.* NEWTON, No. 55, *ante*.

264. Erection of labourers' cottages on estate—Change of ownership—Void.]—*Re* TUNNO, RAIKES *v.* RAIKES, [1886] W. N. 154.

265. Benefit of freemen of city ward—Income from inclosure in lieu of common rights—Not charitable purpose—Customs & Inland Revenue Act, 1885 (c. 51), s. 11 (3).]—By a private inclosure Act in 1763, certain spaces of C. Common were allotted to the corpn. of Y., in trust for the freemen inhabitants of B. ward in that city, as compensation for previous rights of common. In 1632, by agreement with the lord of the manor, the fourth part of the adjoining common of H., afterwards called the "Intack," was conveyed in fee to the Mayor of Y., in satisfaction of the common rights of the freemen inhabitants of B. ward. The allotments of C. Common & the Intack had ever since been enjoyed by the freeman inhabitants of B. ward, & were under the control of pasture-masters, who, after paying the expenses of management, applied the profits of the whole to the benefit of poor freemen, & also for some years past for the benefit of their widows:—*Held:* the profits of the "Intack" were not within the exemption in Customs & Inland Revenue Act, 1885, s. 11 (3), as profits appropriated & applied for any charitable purpose.—INLAND REVENUE

COMRS. *v.* SCOTT, *Re* BOOTHAM WARD STRAYS, YORK, [1892] 2 Q. B. 152; 61 L. J. Q. B. 432; 67 L. T. 173; 56 J. P. 632; 40 W. R. 632; 8 T. L. R. 458; 36 Sol. Jo. 395; 3 Tax Cas. 134, C. A.

Annotation :—**Consd.** *R. v.* Income Tax Special Comrs., *Ex p.* University College of North Wales (1909), 78 L. J. K. B. 576.

See, also, No. 658, *post.*

266. To encourage yacht racing—Void.]—N. by his will gave a sum the interest of which was to be expended in providing a cup to be given for the encouragement of yacht racing :—*Held :* (1) the gift was not charitable; (2) it was void for remoteness.—*Re* NOTTAGE, JONES *v.* PALMER, [1895] 2 Ch. 649; 64 L. J. Ch. 695; 73 L. T. 269; 44 W. R. 22; 11 T. L. R. 519; 39 Sol. Jo. 655; 12 R. 571, C. A.

Annotations :—*As to* (1) **Consd.** *Re* Clifford, Mallam *v.* McFie (1911), 81 L. J. Ch. 220. **Refd.** *Re* Wedgwood, Allen *v.* Wedgwood (1914), 84 L. J. Ch. 107.

267. School club—Valid.]—Testator by his will bequeathed certain shares in a commercial co. to his trustees upon trust to pay the income to the directors of the co. for the purposes of contribution to the holiday expenses of workpeople employed in the spinning department of the co. in such manner as a majority of the directors should in their absolute discretion think fit, the directors having power to divide same equally or unequally between such workpeople. After making certain other bequests testator devised & bequeathed his residuary real & personal estate to his trustees upon trust for sale & conversion, & to hold the proceeds upon trust for the O. B. Club, a club for old boys of the B. School, to be used as the committee of the club should think best in the interests of the club or school. There were upwards of 500 females in the spinning department of the co., employed at an average weekly wage of 15*s.* & 12 workpeople acting as overseers at 36*s.* to 37*s.* a week. There was also a holiday expenses fund to which the operatives & workpeople could, at their option, subscribe, & this fund was supplemented by contributions from the co. :—*Held :* (1) as to the gift of shares, the co.'s workpeople could not be regarded as poor people within 43 Eliz. c. 4; the trust was one for private individuals & not for general public purposes; consequently, the trust, not being charitable, was void as infringing the rule against perpetuities; (2) the residuary gift did not infringe the rule against perpetuities, & was valid.—*Re* DRUMMOND, ASHWORTH *v.* DRUMMOND, [1914] 2 Ch. 90; 83 L. J. Ch. 817; 111 L. T. 156; 30 T. L. R. 429; 58 Sol. Jo. 472.

Annotation :—*As to* (1) **Distd.** *Re* Rayner, Cloutman *v.* Regnart (1920), 89 L. J. Ch. 369.

Gift void for remoteness.]—*See* Part III., Sect. 6, sub-sect. 4, *post.*

SECT. 7.—PURPOSES CONTRARY TO PUBLIC POLICY.

Gifts to superstitious uses.]—*See* Sect. 4, sub-sects. 6–9, *ante.*

268. Gift to promote circulation of treatise upholding supremacy of Pope—Void.]—DE THEMMINES *v.* DE BONNEVAL (1828), 5 Russ. 288; 7 L. J. O. S. Ch. 35; 38 E. R. 1035.

Annotations :—**Consd.** Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Carter *v.* Green (1857), 3 K. & J. 591; Warren *v.* Rudall (1858), 4 K. & J. 603; Barton *v.* Muir (1874), L. R. 6 P. C. 134; Bowman *v.* Secular Soc., [1917] A. C. 406.

269. Attack on Christianity—Legacy for best essay on natural theology—Void.]—BRIGGS *v.* HARTLEY (1850), 19 L. J. Ch. 416; 15 L. T. O. S. 273; 14 Jur. 683.

Annotation :—**Dbtd.** Bowman *v.* Secular Soc., [1917] A. C. 406.

270. —— Gift to Secular Society—Valid.]—There is nothing contrary to the policy of the law in an attack on or a denial of the truth of Christianity or any of its fundamental doctrines, provided that such attack or denial is couched in temperate language, & is free from such an element of vilification, ridicule or irreverence as is necessary for the common law offence of blasphemy.

A bequest to a registered soc., the object of which, as stated in its memorandum of assocn., is to promote the principle that human conduct should be based upon natural knowledge & not upon supernatural belief, & that human welfare in this world is the proper end of all thought & action, is valid.—BOWMAN *v.* SECULAR SOCIETY, LTD., [1917] A. C. 406; 86 L. J. Ch. 568; 117 L. T. 161; 33 T. L. R. 376; 61 Sol. Jo. 478, H. L.

Annotations :—**Refd.** Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Cotman *v.* Brougham, [1918] A. C. 514.

271. Gift for restoration of Jews to Jerusalem—Intention to create revolution in foreign state—Void.]—HABERSHON *v.* VARDON (1851), 4 De G. & Sm. 467; 20 L. J. Ch. 549; 17 L. T. O. S. 196; 15 Jur. 961; 64 E. R. 916.

Gifts to Jews, *see* Sect. 4, sub-sect. 10, *ante.*

272. Gift for purchasing discharge of persons committed under the Game Laws—Void.]—THRUPP *v.* COLLETT (1858), 26 Beav. 125; 32 L. T. O. S. 365; 5 Jur. N. S. 111; 53 E. R. 844.

Annotation :—**Consd.** *Re* Smith, Johnson *v.* Bright-Smith, [1914] 1 Ch. 937.

Part II.—Assurances for Charitable Purposes.

SECT. 1.—APPLICATION OF MORTMAIN AND CHARITABLE USES ACTS GENERALLY.

273. 23 Hen. 8, c. 10—Successive leases for 100 years within—Lease for 100 years with covenant to renew not within.]—ANON. (1537), Bro. N. C. 134; 73 E. R. 905.

274. Charitable Uses Act, 1735 (9 Geo. 2, c. 36)—Estate given, & not merely trusts, made void thereby.]—DOE d. BURDETT *v.* WRIGHTE (1819), 2 B. & Ald. 710; 106 E. R. 524.

Annotations :—**Dbtd.** Doe d. Blacknell *v.* Plowman (1831), 2 B. & Ad. 573. **Consd.** Young *v.* Grove (1847), 4 C. B. 668; Wright *v.* Wilkin (1860), 2 B. & S. 232. **Refd.** Doe d.

PART I. SECT. 7.

269 i. *Attack on Christianity—Legacy for promotion of free thought.*]—EXORS. were directed to invest the residue of testator's estate & to apply the annual interest therefrom for the promotion of free thought & free speech in O. :—*Held :* the bequest was void as opposed to Christianity.—KINSEY *v.* KINSEY (1894), 26 O. R. 99. —CAN.

m. *Gift for promotion of Christian Science.*]—A Christian Scientist, interested in the spread of its doctrines, bequeathed, to Christian scientist churches, specified sums "to be used in spreading the truth," & "towards encouraging those building such churches" :—*Held :* not contrary to public policy.—*Re* ORR (1917), 40 O. L. R. 567; 13 O. W. N. 154.—CAN.

PART II. SECT. 1.

n. *Mortmain Act,* 1902 (*c.* 2) *Part* 2—*R. S. O.,* 1897, *c.* 333—*Subject to Mortmain Act,* 1897 (*c.* 12), *s.* 7.]—

Sect. 1.—Application of Mortmain and Charitable Uses Acts generally. Sect. 2: Sub-sects. 1 & 2.]

Chidgey *v.* Harris (1847), 16 M. & W. 517; Churcher *v.* Martin (1889), 42 Ch. D. 312; *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149. **Mentd.** Doe d. Hammond *v.* Cooke (1829), 6 Bing. 174; Doe d. Egremont *v.* Langdon (1848), 12 Q. B. 711; Garrard *v.* Tuck (1849), 8 C. B. 231; Cottrell *v.* Hughes (1855), 15 C. B. 532; Bolton *v.* Bolton (1870), L. R. 5 Exch. 145.

275. —— Avoided gift only so far as related to charitable use & no further.]—DOE d. THOMPSON *v.* PITCHER (1815), 6 Taunt. 359; 2 Marsh. 61; 128 E. R. 1074.

Annotation:—**Mentd.** Hopkins *v.* Prescott (1847), 16 L. J. C. P. 259.

276. —— ——.]—YOUNG *v.* GROVE (1847), 4 C. B. 668; 16 L. J. C. P. 216; 136 E. R. 671.

Annotations:—**Refd.** Wright *v.* Wilkin (1860), 2 B. & S. 232; *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149.

277. —— Did not make bequest void merely because third party likely to be induced to bring fresh land into mortmain.]—PHILPOTT *v.* ST. GEORGE'S HOSPITAL (PRESIDENT) (1857), 6 H. L. Cas. 338; 27 L. J. Ch. 70; 30 L. T. O. S. 15; 21 J. P. 691; 3 Jur. N. S. 1269; 5 W. R. 845; 10 E. R. 1326, H. L.; *revsg.* (1855), 21 Beav. 134; *subsequent proceedings* (1859), 27 Beav. 107.

Annotations:—**Consd.** Hartshorne *v.* Nicholson (1858), 26 Beav. 68; Hall *v.* Warren (1861), 9 H. L. Cas. 420. **Foll.** Dent *v.* Allcroft (1861), 30 Beav. 335. **Consd.** Sewell *v.* Crewe-Read (1866), L. R. 3 Eq. 60; Cresswell *v.* Cresswell (1868), L. R. 6 Eq. 69; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272; Sinnett *v.* Herbert (1871), L. R. 12 Eq. 201; *Re* Cox, Cox *v.* Davie (1877), 7 Ch. D. 204; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Apld.** *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212. **Refd.** Lechmere *v.* Curtler (1855), 3 Eq. Rep. 938; *Re* North Shields Old Meeting House (1859), 7 W. R. 541; *Re* Hedgman, Morley *v.* Coxon (1878), 26 W. R. 674; Cotton *v.* Imperial & Foreign Agency & Investment Corpn., [1892] 3 Ch. 454. **Mentd.** Chamberlayne *v.* Brockett (1872), 21 W. R. 299.

278. 1888 Act, s. 4—1891 Act, s. 5—Gift of land by will—Assurance of land by deed.]—Under 1891 Act, s. 5, land may be devised in favour of charities for any estate of interest whatever therein, whether the interest is in possession or merely a future one. 1888 Act, s. 4, so far as it applies to wills, is inconsistent with & repealed by 1891 Act, s. 5, but remains in force so far as it is applicable to deeds.—*Re* HUME, FORBES *v.* HUME, [1895] 1 Ch. 422; 64 L. J. Ch. 267; 72 L. T. 68; 43 W. R. 291; 11 T. L. R. 182; 39 Sol. Jo. 216; 12 R. 101, C. A.

279. 1891 Act, ss. 7, 8—"Charitable uses"—"Purpose of the charity."]—*Re* SUTTON, LEWIS *v.* SUTTON, No. 420, *post.*

To Scotland, Ireland & the colonies.]—*See* Sect. 6, sub-sect. 4, *post.*

Investment by charities of funds in land.]—*See* Part V., Sect. 3, *post.*

SECT. 2.—MEANING OF "LAND" IN MORTMAIN AND CHARITABLE USES ACTS.

SUB-SECT. 1.—PERSONAL ESTATE ARISING FROM LAND.

See, now, 1891 Act, s. 3.

280. Devise of land—Devisee to pay named sum to executors—Residue to charity—Void.]—ARNOLD *v.* CHAPMAN (1748), 1 Ves. Sen. 108; 27 E. R. 922, L. C.

Annotations:—**Consd.** Tregonwell *v.* Sydenham (1815), 3 Dow. 194; Doe d. Howson *v.* Waterton (1819), 3 B. & Ald. 149; Amphlett *v.* Parke (1831), 2 Russ. & M. 221; Henchman *v.* A.-G. (1834), 3 My. & K. 485; Young *v.* Grove (1847), 4 C. B. 668; Heptinstall *v.* Gott (1862), 2 John. & H. 449. **Refd.** Hilliard *v.* Taylor (1773), Dick. 475; Field *v.* Mostin (1778), Dick. 543; Kennell *v.* Abbott (1799), 4 Ves. 802; Currie *v.* Pye (1811), 17 Ves. 462; Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262; Philanthropic Soc. *v.* Kemp (1842), 4 Beav. 581; Doe d. Chidgey *v.* Harris (1847), 16 M. & W. 517; Robinson *v.* Geldard (1852), 3 Mac. & G. 735; Smith *v.* Lomas (1864), 4 New Rep. 318. **Mentd.** Dawson *v.* Clark (1809), 15 Ves. 409.

281. Devise of land to be sold—Residue of proceeds to charity—Void.]—A.-G. *v.* WEYMOUTH (LORD) (1743), Amb. 20; 27 E. R. 11, L. C.

Annotations:—**Consd.** Mogg *v.* Hodges (1750), 2 Ves. Sen. 52; Myers *v.* Perigal (1852), 17 Jur. 145; Jeffries *v.* Alexander (1860), 8 H. L. Cas. 594. **Refd.** Arnold *v.* Chapman (1748), 1 Ves. Sen. 108; A.-G. *v.* Tyndall (1764), 2 Eden, 207; Salkeld *v.* Johnson (1848), 2 Exch. 256; Arden *v.* Arden (1885), 29 Ch. D. 702.

282. —— Proceeds together with personalty to charity—Void.]—DUROUR *v.* MOTTEUX (1749), 1 Ves. Sen. 320; 1 Sim. & St. 292, n.; 27 E. R. 1057, L. C.

Annotations:—**Consd.** Turner *v.* Ogden (1787), 1 Cox, Eq. Cas. 316; Amphlett *v.* Parke (1831), 2 Russ. & M. 221; Phillips *v.* Phillips (1832), 1 My. & K. 649. **Apld.** Green *v.* Jackson (1835), 2 Russ. & M. 238. **Refd.** Hutcheson *v.* Hammond (1790), 3 Bro. C. C. 128; Ackers *v.* Phipps (1835), 3 Cl. & Fin. 665; Cogan *v.* Stephens (1835), 5 L. J. Ch. 17. **Mentd.** Digby *v.* Legard (1774), Dick. 500; Fletcher *v.* Ashburner (1779), 1 Bro. C. C. 497; Kennell *v.* Abbott (1799), 4 Ves. 802; Williams *v.* Coade (1805), 10 Ves. 500; Maugham *v.* Mason (1813), 1 Ves. & B. 410; Jones *v.* Mitchell (1823), 1 Sim. & St. 290; *Ex p.* Pring (1841), 4 Y. & C. Ex. 507; Salt *v.* Chattaway (1841), 3 Beav. 576; Taylor *v.* Taylor (1853), 1 Eq. Rep. 239 Spencer *v.* Wilson (1873), L. R. 16 Eq. 501.

283. —— Proceeds with sum of personalty—Void as to proceeds.]—WAITE *v.* WEBB (1821), 6 Madd. 71; 56 E. R. 1017.

284. —— Proceeds to public purpose—Void.]—BRITISH MUSEUM *v.* WHITE (1826), 2 Sim. & St. 594; 4 L. J. O. S. Ch. 206; 57 E. R. 473.

Annotations:—**Consd.** Carne *v.* Long (1858), 27 L. J. Ch. 589; R. *v.* Income Tax Comrs. (1911), 80 L. J. K. B. 788. **Refd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; Income Tax Special Comrs. *v.* Pemsel (1891), 3 Tax Cas. 53; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100.

285. —— Legacy out of mixed fund—Release by heir-at-law—Valid.]—LOWDEN *v.* A.-G (1836), Donnelly, 114; 47 E. R. 263.

286. —— Proceeds to religious & charitable societies—Invalid as charitable gift.]—DOE d. CHIDGEY *v.* HARRIS (1847), 16 M. & W. 517; 16 L. J. Ex. 190; 8 L. T. O. S. 414; 12 J. P. 39; 153 E. R. 1294.

Annotations:—**Consd.** Young *v.* Grove (1847), 4 C. B. 668. **Foll.** Wright *v.* Wilkin (1860), 2 B. & S. 232. **Refd.** *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149. **Mentd.** Venables *v.* East India Co. (1848), 18 L. J. Ex. 266.

287. —— Proceeds to charities — Void.] — ROBINSON *v.* ROBINSON (1854), 19 Beav. 494; 52 E. R. 442.

Annotation:—**Refd.** *Re* Hotchkys, Freke *v.*, Calmady (1886), 34 W. R. 569.

288. —— —— ——.]—WILSON *v.* COLES (1860), 28 Beav. 215; 3 L. T. 44; 6 Jur. N. S. 1003; 8 W. R. 383; 54 E. R. 348.

289. —— Bequest of share of proceeds by successor—Not "land."]—MARSH *v.* A.-G. (1860),

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Re BRAY (1903), 2 O. W. R. 520, 711. —**CAN.**

c. —— *Whether applying to wills.]*—The above sect. does not apply to wills but only to assurances *inter vivos.*—*Re* BARRETT (1905), 10 O. L. R. 337; 25 C. L. T. 357; 5 O. W. R. 790.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

281 i. *Devise of land to be sold—Residue of proceeds to charity.]*—A. devised all her estate upon trust for sale, &, after payment of legacies, debts, etc., to invest the residue & pay the interest to the trustees of the R. Baptist Church:—*Held:* the gift was not of "land" within Mortmain & Charitable Uses Act, 1897, s. 3, but of "personal estate arising from or connected with land" within s. 8 (4) of the above Act.—*Re* BARRETT (1905), 10 O. L. R. 337; 25 C. L. T. 357; 5 O. W. R. 790.—**CAN.**

285 i. —— *Legacy out of mixed fund —Void.]*—*Re* MCDONALD'S WILL TRUSTS (1881), 29 Gr. 241.—**CAN.**

285 ii. —— —— —— ——.] TOOMEY *v.* TRACEY (1884), 4 O. R. 708.—**CAN.**

285 iii. —— —— ——.]—A will directed a bequest to be paid out of a mixed fund derived from the sale of land & personalty:—*Held:* the gift failed as far as the real estate was concerned.

2 John. & H. 61 ; 30 L. J. Ch. 233 ; 3 L. T. 615 ; 25 J. P. 180 ; 7 Jur. N. S. 184 ; 9 W. R. 179 ; 70 E. R. 971.

Annotations :—**Consd.** Aspinall *v.* Bourne (1861), 29 Beav. 462 ; Brook *v.* Badley (1868), 3 Ch. App. 672 ; Ashworth *v.* Munn (1880), 15 Ch. D. 363 ; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19.

See, also, Nos. 300, 322, 323, *post*.

290. Under 1891 Act—Devise of land to be sold—Residue of proceeds to charity.]—Land was devised to trustees on trust to sell & to hold the proceeds after making certain payments thereout, upon trust for a charity. The will contained a power to the trustees to postpone sale :—*Held :* (1) the subject-matter of the gift being " personal estate arising from land," was within the exception from the definition of " land " contained in 1891 Act, s. 3, & s. 5 was not applicable ; (2) it was competent for the trustees, without obtaining the leave of the ct., to retain the land unsold after the expiration of one year from the death of testator.—*Re* WILKINSON, ESAM *v.* A.-G., [1902] 1 Ch. 841 ; 71 L. J. Ch. 663, n. ; 87 L. T. 40.

291. —— —— Proceeds to charity.]—A devise of real estate to trustees upon trust to sell & hand over the proceeds to a charity is a gift of " personal estate arising from the land " within the exception to 1891 Act, s. 3, & is not affected by ss. 5, 6, & 8. The trustees are not obliged to sell the land within a year from testator's death, but may retain it without obtaining the leave of the ct. They are not, however, at liberty to postpone the sale indefinitely.—*Re* SIDEBOTTOM, BEELEY *v.* WATERHOUSE, [1902] 2 Ch. 389 ; 71 L. J. Ch. 662 ; 87 L. T. 57 ; 50 W. R. 641 ; 18 T. L. R. 682 ; 46 Sol. Jo. 614, C. A.

Annotation :—**Consd.** *Re* Ryland, Roper *v.* Ryland, [1903] 1 Ch. 467.

292. —— —— Reversionary interest—Immediate terminable interest—Consent by tenant for life to sale.]—Testator gave all his real & personal estate upon trust for conversion, the income to be paid during the lifetime of his wife to her & to certain charities, the estate to be ultimately divided between the charities. He directed that no part of his freeholds or leaseholds should be sold during his wife's life without her consent :—*Held :* (1) the reversionary interest given to the charities was not " land " within 1891 Act, but the immediate terminable interest in the income of land was ; (2) the latter interest, not having been sold within a year of testator's death, & no application for an extension of time having been made within the year, had vested by force of the Act in the Official Trustee of Charity Lands.—*Re* RYLAND, ROPER *v.* RYLAND, [1903] 1 Ch. 467 ; 72 L. J. Ch. 277 ; 88 L. T. 456 ; 51 W. R. 345 ; 19 T. L. R. 184 ; 47 Sol. Jo. 255.

SUB-SECT. 2.—MONEY SECURED ON LAND.

See, now, 1891 Act, s. 3.

293. Devise by mortgagee in possession—Of all money due on his securities—Within earlier Acts.]—A.-G. *v.* MEYRICK (1750), 2 Ves. Sen. 44 ; 28 E. R. 30.

Annotations :—**Distd.** Vaughan *v.* Farrer (1751), 2 Ves. Sen. 182. **Consd.** A.-G. *v.* Winchelsea (1791), 3 Bro. C. C. 373. **Refd.** Negus *v.* Coulter (1759), Amb. 367 ; Pickering *v.* Stamford (1793), 4 Bro. C. C. 214 ; Jeffries *v.* Alexander (1860), 8 H. L. Cas. 595 ; *Re* Hoyles, Row *v.* Jagg (1910), 103 L. T. 817.

294. Mortgage included in residue—Within earlier Acts.]—A.-G. *v.* CALDWELL (1766), Amb. 635 ; 27 E. R. 412.

Annotations :—**Consd.** A.-G. *v.* Winchelsea (1791), 3 Bro. C. C. 373. **Refd.** A.-G. *v.* Hurst (1790), 2 Cox, Eq. Cas. 364.

295. —— ——.]—A.-G. *v.* WINCHELSEA (EARL) (1791), 3 Bro. C. C. 373 ; 29 E. R. 591.

Annotations :—**Foll.** Howse *v.* Chapman (1799), 4 Ves. 542 ; Paice *v.* Canterbury (1807), 14 Ves. 364. **Refd.** Chapman *v.* Brown (1801), 6 Ves. 404 ; Hopkinson *v.* Ellis (1846), 10 Beav. 169. **Mentd.** Dawson *v.* Clark (1809), 15 Ves. 409 ; Eyre *v.* Marsden (1839), 4 My. & Cr. 231 ; Christian *v.* Foster (1846), 2 Coop. *temp.* Cott. 348.

296. —— ——.]—PAICE *v.* CANTERBURY (ARCHBP.) (1807), 14 Ves. 364 ; 33 E. R. 560, L. C.

Annotations :—**Refd.** *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 83. **Mentd.** Doe d. Crutchfield *v.* Pearce (1815), 1 Price, 353 ; Pocock *v.* Lincoln (1821), 3 Brod. & Bing. 27 ; Bridge *v.* Brown (1843), 2 Y. & C. Ch. Cas. 181 ; Mapp *v.* Elcock (1849), 2 Ph. 793.

297. —— ——.]—HARRISON *v.* HARRISON (1829), 1 Russ. & M. 71 ; Taml. 273 ; 48 E. R. 109.

298. Money on mortgage — Admission of assets by executor—Not within earlier Acts.]—CAMPBELL *v.* RADNOR (EARL) (1783), 1 Bro. C. C. 271 ; 28 E. R. 1123.

Annotations :—**Refd.** Barnard *v.* Pumfrett (1841), 5 My. & Cr. 63. **Mentd.** Thorne *v.* Rooke (1841), 2 Curt. 799 ; Walsh *v.* Gladstone (1843), 1 Ph. 294 ; Lee *v.* Pain (1844), 4 Hare, 201 ; Wilson *v.* O'Leary (1871), L. R. 12 Eq. 525.

299. Legacy secured by mortgage—Within earlier Acts.]—WHITE *v.* EVANS (1798), 4 Ves. 21 ; 31 E. R. 11.

Annotations :—**Refd.** *Re* Lacy Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149. **Mentd.** Williams *v.* Jones (1804), 10 Ves. 77 ; Griffiths *v.* Hamilton (1806), 12 Ves. 298.

Legacy charged on land.]—*See* Sub-sect. 3, *post*.

300. Trust for conversion of charges—Residuary bequest to wife—Charitable bequest by wife out of personal estate—Charges paid off after wife's death—Within earlier Acts.]—A.-G. *v.* HARLEY (1821), 5 Madd. 321 ; 56 E. R. 918.

Annotations :—**Consd.** Jeffries *v.* Alexander (1860), 8 H. L. Cas. 595 ; Marsh *v.* A.-G. (1860), 2 John. & H. 61 ; Aspinall *v.* Bourne (1861), 29 Beav. 462. **Foll.** Brook *v.* Badley (1867), L. R. 4 Eq. 106. **Mentd.** Gresham Life Assce. Soc. *v.* Crowther, [1914] 2 Ch. 219.

See, also, No. 289, *ante*, Nos. 322, 323, *post*.

301. Bequest of money directed to be laid out on mortgage—Within earlier Acts.]—BAKER *v.* SUTTON (1836), 1 Keen, 224 ; 5 L. J. Ch. 264 ; 48 E. R. 292.

Annotations :—**Refd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Mentd.** Townsend *v.* Carus (1844), 3 Hare, 257 ; Lloyd Greame *v.* A.-G. (1893), 10 T. L. R. 66 ; *Re* White, White *v.* White, [1893] 2 Ch. 41 ; Dunne *v.* Byrne, [1912] A. C. 407.

302. Covenant for payment of money after death—Assets mainly consisting of mortgages—Within earlier Acts.]—JEFFRIES *v.* ALEXANDER (1860), 8 H. L. Cas. 594 ; 31 L. J. Ch. 9 ; 2 L. T. 748 ; 24 J. P. 643 ; 7 Jur. N. S. 221 ; 11 E. R. 562, H. L. ; *revsg.* S. C. *sub nom.* ALEXANDER *v.* BRAME (1855), 7 De G. M. & G. 525, L. JJ. ; *subsequent proceedings sub nom.* ALEXANDER *v.* BRAME (No. 2) (1861), 30 Beav. 153.

Annotations :—**Consd.** Brook *v.* Badley (1867), L. R. 4 Eq. 106. **Foll.** Fox *v.* Lownds (1875), L. R. 19 Eq. 453.

—OSTROM *v.* ALFORD (1893), 24 O. R. 305.—**CAN.**

p. *Legacy out of mixed fund.*]—A bequest of residue to charities fails as to such proportion of the residue as consists of real property or lands in Ireland.—*Re* DWYER (DECEASED), O'CONNOR *v.* O'CALLAGHAN (1908), 46 I. L. T. 147.—**IR.**

q. —— *For public library—Void.*]—WHITBY CORPN. *v.* LISCOMBE (1876), 23 Gr. 1.—**CAN.**

294 i. *Mortgage included in residue.*]—THOMSON *v.* TORRANCE (1881), 28 Gr. 253.—**CAN.**

294 ii. —— *Whether legal estate passed or not.*]—MURLAND *v.* PERRY (1879), 3 L. R. Ir. 135.—**IR.**

298 i. *Money on mortgage—Unless words sufficient to pass legal estate.*]—STEWART *v.* BARTON (1872), I. R. 6 Eq. 215.—**IR.**

299 i. *Legacy secured by mortgage—To missions able to hold land.*]—LABATT *v.* CAMPBELL (1884), 7 O. R. 250.—**CAN.**

r. *Mortgage as collateral security to promissory note.*]—A promissory note payable to the testator collaterally secured by mtge. on land is impure personalty.—FAREWELL *v.* FAREWELL (1892), 22 O. R. 573.—**CAN.**

Sect. 2.—*Meaning of "land" in Mortmain and Charitable Uses Acts: Sub-sects.* 2, 3, 4 & 5.]

Expld. *Re* Robson, Emley *v.* Davidson (1881), 19 Ch. D. 156. **Refd.** Marsh *v.* A.-G. (1860), 3 L. T. 615. **Mentd.** Patch *v.* Shore (1862), 2 Drew. & Sm. 589; Richards *v.* Davies (1862), 13 C. B. N. S. 69; Coleman *v.* Llanelly Ry. & Dock Co. (1867), 17 L. T. 86; Cotton *v.* Imperial & Foreign Agency & Investment Corpn., [1892] 3 Ch. 454.

303. Equitable mortgage—Within earlier Acts.] —ALEXANDER *v.* BRAME (No. 2) (1861), 30 Beav. 153; 7 Jur. N. S. 889; 9 W. R. 719; 54 E. R. 847.

Annotations :—**Refd.** Attree *v.* Hawe (1878), 9 Ch. D. 337; *Re* Robson, Emley *v.* Davidson (1881), 19 Ch. D. 156; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544.

304. —— Of leaseholds—Within earlier Acts.] —CHESTER *v.* CHESTER (1871), L. R. 12 Eq. 444; 19 W. R. 946.

Annotation :—**Consd.** Perring *v.* Trial (1874), 22 W. R. 512.

305. —— Of ground rents—Not within earlier Acts.]—*Re* WEBB, PALMER *v.* WEBB (1887), 3 T. L. R. 404.

306. Money secured as to one moiety by equitable mortgage—As to other moiety by promissory note—First moiety within, second moiety not within, earlier Acts.]—SMITH *v.* SOPWITH, [1877] W. N. 208.

307. Money secured by mortgage—Bequest by legatee without having converted—No presumption of conversion—Within earlier Acts.]—LUCAS *v.* JONES (1867), L. R. 4 Eq. 73; 36 L. J. Ch. 602; 15 W. R. 738.

308. —— Residuary personalty—Within earlier Acts.]—PICKERING *v.* STAMFORD (LORD) (1795), 2 Ves. 581; 30 E. R. 787; *subsequent proceedings* (1797), 3 Ves. 332, 492, L. C.

Annotations :—**Refd.** Waring *v.* Ward (1800), 5 Ves. 670; Garthshore *v.* Chalie (1804), 10 Ves. 1; Leake *v.* Robinson (1817), 2 Mer. 363. **Mentd.** Kohler *v.* Reynolds (1857), 26 L. J. Ch. 415; Harcourt *v.* White (1860), 28 Beav. 303; *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423.

309. Money paid in respect of supposed liability on worthless mortgage—Not within earlier Acts.]—*Re* BUCKLAND, BUCKLAND *v.* BENNETT (1887), 22 L. J. N. C. 7.

310. Interest in trust funds—Invested on mortgage—Within earlier Acts.]—*Re* WATTS, CORNFORD *v.* ELLIOTT (1885), 29 Ch. D. 947; 55 L. J. Ch. 332; 53 L. T. 426; 33 W. R. 885, C. A.

Annotations :—**Folld.** *Re* Prichard's Settlement, Playne *v.* Twisden (1903), 88 L. T. 197. **Apld.** *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626. **Refd.** *Re* Hollon, Forbes *v.* Hardcastle (1893), 69 L. T. 425; Miller *v.* Collins, [1896] 1 Ch. 573; *Re* Lyne's Settlement Trusts, *Re* Gibbs, Lyne *v.* Gibbs, [1919] 1 Ch. 80.

311. —— —— Interest in land in remainder—Death of testator before 1891 Act—Within earlier Acts.]—By his will, made in 1889, testator gave to a charity property, including his interest in remainder, expectant on the determination of his parents' life interests, in the trust funds comprised in their marriage settlement. He died in 1890. At the date both of his will & of his death £500, part of the trust funds, was properly invested on mtge. of real estate, but in 1902, when the life interests determined, the £500 had been called in & was represented by a sum of Consols :—*Held :* as regards the £500, testator was disposing of an interest in land, although his interest was in remainder, & the gift to the charity failed as regards this sum.—*Re* PRICHARD'S SETTLEMENT, PLAYNE *v.* TWISDEN (1903), 88 L. T. 197.

312. Arrears of interest on mortgage of real estate—Within earlier Acts.] —ALEXANDER *v.* BRAME (No. 2) (1861), 30 Beav. 153; 7 Jur. N. S. 889; 9 W. R. 719; 54 E. R. 847.

Annotations :—**Refd.** Attree *v.* Hawe (1878), 9 Ch. D. 337; *Re* Robson, Emley *v.* Davidson (1881), 19 Ch. D. 156. **Mentd.** *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544.

313. Judgment debt—Incumbrance affecting debtor's real estate—Within earlier Acts.]—COLLINSON *v.* PATER, COLLINSON *v.* KNIBE (1831), 2 Russ. & M. 344; 9 L. J. O. S. Ch. 158; 39 E. R. 425.

Annotation :—**Consd.** Jeffries *v.* Alexander (1860), 8 H. L. Cas. 595.

314. Under 1891 Act—Devise by mortgagee in possession.]—By her will dated Aug. 20, 1891, testatrix, amongst other dispositions, bequeathed the interest on a sum of £850, which was then invested on mtge. of property in England at 5 per cent., to K. for her life, & on her decease testatrix bequeathed one moiety of the interest of the £850 to the president for the time being of A. College, for & towards the maintenance & education of a student at the college, & bequeathed the remaining moiety of the interest to the superioress for the time being of M. Convent, towards the maintenance & education of two orphans from time to time in the convent. Testatrix appointed pltf. & the two residuary legatees named in the will exors. who, after her death on Feb. 18, 1894, duly proved it. The £850 had been advanced by testatrix in Jan. 1881, upon mtge. in fee simple of certain land & houses. Default was made in payment of the principal & interest, & in Oct. 1882, testatrix entered into possession of the mortgaged premises & she continued in possession thereof until her death, & her exors. had ever since remained in possession of them without giving any acknowledgment of the mtgor.'s title :—*Held :* (1) there was a good charitable gift of the capital of the moieties of the £850 to the president of the college & the superioress of the convent respectively; (2) the land was vested in the exors. of the will, who should sell it & pay the sum of £850, or the proceeds of sale if less than that sum, to the Comrs. of Charitable Donations & Bequests for Ireland, to be applied by them, as to one-half for the purposes of the bequest to the president of A. College, & as to the other half for the purposes of the bequest to the superioress of M. Convent.—*Re* LEE, KELLY *v.* O'DONNELL, [1916] W. N. 135.

SUB-SECT. 3.—LEGACIES CHARGED ON LAND.

See, now, 1891 Act, s. 3.

315. Less legacy "instead thereof" to different charity—Within earlier Acts.]—LEACROFT *v.* MAYNARD (1791), 3 Bro. C. C. 233; 1 Ves. 279; 29 E. R. 507, L. C.

Annotations :—**Consd.** *Re* Backhouse, Salmon *v.* Backhouse, [1916] 1 Ch. 65. **Refd.** Johnstone *v.* Harrowby (1859), 1 De G. F. & J. 183. **Mentd.** Cooper *v.* Day (1817), 3 Mer. 154; *Re* More's Trust (1851), 10 Hare, 171; *Re* Boden, Boden *v.* Boden, [1907] 1 Ch. 132; *Re* Joseph, Pain *v.* Joseph, [1908] 1 Ch. 599.

316. While unpaid—Within earlier Acts.]—BROOK *v.* BADLEY (1868), 3 Ch. App. 672; 37 L. J. Ch. 884; 33 J. P. 3; 16 W. R. 947, L. C.

Annotations :—**Apld.** Ashworth *v.* Munn (1880), 15 Ch. D. 363. **Consd.** *Re* Hill's Trusts (1880), 16 Ch. D. 173. **Distd.** *Re* Robson, Emley *v.* Davidson (1881), 19 Ch. D. 156. **Consd.** *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947; *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626. **Refd.** Cadbury *v.* Smith (1869), L. R. 9 Eq. 37; *Re* Hollon, Forbes *v.* Hardcastle (1893), 69 L. T. 425; Miller *v.* Collins, [1896] 1 Ch. 573. **Mentd.** Shepheard *v.* Beetham (1877), 6 Ch. D. 597; *Re* Lloyd, Lloyd *v.* Lloyd (1902), 72 L. J. Ch. 78.

SUB-SECT. 4.—LEASEHOLDS.

See, now, 1891 Act, s. 3.

317. Within earlier Acts.] –PAICE *v.* CANTERBURY (ARCHBP.) (1807), 14 Ves. 364; 33 E. R. 560, L. C.

Annotations :—**Refd.** *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 83. **Mentd.** Doe d. Crutchfield *v.* Pearce (1815), 1 Price, 353; Pocock *v.* Lincoln (1821), 3 Brod. & Bing. 27; Bridge *v.* Brown (1843), 2 Y. & C. Ch. Cas. 181; Mapp *v.* Elcock (1849), 2 Ph. 793.

318. —— Term vested in testator as lessee.]—A.-G. *v.* GRAVES (1752), Amb. 155; 27 E. R. 103, L. C.

Annotations :—**Apld.** A.-G. *v.* Tomkins (1754), Amb. 216; A.-G. *v.* Caldwell (1766), Amb. 635. **Refd.** A.-G. *v.* Tyndall (1764), 2 Eden, 207. **Mentd.** Hilliard *v.* Taylor (1773), Dick. 476; Field *v.* Mostin (1778), Dick. 543; Giblett *v.* Hobson (1834), 3 My. & K. 517.

319. —— Included in devise of residue.]—A.-G. *v.* TOMKINS (1754), Amb. 216; 3 Keny. 129; 27 E. R. 143, L. C.

Annotations :—**Refd.** Dawson *v.* Clark (1809), 15 Ves. 409. **Mentd.** Hilliard *v.* Taylor (1773), Dick. 476; Field *v.* Mostin (1778), Dick. 543.

320. —— ——.]—JOHNSTON *v.* SWANN (1818), 3 Madd. 457; 56 E. R. 573.

Annotations :—**Consd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Mentd.** Giblett *v.* Hobson (1834), 5 Sim. 651; Ellis *v.* Selby (1836), 1 My. & Cr. 286; A.-G. *v.* Hodgson (1846), 15 Sim. 146; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Hartshorne *v.* Nicholson (1858), 26 Beav. 58; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212.

321. —— ——.]—JOHNSTONE *v.* HAMILTON (1865), 5 Giff. 30; 6 New Rep. 352; 12 L. T. 822; 11 Jur. N. S. 777; 13 W. R. 961; 66 E. R. 910.

322. Not within earlier Acts—Conversion of former testator's estate.]—SHADBOLT *v.* THORNTON (1849), 17 Sim. 49; 18 L. J. Ch. 392; 13 Jur. 597; 60 E. R. 1046.

Annotations :—**Consd.** Marsh *v.* A.-G. (1860), 2 John. & H. 61. **N. F.** Lucas *v.* Jones (1867), L. R. 4 Eq. 73; Brook *v.* Badley (1868), 3 Ch. App. 672. **Refd.** Aspinall *v.* Bourne (1861), 29 Beav. 462.

323. —— ——.]—ASPINALL *v.* BOURNE (1861), 29 Beav. 462; 54 E. R. 706.

See, also, Nos. 289, 300, *ante.*

Conversion, generally, *see* EQUITY.

324. —— Share of partnership property.]—RAYMOND *v.* LAKEMAN (1867), 16 W. R. 67.

Annotation :—**Refd.** Ashworth *v.* Munn (1880), 15 Ch. D. 363.

SUB-SECT. 5.—SECURITIES OVER RATES, MUNICIPAL FUNDS AND PROPERTY, AND TURNPIKE TOLLS.

See, now, 1891 Act, s. 3.

325. Poor rates—County rates—Within earlier Acts.]—FINCH *v.* SQUIRE (1804), 10 Ves. 41; 32 E. R. 758.

Annotations :—**Folld.** R. *v.* Bates (1816), 3 Price, 341. **Expld. & Apld.** Thornton *v.* Kempson (1854), Kay, 592. **Expld. & Distd.** *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 49 L. J. Ch. 687. **Consd.** Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544; Payne *v.* Esdaile (1888), 13 App. Cas. 613; *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704. **Refd.** Chandler *v.* Howell (1876), 4 Ch. D. 651; Attree *v.* Hawe (1878), 9 Ch. D. 337.

326. Town hall rates—Within earlier Acts.]—THORNTON *v.* KEMPSON (1854), Kay, 592; 2 Eq. Rep. 903; 23 L. J. Ch. 977; 23 L. T. O. S. 185; 18 J. P. 629; 2 W. R. 399; 69 E. R. 251.

Annotations :—**Folld.** Ion *v.* Ashton (1860), 28 Beav. 379. **Consd.** *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 15 Ch. D. 561; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544; *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704. **Refd.** Chandler *v.* Howell (1876), 4 Ch. D. 651; *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947. **Mentd.** *Re* Thompson, Bedford *v.* Teal (1889), 59 L. J. Ch. 249.

327. Borough funds & rates—Within earlier Acts.]—CHANDLER *v.* HOWELL (1876), 4 Ch. D. 651; 46 L. J. Ch. 25; 35 L. T. 592; 25 W. R. 55.

Annotations :—**Consd.** Mitchell *v.* Moberley (1877), 37 L. T. 145. **N. F.** Attree *v.* Hawe (1878), 9 Ch. D. 337. **Consd.** *Re* Parker, Wignall *v* Park, [1891] 1 Ch. 682.

328. —— Gas rates & rents—Borough funds including rents of surplus lands—Within earlier Acts.]—*Re* HATTON, ROBSON *v.* GIBBS (1888), 4 T. L. R. 311.

Annotation :—**Consd.** *Re* Thompson, Bedford *v.* Teal (1890), 45 Ch. D. 161.

329. —— Not within earlier Acts.]—*Re* THOMPSON, BEDFORD *v.* TEAL (1890), 45 Ch. D. 161; 59 L. J. Ch. 689; 63 L. T. 471; 39 W. R. 50; 6 T. L. R. 394, C. A.

Annotations :—**Consd.** *Re* Holmes, Holmes *v.* Holmes (1890), 60 L. J. Ch. 267. **Folld.** *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704.

330. —— & all other corporation property—Within earlier Acts.]—*Re* GOULDEN, WALMSLEY *v.* RICE (1885), 1 T. L. R. 251, C. A.

331. —— —— ——.]—*Re* HOLMES, HOLMES *v.* HOLMES (1890), 60 L. J. Ch. 267; 63 L. T. 477; 6 T. L. R. 485.

Annotations :—**Consd.** *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704; *Re* Crossley, Birrell *v.* Greenhough, [1897] 1 Ch. 928.

332. —— —— Not within earlier Acts—Death of testator before 1891 Act.]—*Re* PICKARD, ELMSLEY *v.* MITCHELL, [1894] 3 Ch. 704; 64 L. J. Ch. 92; 71 L. T. 558; 7 R. 479, C. A.

Annotations :—**Consd.** *Re* Crossley, Birrell *v.* Greenhough, [1897] 1 Ch. 928; *Re* Deane, Goodwin *v.* Brocklehurst (1902), 19 T. L. R. 26.

333. Police rates—Not within earlier Acts.]—*Re* HARRIS, JACSON *v.* QUEEN ANNE'S BOUNTY (GOVERNORS) (1880), 15 Ch. D. 561; 49 L. J. Ch. 687; 43 L. T. 116; 45 J. P. 173; 29 W. R. 119.

Annotations :—**Consd.** Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Expld. & Distd.** *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947. **Mentd.** Miller *v.* Collins (1896), 65 L. J. Ch. 353.

334. General district rates—Not within earlier Acts.]—*Re* HALLETT, HOWARTH *v.* MASSEY (1889), 5 T. L. R. 285.

Annotation :—**Consd.** *Re* Crossley, Birrell *v.* Greenhough, [1897] 1 Ch. 928.

335. Water rates & works—Not within earlier Acts—Death of testator before 1891 Act.]—*Re* PARKER, WIGNALL *v.* PARK, [1891] 1 Ch. 682; 60 L. J. Ch. 195; 64 L. T. 257; 39 W. R. 346; 7 T. L. R. 200.

Annotation :—**Consd.** *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704.

336. Improvement bonds—City of Bath—Within earlier Acts.]—HOWSE *v.* CHAPMAN (1799), 4 Ves. 542; 31 E. R. 278, L. C.

Annotations :—**Consd.** R. *v.* Bates (1816), 3 Price, 341; A.-G. *v.* Giles (1835), 5 L. J. Ch. 44; Eyre *v.* Marsden (1839), 4 My. & Cr. 231; Chandler *v.* Howell (1876), 4 Ch. D. 651. **Refd.** Mitford *v.* Reynolds (1842), 1 Ph. 185; Nightingale *v.* Goulburn (1847), 5 Hare, 484; Attree *v.* Hawe (1877), 47 L. J. Ch. 157; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; *Re* David, Buckley *v.* Royal National Life Boat Institution (1889), 41 Ch. D. 168; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Mentd.** Christian *v.* Foster, Bunnett *v.* Foster (1846), 2 Coop. *temp.* Cott. 348; Hurst *v.* Hurst (1884), 28 Ch. D. 159.

337. —— Tothill Fields—Not within earlier Acts.]—BUNTING *v.* MARRIOTT (1854), 19 Beav. 163; 52 E. R. 311.

Annotation :—**Consd.** Chandler *v.* Howell (1876), 4 Ch. D. 651.

338. —— Norland Estate—Not within earlier Acts.]—JERVIS *v.* LAWRENCE (1882), 22 Ch. D. 202; 52 L. J. Ch. 242; 47 L. T. 428; 31 W. R. 267.

339. —— Dover Improvement Board—Within earlier Acts.]—*Re* GANGE (1889), *Times*, March 19.

340. Turnpike tolls & bonds—Within earlier Acts.]—KNAPP *v.* WILLIAMS (1798), 4 Ves. 430, n.; 31 E. R. 221, L. C.

Annotations :—**Consd.** R. *v.* Bates (1816), 3 Price, 341; Myers *v.* Perigal (1852), 2 De G. M. & G. 599. **Folld.** Ion *v.* Ashton (1860), 28 Beav. 379; Chandler *v.* Howell (1876), 4 Ch. D. 651. **Consd.** Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Christmas, Martin *v.* Lacon (1886), 33 Ch. D. 332. **Folld.** Buckley *v.* Royal National Lifeboat Institution (1889), 5 T. L. R. 320. **Consd.** Buckley *v.* Royal National Lifeboat Institution (1889), 6 T. L. R. 42; *Re* David, Buckley *v.* Royal National Lifeboat Institution (1889), 43 Ch. D. 27. **Refd.** Attree *v.* Hawe (1877), 47 L. J. Ch. 157; Cavendish *v.* Cavendish (1883), 24 Ch. D. 685; *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704. **Mentd.** Crewe *v.* Edleston (1857), 1 De G. & J. 93.

Sect. 2.—Meaning of "land" in Mortmain and Charitable Uses Acts: Sub-sects. 5, 6, 7, 8 & 9.]

341. ——. ——.]—HOWSE *v.* CHAPMAN (1799), 4 Ves. 542 ; 31 E. R. 278, L. C.

Annotations :—**Consd.** R. *v.* Bates (1816), 3 Price, 341 ; A.-G. *v.* Giles (1835), 5 L. J. Ch. 44 ; Eyre *v.* Marsden (1839), 4 My. & Cr. 231 ; Chandler *v.* Howell (1876), 4 Ch. D. 651. **Refd.** Mitford *v.* Reynolds (1842), 1 Ph. 185 ; Nightingale *v.* Goulburn (1847), 5 Hare, 484 ; Attree *v.* Hawe (1877), 47 L. J. Ch. 157 ; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633 ; Jervis *v.* Lawrence (1882), 22 Ch. D. 202 ; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933 ; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520 ; *Re* David, Buckley *v.* Royal National Life Boat Institution (1889), 41 Ch. D. 168 ; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Mentd.** Christian *v.* Foster (1846), 2 Ph. 161 ; Hurst *v.* Hurst (1884), 28 Ch. D. 159.

342. —— ——.]—ASHTON *v.* LANGDALE (LORD) (1851), 4 De G. & Sm. 402 ; 20 L. J. Ch. 234 ; 17 L. T. O. S. 175 ; 15 Jur. 868 ; 64 E. R. 888.

Annotations :—**Apprvd. & Folld.** Alexander *v.* Brame (1861), 30 Beav. 153. **Consd.** Imperial Mercantile Credit Assocn. *v.* Newry & Armagh Ry. (1868), 16 W. R. 1070. **Expld. & Distd.** Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **N. F.** *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655 ; Attree *v.* Hawe (1878), 9 Ch. D. 337. **Dist. & N. F.** Jervis *v.* Lawrence (1882), 22 Ch. D. 202. **Folld.** *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Refd.** *Re* Langham's Will (1853), 1 Eq. Rep. 118 ; Thornton *v.* Kempson (1854), Kay, 592 ; Ware *v.* Cumberlege (1855), 20 Beav. 503 ; Chandler *v.* Howell (1876), 4 Ch. D. 651 ; *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 15 Ch. D. 561 ; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Mentd.** Robinson *v.* London Hospital Governors (1853), 10 Hare, 19.

343. —— ——.]—TYRRELL *v.* WHINFIELD, [1877] W. N. 99.

SUB-SECT. 6.—SECURITIES OVER RAILWAY, NAVIGATION AND SIMILAR RATES, TOLLS AND DUTIES.

See, now, 1891 Act, s. 3.

344. Canal tolls & rates—Bonds secured on—Not within earlier Acts.]—WALKER *v.* MILNE (1849), 11 Beav. 507 ; 18 L. J. Ch. 288 ; 13 L. T. O. S. 542 ; 13 Jur. 933 ; 50 E. R. 913.

Annotations :—**Consd.** Ashton *v.* Langdale (1851), 4 De G. & Sm. 402. **Folld.** *Re* Langham's Will (1853), 22 L. T. O. S. 63. **Distd.** Chandler *v.* Howell (1876), 4 Ch. D. 651. **Folld.** Attree *v.* Hawe (1878), 9 Ch. D. 337. **Consd.** Jervis *v.* Lawrence (1882), 22 Ch. D. 202. **Refd.** Myers *v.* Perigal (1852), 2 De G. M. & G. 599 ; Ware *v.* Cumberlege (1855), 20 Beav. 503 ; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19 ; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185 ; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655 ; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682.

345. —— Mortgage of—Within earlier Acts.]—*Re* LANGHAM'S TRUST (1853), 10 Hare, 446 ; 1 Eq. Rep. 118 ; 22 L. T. O. S. 63 ; 1 W. R. 301 ; 68 E. R. 1001.

Annotations :—**Consd.** *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655. **Refd.** Thornton *v.* Kempson (1854), 2 Eq. Rep. 903 ; Chandler *v.* Howell (1876), 4 Ch. D. 651 ; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185.

346. River improvement tolls & duties—Mortgage of—Within earlier Acts.]—ION *v.* ASHTON (1860), 28 Beav. 379 ; 2 L. T. 686 ; 6 Jur. N. S. 879 ; 8 W. R. 573 ; 54 E. R. 411.

Annotations :—**Distd.** *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 332. **Refd.** Chandler *v.* Howell (1876), 4 Ch. D. 651. **Mentd.** Sinnett *v.* Herbert (1871), L. R. 12 Eq. 201 ; Poole *v.* Heron (1873), 42 L. J. Ch. 348 ; *Re* Needham, Robinson *v.* Needham (1884), 54 L. J. Ch. 75.

347. —— Bonds secured on—Not within earlier Acts—Death of testator before 1891 Act.]—*Re* DEANE, GOODWIN *v.* BROCKLEHURST (1902), 19 T. L. R. 26.

348. Railway rates & tolls—Mortgage of—Within earlier Acts.]—ASHTON *v.* LANGDALE (LORD) (1851), 4 De G. & Sm. 402 ; 20 L. J. Ch. 234 ; 17 L. T. O. S. 175 ; 15 Jur. 868 ; 64 E. R. 888.

Annotations :—**Folld.** *Re* Langham's Will (1853), 1 Eq. Rep. 118 ; Alexander *v.* Brame (1861), 30 Beav. 153. **Consd.** Imperial Mercantile Credit Assocn. *v.* Newry & Armagh Ry. (1868), 16 W. R. 1070. **Distd.** Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **N. F.** *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655 ; Attree *v.* Hawe (1878), 9 Ch. D. 337 ; Jervis *v.* Lawrence (1882), 22 Ch. D. 202. **Folld.** *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Refd.** Thornton *v.* Kempson (1854), Kay, 592 ; Ware *v.* Cumberlege (1855), 20 Beav. 503 ; Chandler *v.* Howell (1876), 4 Ch. D. 651 ; *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 15 Ch. D. 561 ; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682.

349. Dock duties—Debenture secured on—Within earlier Acts.]—ALEXANDER *v.* BRAME (No. 2) (1861), 30 Beav. 153 ; 7 Jur. N. S. 889 ; 9 W. R. 719 ; 54 E. R. 847.

Annotations :—**Consd.** Attree *v.* Hawe (1878), 9 Ch. D. 337 ; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544.

350. —— Bonds secured on—Not within earlier Acts.]—*Re* CHRISTMAS, MARTIN *v.* LACON (1886), 33 Ch. D. 332 ; 55 L. J. Ch. 878 ; 55 L. T. 197 ; 50 J. P. 759 ; 34 W. R. 779 ; 2 T. L. R. 853, C. A.

Annotations :—**Consd.** *Re* David, Buckley *v.* Royal National Lifeboat Institution (1889), 43 Ch. D. 27. **Mentd.** *Re* Thompson, Bedford *v.* Teal (1889), 59 L. J. Ch. 249.

351. Bridge tolls—Mortgage of—Within earlier Acts.]—*Re* DAVID, BUCKLEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION (1889), 43 Ch. D. 27 ; 59 L. J. Ch. 87 ; 62 L. T. 141 ; 38 W. R. 162 ; 6 T. L. R. 42, C. A.

Annotations :—**Consd.** *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682 ; Driver *v.* Broad, [1893] 1 Q. B. 539 ; *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704. **Refd.** *Re* Thompson, Bedford *v.* Teal (1890), 45 Ch. D. 161 ; *Re* Hollon, Forbes *v.* Hardcastle (1893), 69 L. T. 425.

Shares, stocks & debentures issued by railway & canal companies.]—*See* Sub-sect. 9, *post.*

SUB-SECT. 7.—COPYHOLDS.

See, now, 1891 Act, s. 3.

352. Valid.]—KENSON'S CASE (1599), Duke, 80 ; Toth. 30 ; 21 E. R. 114.

Conveyance inter vivos—Informal conveyance—Enrolment.]—*See,* Sect. 4, sub-sect. 5, *post.*

See, also, No. 59, *ante,* Nos. 566, 567, *post.*

SUB-SECT. 8.—ANNUITIES AND RENTCHARGES.

See, now, 1891 Act, s. 3.

353. Annuity charged on devised estate—Within earlier Acts.]—BAKER *v.* HALL (1806), 12 Ves. 497 ; 33 E. R. 188.

Annotations :—**Mentd.** Knight *v.* Knight (1874), L. R. 18 Eq. 487 ; *Re* Birchall, Wilson *v.* Birchall (1881), 44 L. T. 243 ; *Re* Butler, Hughes *v.* Anderson (1888), 57 L. J. Ch. 643.

354. Rentcharge—Out of Crown estate—Not rent in fee—Not within earlier Acts.]—VIGERS *v.* ST. PAUL'S (DEAN & CHAPTER) (1849), 14 Q. B. 909 ; 18 L. J. Q. B. 97 ; 13 Jur. 256 ; 117 E. R. 349 ; *revsd.* without affecting this point, 14 Q. B. 920, Ex. Ch.

355. —— Devise of lands with condition that devisees should pay annual sum to charity—Within earlier Acts—Death of testator before 1891 Act.]—*Re* AMOS, CARRIER *v.* PRICE, [1891] 3 Ch. 159 ; 60 L. J. Ch. 570 ; 65 L. T. 69 ; 39 W. R. 550 ; 7 T. L. R. 559.

Annotation :—**Refd.** *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110.

SUB-SECT. 9.—SHARES, STOCKS AND DEBENTURES.

See, now, 1891 Act, s. 3.

356. Shares—General rule.]—Shares in cos. whether incorporated by Act of Parliament or not, but by the constitution of which the shares were

made personal estate, & to devolve as such, did not come within Charitable Uses Act, 1735 (9 Geo. 2, c. 36).—SPARLING *v.* PARKER (1846), 9 Beav. 450; 16 L. J. Ch. 57; 7 L. T. O. S. 465; 10 Jur. 448; 50 E. R. 417.

Annotations :—**Apld.** Walker *v.* Milne (1849), 18 L. J. Ch. 288. **Folld.** Ashton *v.* Langdale (1851), 4 De G. & Sm. 402. **Consd.** Watson *v.* Spratley (1854), 10 Exch. 222; Hayter *v.* Tucker (1858), 4 K. & J. 243. **Refd.** Myers *v.* Perigal (1849), 16 Sim. 533; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Mentd.** Walker *v.* Bartlett (1856), 18 C. B. 845; Hickman *v.* Cox (1857), 3 C. B. N. S. 523; New River Co. *v.* Great Anwell Land Tax Comrs. (1857), 29 L. T. O. S. 200; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19; Calvert *v.* Armitage (1863), 1 Hem. & M. 446.

357. —— **Incorporated company—Not within earlier Acts—Shares declared to be personal estate.**]—ASHTON *v.* LANGDALE (LORD) (1851), 4 De G. & Sm. 402; 20 L. J. Ch. 234; 17 L. T. O. S. 175; 15 Jur. 868; 64 E. R. 888.

Annotations :—**Folld.** *Re* Langham's Will (1853), 1 Eq. Rep. 118. **Consd.** Ware *v.* Cumberlege (1855), 20 Beav. 503. **Refd.** Alexander *v.* Brame (1861), 30 Beav. 153; Chandler *v.* Howell (1876), 4 Ch. D. 651; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; Attree *v.* Hawe (1878), 9 Ch. D. 337; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Mentd.** Thornton *v.* Kempson (1854), Kay, 592; *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 15 Ch. D. 561.

358. —— —— —— **Shares not declared to be personal estate.**]—EDWARDS *v.* HALL (1855), 6 De G. M. & G. 74; 25 L. J. Ch. 82; 26 L. T. O. S. 170; 20 J. P. 38; 1 Jur. N. S. 1189; 4 W. R. 111; 43 E. R. 1158, L. C.; *affg.* (1853), 11 Hare, 1.

Annotations :—**Consd.** Ware *v.* Cumberlege (1855), 20 Beav. 503. **Folld.** Linley *v.* Taylor (1859), 28 L. J. Ch. 686. **Distd.** Alexander *v.* Brame (1861), 30 Beav. 153. **Consd.** Bennett *v.* Blain (1863), 15 C. B. N. S. 518; Entwistle *v.* Davis (1867), L. R. 4 Eq. 272; Chandler *v.* Howell (1876), 4 Ch. D. 651. **Refd.** Fisher *v.* Brierley (1860), 1 De G. F. & J. 643; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185; *Re* Corcoran, Corcoran *v.* Riddell (1892), 62 L. J. Ch. 267; *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160; *Re* Rickard, Elmsley *v.* Mitchell, [1894] 2 Ch. 88. **Mentd.** Dunn *v.* Bownas (1855), 1 K. & J. 596; Marsh *v.* A.-G. (1860), 30 L. J. Ch. 233; Tatham *v.* Drummond (1864), 3 New Rep. 706; R. *v.* Southampton Port Comrs. (1870), L. R. 4 H. L. 449; Shepheard *v.* Beetham (1877), 6 Ch. D. 597; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212.

359. —— —— **Within earlier Acts—Substance of undertaking dealing in land.**]—WARE *v.* CUMBERLEGE (1855), 20 Beav. 503; 3 Eq. Rep. 656; 24 L. J. Ch. 630; 25 L. T. O. S. 138; 1 Jur. N. S. 745; 3 W. R. 437; 52 E. R. 697.

Annotations :—**Overd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Dbtd.** Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Mentd.** *Re* King, Jackson *v.* A.-G., [1917] 2 Ch. 420.

360. —— **Unincorporated company—Not within earlier Acts—Company authorised to hold lands by way of mortgage—Shares declared to be personal estate.**]—ASHTON *v.* LANGDALE (LORD) (1851), 4 De G. & Sm. 402; 20 L. J. Ch. 234; 17 L. T. O. S. 175; 15 Jur. 868; 64 E. R. 888.

Annotations :—**Folld.** *Re* Langham's Will (1853), 1 Eq. Rep. 118. **Consd.** Ware *v.* Cumberlege (1855), 20 Beav. 503; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Refd.** Alexander *v.* Brame (1861), 30 Beav. 153; Chandler *v.* Howell (1876), 4 Ch. D. 651; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; Attree *v.* Hawe (1878), 9 Ch. D. 337; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Mentd.** Thornton *v.* Kempson (1854), Kay, 592; *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 15 Ch. D. 561.

361. —— **Canal company—Within earlier Acts—Shares declared to be personal estate.**]—TOMLINSON *v.* TOMLINSON (1823), 9 Beav. 459; 50 E. R. 420.

Annotations :—**N.F.** Walker *v.* Milne (1849), 11 Beav. 507. **Consd.** Holdsworth *v.* Davenport (1876), 3 Ch. D. 185.

362. —— —— **Not within earlier Acts—Declared to be personal estate.**]—WALKER *v.* MILNE (1849), 11 Beav. 507; 18 L. J. Ch. 288; 13 L. T. O. S. 542; 13 Jur. 933; 50 E. R. 913.

Annotations :—**Folld.** Ashton *v.* Langdale (1851), 4 De G. & Sm. 402. **Consd.** Myers *v.* Perigal (1852), 2 De G. M. & G. 599; *Re* Langham's Will (1853), 1 Eq. Rep. 118; Attree *v.* Hawe (1878), 9 Ch. D. 337. **Refd.** Ware *v.* Cumberlege (1855), 20 Beav. 503; Chandler *v.* Howell (1876), 4 Ch. D. 651; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Mentd.** Bulmer *v.* Norris (1860), 9 C. B. N. S. 19.

363. —— —— —— ——.]—*Re* LANGHAM'S TRUST (1853), 10 Hare, 446; 1 Eq. Rep. 118; 22 L. T. O. S. 63; 1 W. R. 301; 68 E. R. 1001.

Annotations :—**Consd.** Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Refd.** Chandler *v.* Howell (1876), 4 Ch. D. 651; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655. **Mentd.** Thornton *v.* Kempson (1854), 2 Eq. Rep. 903.

364. —— **Dock company—Not within earlier Acts—Declared to be personal estate.**]—SPARLING *v.* PARKER (1846), 9 Beav. 450; 16 L. J. Ch. 57; 7 L. T. O. S. 465; 10 Jur. 448; 50 E. R. 417.

Annotations :—**Apld.** Walker *v.* Milne (1849), 18 L. J. Ch. 288. **Folld.** Ashton *v.* Langdale (1851), 4 De G. & Sm. 402. **Consd.** Watson *v.* Spratley (1854), 10 Exch. 222. **Refd.** Myers *v.* Perigal (1849), 16 Sim. 533; Hayter *v.* Tucker (1858), 4 K. & J. 243; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Mentd.** Walker *v.* Bartlett (1856), 18 C. B. 845; Hickman *v.* Cox (1857), 3 C. B. N. S. 523; New River Co. *v.* Great Anwell Land Tax Comrs. (1857), 29 L. T. O. S. 200; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19; Calvert *v.* Armitage (1863), 1 Hem. & M. 446.

365. —— —— —— ——.]—HILTON *v.* GIRAUD (1847), 1 De G. & Sm. 183; 16 L. J. Ch. 285; 9 L. T. O. S. 72; 11 Jur. 838; 63 E. R. 1024.

Annotations :—**Refd.** Myers *v.* Perigal (1849), 16 Sim. 533; Watson *v.* Spratley (1854), 10 Exch. 222; Hayter *v.* Tucker (1858), 4 K. & J. 243; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19; Bennett *v.* Blain (1863), 15 C. B. N. S. 518.

366. —— —— —— ——.]—WALKER *v.* MILNE (1849), 11 Beav. 507; 18 L. J. Ch. 288; 13 L. T. O. S. 542; 13 Jur. 933; 50 E. R. 913.

Annotations :—**Folld.** Ashton *v.* Langdale (1851), 4 De G. & Sm. 402. **Consd.** Myers *v.* Perigal (1852), 2 De G. M. & G. 599; *Re* Langham's Will (1853), 1 Eq. Rep. 118; Chandler *v.* Howell (1876), 4 Ch. D. 651; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Refd.** Ware *v.* Cumberlege (1855), 20 Beav. 503; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; Attree *v.* Hawe (1878), 9 Ch. D. 337; Jervis *v.* Lawrence (1882), 22 Ch. D. 202. **Mentd.** Bulmer *v.* Norris (1860), 9 C. B. N. S. 19.

367. —— **Gas-light company—Not within earlier Acts—Declared to be personal estate.**]—THOMPSON *v.* THOMPSON (1844), 1 Coll. 381; 13 L. J. Ch. 455; 3 L. T. O. S. 452; 8 Jur. 800; 63 E. R. 464.

Annotations :—**Refd.** Myers *v.* Perigal (1849), 16 Sim. 533. **Mentd.** Marsh *v.* Means (1857), 30 L. T. O. S. 89; *Re* Sanderson's Trust (1857), 3 K. & J. 497; Thomson *v.* Shakespeare (1859), John. 612; Sinnett *v.* Herbert (1872), 7 Ch. App. 232; Bowman *v.* Secular Soc., [1917] A. C. 406.

368. —— —— —— ——.]—SPARLING *v.* PARKER (1846), 9 Beav. 450; 16 L. J. Ch. 57; 7 L. T. O. S. 465; 10 Jur. 448; 50 E. R. 417.

Annotations :—**Apld.** Walker *v.* Milne (1849), 18 L. J. Ch. 288. **Folld.** Ashton *v.* Langdale (1851), 4 De G. & Sm. 402. **Consd.** Hayter *v.* Tucker (1858), 4 K. & J. 243. **Refd.** Myers *v.* Perigal (1849), 16 Sim. 533; Watson *v.* Spratley (1854), 10 Exch. 222; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Mentd.** Walker *v.* Bartlett (1856), 18 C. B. 845; Hickman *v.* Cox (1857), 3 C. B. N. S. 523; New River Co. *v.* Great Anwell Land Tax Comrs. (1857), 29 L. T. O. S. 200; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19; Calvert *v.* Armitage (1863), 1 Hem. & M. 446.

369. —— **Railway company—Not within earlier Acts—Declared to be personal estate.**]—SPARLING *v.* PARKER (1846), 9 Beav. 450; 16 L. J. Ch. 57; 7 L. T. O. S. 465; 10 Jur. 448; 50 E. R. 417.

Annotations :—**Apld.** Walker *v.* Milne (1849), 18 L. J. Ch. 288. **Folld.** Ashton *v.* Langdale (1851), 4 De G. & Sm. 402. **Refd.** Myers *v.* Perigal (1849), 16 Sim. 533; Watson *v.* Spratley (1854), 10 Exch. 222; Hayter *v.* Tucker (1858), 4 K. & J. 243; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Mentd.** Walker *v.* Bartlett (1856), 18 C. B. 845; Hickman *v.* Cox (1857), 3 C. B. N. S. 523; New River Co. *v.* Great Anwell Land Tax Comrs. (1857), 29 L. T. O. S. 200; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19; Calvert *v.* Armitage (1863), 1 Hem. & M. 446.

370. —— —— —— **Undertaking leased to another railway.**]—TAYLOR *v.* LINLEY (1860), 2

Sect. 2.—Meaning of "land" in Mortmain and Charitable Uses Acts: Sub-sects. 9, 10 & 11. Sect. 3: Sub-sect. 1.]

De G. F. & J. 84; 29 L. J. Ch. 534; 25 J. P. 180; 8 W. R. 735; 45 E. R. 554, L. C.

Annotations:—**Consd.** Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Refd.** *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160. **Mentd.** Shepheard *v.* Beetham (1877), 6 Ch. D. 597.

371. —— Waterworks company — Within earlier Acts—Shares not declared to be personal estate.]—WARE *v.* CUMBERLEGE (1855), 20 Beav. 503; 3 Eq. Rep. 656; 24 L. J. Ch. 630; 25 L. T. O. S. 138; 1 Jur. N. S. 745; 3 W. R. 437; 52 E. R. 697.

Annotations:—**N.F.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Consd.** Holdsworth *v.* Davenport (1876), 3 Ch. D. 185. **Mentd.** *Re* King, Jackson *v.* A.-G., [1917] 2 Ch. 420.

372. —— Joint stock company—Not within earlier Acts—Assets to be deemed personal estate.]—MYERS *v.* PERIGAL (1852), 2 De G. M. & G. 599; 22 L. J. Ch. 431; 20 L. T. O. S. 229; 17 Jur. 145; 1 W. R. 57; 42 E. R. 1006, L. C.; *revsg.* (1849), 16 Sim. 533.

Annotations:—**Consd.** Thornton *v.* Kempson (1854), Kay. 592. **Apld.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Distd.** Ware *v.* Cumberlege (1855), 20 Beav. 503. **Foll.** Linley *v.* Taylor (1859), 28 L. J. Ch. 686. **Consd.** Morris *v.* Glynn (1859), 27 Beav. 218; Marsh *v.* A.-G. (1860), 2 John. & H. 61. **Apld.** Entwistle *v.* Davis (1867), L. R. 4 Eq. 272. **Distd.** Ashworth *v.* Munn (1880), 15 Ch. D. 363. **Consd.** *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160; *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626. **Refd.** Ashton *v.* Langdale (1851), 20 L. J. Ch. 234; Watson *v.* Spratley (1854), 10 Exch. 222; Hayter *v.* Tucker (1858), 4 K. & J. 243; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19; Symonds *v.* Marine Soc. (1860), 2 Giff. 325; Bennett *v.* Blain (1863), 15 C. B. N. S. 518; Brook *v.* Badley (1868), 3 Ch. App. 672; Forbes *v.* Steven, Mackenzie *v.* Forbes (1870), L. R. 10 Eq. 178; Chandler *v.* Howell (1876), 4 Ch. D. 651; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; *Re* Christmas, Martin *v.* Lacon (1886), 33 Ch. D. 332; *Re* David, Buckley *v.* Royal National Life Boat Institution (1889), 41 Ch. D. 168. **Mentd.** Freeman *v.* Gainsford (1865), 18 C. B. N. S. 185; Lucas *v.* Jones (1867), 36 L. J. Ch. 602; R. *v.* Southampton Port Comrs. (1870), L. R. 4 H. L. 449; Watson *v.* Black (1885), 16 Q. B. D. 270.

373. —— Insurance company—Not within earlier Acts.]—ROBINSON *v.* LONDON HOSPITAL (GOVERNORS) (1853), 10 Hare, 19; 22 L. J. Ch. 754; 68 E. R. 821.

Annotations:—**Mentd.** Simmons *v.* Rose (1856), 6 De G. M. & G. 411; Calvert *v.* Armitage (1863), 1 Hem. & M. 446; Perring *v.* Trail (1874), L. R. 18 Eq. 88; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty, [1916] 1 Ch. 100.

374. —— Cost-book mining company—Not within earlier Acts.]—HAYTER *v.* TUCKER (1858), 4 K. & J. 243; 32 L. T. O. S. 121; 23 J. P. 19; 4 Jur. N. S. 257; 6 W. R. 243; 70 E. R. 101.

Annotations:—**Distd.** Morris *v.* Glynn (1860), 2 L. T. 73. **Consd.** *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160.

375. —— Iron company—Within earlier Acts.]—MORRIS *v.* GLYNN (1859), 27 Beav. 218; 2 L. T. 73; 5 Jur. N. S. 1047; 54 E. R. 85.

Annotation:—**N.F.** Entwistle *v.* Davis (1867), L. R. 4 Eq. 272.

376. —— Land company or society—Not within earlier Acts.]—ENTWISTLE *v.* DAVIS (1867), L. R. 4 Eq. 272; 36 L. J. Ch. 825; 31 J. P. 708.

Annotations:—**Consd.** *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160; *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626.

377. Scrip—Railway—Not within earlier Acts.]—ASHTON *v.* LANGDALE (LORD) (1851), 4 De G. & Sm. 402; 20 L. J. Ch. 234; 17 L. T. O. S. 175; 15 Jur. 868; 64 E. R. 888.

Annotations:—**Foll.** *Re* Langham's Will (1853), 1 Eq. Rep. 118. **Refd.** Ware *v.* Cumberlege (1855), 20 Beav. 503; Alexander *v.* Brame (1861), 30 Beav. 153; Chandler *v.* Howell (1876), 4 Ch. D. 651; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; Attree *v.* Hawe (1878), 9 Ch. D. 337; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Mentd.** Thornton *v.* Kempson (1854), Kay, 592; *Re* Harris, Jacson *v.* Queen Anne's Bounty Governors (1880), 15 Ch. D. 561.

378. Stock—East India Company—Not within earlier Acts.]—A.-G. *v.* GILES (1835), 5 L. J. Ch. 44.

Annotation:—**Refd.** Alexander *v.* Brame (1855), 7 De G. M. & G. 525.

379. —— Bank of England—Not within earlier Acts.] — ROBINSON *v.* LONDON HOSPITAL (GOVERNORS) (1853), 10 Hare, 19; 22 L. J. Ch. 754; 68 E. R. 821.

Annotations:—**Mentd.** Simmons *v.* Rose (1856), 6 De G. M. & G. 411; Calvert *v.* Armitage (1863), 1 Hem. & M. 446; Perring *v.* Trail (1874), L. R. 18 Eq. 88; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty, [1916] 1 Ch. 100.

380. —— Metropolitan—Within earlier Acts.]—CLUFF *v.* CLUFF (1876), 2 Ch. D. 222; 24 W. R. 632.

Annotations:—**Foll.** *Re* Copland, Mitchell *v.* Bain (1895), 39 Sol. Jo. 396; *Re* Crossley, Birrell *v.* Greenhough, [1897] 1 Ch. 928.

381. —— —— —— Death of testator before 1891 Act.]—*Re* COPLAND, MITCHELL *v.* BAIN (1895), 39 Sol. Jo. 396.

382. —— —— —— Death of testator after 1891 Act—Construction of will.]—*Re* CROSSLEY, BIRRELL *v.* GREENHOUGH, [1897] 1 Ch. 928; 66 L. J. Ch. 558; 76 L. T. 419; 61 J. P. 390; 45 W. R. 615.

—— Corporation—Charged on rates & revenues.]—*See* Sub-sect. 5, *ante*.

383. —— Railway—Not within earlier Acts—Death of testator before 1891 Act.]—*Re* HOLLON, FORBES *v.* HARDCASTLE (1893), 69 L. T. 425, C. A.

Annotation:—**Refd.** *Re* Pickard, Elmsley *v.* Mitchell (1894), 71 L. T. 558.

384. Debentures—Incorporated company—Debenture stock—Not within earlier Acts.]—ATTREE *v.* HAWE (1878), 9 Ch. D. 337; 47 L. J. Ch. 863; 38 L. T. 733; 43 J. P. 124; 26 W. R. 871, C. A.

Annotations:—**Expld.** Ashworth *v.* Munn (1880), 15 Ch. D. 363. **Apld.** *Re* Harris, Jacson *v.* Queen Anne's Bounty, Governors (1880), 15 Ch. D. 561; Jervis *v.* Lawrence (1882), 22 Ch. D. 202. **Distd.** Cavendish *v.* Cavendish (1883), 24 Ch. D. 685, where it was held that decisions under the Mortmain Acts were not applicable to cases not decided under those Acts. **Expld.** *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Consd.** *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947; *Re* David, Buckley *v.* Royal National Life Boat Institution (1889), 41 Ch. D. 168. **Apld.** *Re* Thompson, Bedford *v.* Teal (1890), 45 Ch. D. 161; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682; *Re* Hollon, Forbes *v.* Hardcastle (1893), 69 L. T. 425. **Consd.** *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704; *Re* Crossley, Birrell *v.* Greenhough, [1897] 1 Ch. 928. **Distd.** *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626. **Refd.** G. E. Ry. *v.* East London Ry. (1881), 44 L. T. 903; *Re* Holmes, Holmes *v.* Holmes (1890), 60 L. J. Ch. 267; *Re* Bodman, Bodman *v.* Bodman, [1891] 3 Ch. 135; *Re* Hume, Forbes *v.* Hume, [1895] 1 Ch. 422; Lawrence *v.* West Somerset Mineral Ry., [1918] 2 Ch. 250. **Mentd.** Jarrah Timber & Wood Paving Corpn. *v.* Samuel, [1903] 2 Ch. 1.

385. —— Railway company—Not within earlier Acts.]—MYERS *v.* PERIGAL (1849), 16 Sim. 533; 18 L. J. Ch. 185; 13 Jur. 223; 60 E. R. 981; *revsd.* without affecting this point (1852), 2 De G. M. & G. 599, L.C.

Annotations:—**Consd.** Chandler *v.* Howell (1876), 4 Ch. D. 651; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185; Ashworth *v.* Munn (1880), 15 Ch. D. 363. **Refd.** Ashton *v.* Langdale (1851), 20 L. J. Ch. 234; Thornton *v.* Kempson (1854), Kay, 592; Edwards *v.* Hall (1855), 6 De G. M. & G. 74; Ware *v.* Cumberlege (1855), 20 Beav. 503; Hayter *v.* Tucker (1858), 4 K. & J. 243; Linley *v.* Taylor (1859), 28 L. J. Ch. 686; Morris *v.* Glynn (1859), 27 Beav. 218; Bulmer *v.* Norris (1860), 9 C. B. N. S. 19; Marsh *v.* A.-G. (1860), 2 John & H. 61; Symonds *v.* Marine Soc. (1860), 2 Giff. 325; Entwistle *v.* Davis (1867), L. R. 4 Eq. 272; Brook *v.* Badley (1868), 3 Ch. App. 672; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655; *Re* Christmas, Martin *v.* Lacon (1886), 33 Ch. D. 332; *Re* David, Buckley *v.* Royal National Life Boat Institution (1889), 41 Ch. D. 168; *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160; *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626. **Mentd.** Watson *v.* Spratley (1854), 10 Exch. 222; Bennett *v.* Blain (1863), 15 C. B. N. S. 518; Freeman *v.* Gainsford (1865), 18 C. B. N. S. 185; Lucas *v.*

Jones (1867), 36 L. J. Ch. 602 ; Forbes *v.* Steven, Mackenzie *v.* Forbes (1870), L. R. 10 Eq. 178 ; R. *v.* Southampton Port Comrs. (1870), L. R. 4 H. L. 449 ; Watson *v.* Black (1885), 16 Q. B. D. 270.

386. —— —— —— **Merely containing personal obligation to holder.**]—ASHTON *v.* LANGDALE (LORD) (1851), 4 De G. & Sm. 402 ; 20 L. J. Ch. 234 ; 17 L. T. O. S. 175 ; 15 Jur. 868 ; 64 E. R. 888.

Annotations :—**Folld.** *Re* Langham's Will (1853), 1 Eq. Rep. 118. **Consd.** Alexander *v.* Brame (1861), 30 Beav. 153 ; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185 ; *Re* Mitchell's Estate, Mitchell *v.* Moberly (1877), 6 Ch. D. 655. **Consd. & N.F.** Attree *v.* Hawe (1878), 9 Ch. D. 337. **Consd.** Jervis *v.* Lawrence (1882), 22 Ch. D. 202 ; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Refd.** Thornton *v.* Kempson (1854), Kay, 592 ; Ware *v.* Cumberlege (1855), 20 Beav. 503 ; Chandler *v.* Howell (1876), 4 Ch. D. 651 ; *Re* Harris, Jacson *v.* Queen Anne's Bounty, Governors (1880), 15 Ch. D. 561 ; *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682.

387. —— —— —— **Debenture in statutory form.**]—*Re* MITCHELL'S ESTATE, MITCHELL *v.* MOBERLY (1877), 6 Ch. D. 655 ; 37 L. T. 145 ; 25 W. R. 903.

Annotation :—**Consd.** *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682.

388. —— —— —— **Debenture not in statutory form.**]—*Re* YERBURY'S ESTATE, KER *v.* DENT (1889), 62 L. T. 55.

Annotations :—**Consd.** *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Folld.** *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704.

389. —— **Dock commissioners—Within earlier Acts.**]—ALEXANDER *v.* BRAME (No. 2) (1861), 30 Beav. 153 ; 7 Jur. N. S. 889 ; 9 W. R. 719 ; 54 E. R. 847.

Annotations :—**Consd.** *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544. **Refd.** Attree *v.* Hawe (1878), 9 Ch. D. 337. **Mentd.** *Re* Robson, Emley *v.* Davidson (1881), 19 Ch. D. 156.

390. —— **Waterworks company—Not within earlier Acts—Debenture in statutory form.**]—HOLDSWORTH *v.* DAVENPORT (1876), 3 Ch. D. 185 ; 46 L. J. Ch. 20 ; 35 L. T. 319 ; 25 W. R. 20.

Annotations :—**Distd.** Chandler *v.* Howell (1876), 4 Ch. D. 651. **Consd.** *Re* Parker, Wignall *v.* Park, [1891] 1 Ch. 682. **Refd.** Mitchell *v.* Moberley (1877), 37 L. T. 145 ; Attree *v.* Hawe (1878), 9 Ch. D. 337.

391. —— **Australian land company—Within earlier Acts—Death of testator before 1891 Act.**]—*Re* DAWSON, PATTISSON *v.* BATHURST, [1915] 1 Ch. 626 ; 84 L. J. Ch. 476 ; 113 L. T. 19 ; 31 T. L. R. 277 ; 59 Sol. Jo. 363, C. A.

SUB-SECT. 10.—TITHES.

See, now, 1891 Act, s. 3.

392. Gift by will—Of great tithes—Within earlier Acts.]—BURR *v.* MILLER, [1872] W. N. 63.

Gift of personal estate—To buy tithes.]—*See* Sect. 3, sub-sect. 3, *post.*

SUB-SECT. 11.—OTHER CASES.

See, now, 1891 Act, s. 3.

393. Fixtures in leasehold house—Not within earlier Acts.]—JOHNSTON *v.* SWANN (1818), 3 Madd. 457 ; 56 E. R. 573.

Annotations :—**Consd.** Giblett *v.* Hobson (1834), 5 Sim. 651. **Dbtd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286. **Distd.** A.-G. *v.* Hodgson (1846), 15 Sim. 146. **Folld.** Hartshorne *v.* Nicholson (1858), 26 Beav. 58. **Consd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Refd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212.

394. Advowson—Not within earlier Acts.]—A.-G. *v.* WARD (1829), 7 L. J. O. S. Ch. 114.

Annotation :—**Refd.** *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643.

See, also, No. 158, *ante.*

395. Life insurance policy—Charged on funds of company—Not within earlier Acts.]—MARCH *v.* A.-G. (1842), 5 Beav. 433 ; 12 L. J. Ch. 31 ; 6 J. P. 473 ; 6 Jur. 829 ; 49 E. R. 646.

Annotations :—**Consd.** Walker *v.* Milne (1849), 11 Beav. 507. **Distd.** *Re* Langham's Will (1853), 22 L. T. O. S. 63. **Consd.** Alexander *v.* Brame (1855), 7 De G. M. & G. 525.

396. Proceeds of sale—Of growing crops—Within earlier Acts.]—SYMONDS *v.* MARINE SOCIETY (1860), 2 Giff. 325 ; 29 L. J. Ch. 623 ; 2 L. T. 724 ; 25 J. P. 180 ; 6 Jur. N. S. 910 ; 8 W. R. 728 ; 66 E. R. 136.

397. —— **Of partnership share of real estate—Within earlier Acts.**]—ASHWORTH *v.* MUNN (1880), 15 Ch. D. 363 ; 50 L. J. Ch. 107 ; 43 L. T. 553 ; 28 W. R. 965, C. A.

Annotations :—**Consd.** *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160 ; *Re* Pickard, Elmsley *v.* Mitchell, [1894] 3 Ch. 704 ; *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626. **Refd.** *Re* Hill's Trusts (1880), 16 Ch. D. 173 ; *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947 ; *Re* Hume, Forbes *v.* Hume, [1895] 1 Ch. 422.

398. Unpaid instalment of consideration—For demise of minerals—Not within earlier Acts.]—BROOK *v.* BADLEY (1868), 3 Ch. App. 672 ; 37 L. J. Ch. 884 ; 33 J. P. 3 ; 16 W. R. 947, L. C.

Annotations :—**Consd.** Shepheard *v.* Beetham (1877), 6 Ch. D. 597 ; Ashworth *v.* Munn (1880), 15 Ch. D. 363 ; *Re* Hill's Trusts (1880), 16 Ch. D. 173 ; *Re* Robson, Emley *v.* Davidson (1881), 19 Ch. D. 156. **Folld.** *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947. **Consd.** *Re* Hollon, Forbes *v.* Hardcastle (1893), 69 L. T. 425. **Folld.** *Re* Dawson, Pattisson *v.* Bathurst, [1915] 1 Ch. 626. **Refd.** Cadbury *v.* Smith (1869), L. R. 9 Eq. 37 ; Miller *v.* Collins, [1896] 1 Ch. 573. **Mentd.** *Re* Lloyd, Lloyd *v.* Lloyd (1902), 72 L. J. Ch. 78.

399. Unpaid premium—On grant of lease—Within earlier Acts.]—SHEPHEARD *v.* BEETHAM (1877), 6 Ch. D. 597 ; 46 L. J. Ch. 763 ; 36 L. T. 909 ; 25 W. R. 764.

Annotation :—**Consd.** *Re* Pullen, Parker *v.* Pullen, [1910] 1 Ch. 564.

400. Charge on building society's assets—Including mortgages of real estate—Not within earlier Acts.]—*Re* GOULDEN, WALMSLEY *v.* RICE (1885), 1 T. L. R. 251, C. A.

SECT. 3.—**ASSURANCES OF PERSONAL ESTATE.**

SUB-SECT. 1.—TO BE LAID OUT IN LAND.

401. Void—Scheme to evade Mortmain Acts.]—A.-G. *v.* DAY (1749), 1 Ves. Sen. 218 ; 27 E. R. 992, L. C.

Annotations :—**Consd.** A.-G. *v.* Davies (1804), 9 Ves. 535. **Refd.** Buckmaster *v.* Harrop (1802), 7 Ves. 341 ; Price *v.* Hathaway (1822), 6 Madd. 304 ; Giblett *v.* Hobson (1834), 3 My. & K. 517 ; Philpott *v.* St. George's Hospital (1857), 3 Jur. N. S. 1269. **Mentd.** Whittaker *v.* Whittaker (1792), 4 Bro. C. C. 31 ; *Ex p.* Minor (1805), 11 Ves. 559 ; Blagden *v.* Bradbear (1806), 12 Ves. 466 ; Harford *v.* Purrier (1816), 1 Madd. 532 ; Frank *v.* Mainwaring (1839), 2 Beav. 115 ; Horrocks *v.* Rigby (1878), 9 Ch. D. 180 ; Bankes *v.* Small (1887), 36 Ch. D. 716 ; Meeking *v.* Meeking, [1917] 1 Ch. 77.

402. ——.]—MOGG *v.* HODGES (1750), 1 Cox, Eq. Cas. 9 ; 2 Ves. Sen. 52 ; 29 E. R. 1038, L. C.

Annotations :—**Consd.** A.-G. *v.* Tyndall (1764), 2 Eden, 207 ; Foster *v.* Bladgen (1771), Amb. 704 ; Hilliard *v.* Taylor (1773), Dick. 475. **Refd.** Negus *v.* Coulter (1759), Dick. 326 ; A.-G. *v.* Heartwell (1764), Amb. 451 ; Webster *v.* Southey (1887), 36 Ch. D. 9 ; *Re* Oliver's Settlement, Evered *v.* Leigh, [1905] 1 Ch. 191 ; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100.

403. ——.]—ENGLISH *v.* ORD (1754), Highmore's History of Mortmain, 181 ; Duke B. 432.

Annotation :—**Refd.** Kirkbank *v.* Hudson (1819), Dan. 259.

404. —— **Money "recommended" to be laid out in land.**]—KIRKBANK *v.* HUDSON (1819), Dan. 259 ; 7 Price, 212 ; 146 E. R. 951.

405. —— **Purchase to be made when convenient.**]—MANN *v.* BURLINGHAM (1836), 1 Keen, 235 ; 48 E. R. 296.

406. —— **Money not laid out at time of charity**

Sect. 3.—Assurances of personal estate: Sub-sects. 1 & 2, A. & B.]

becoming entitled.]—COGAN *v.* STEPHENS (1835), 1 Beav. 482, n.; 5 L. J. Ch. 17; 48 E. R. 1027.

Annotations :—**Mentd.** Hereford *v.* Ravenhill (1839), 1 Beav. 481; Fitch *v.* Weber (1848), 6 Hare, 145; Taylor *v.* Taylor (1853), 3 De G. M. & G. 190; Simmons *v.* Rose (1856), 6 De G. M. & G. 411; Head *v.* Godlee, Reynolds *v.* Godlee (1859), John. 536; Curteis *v.* Wormald (1878), 10 Ch. D. 172.

407. —— Income of tenant for life arising from realty forfeited to charity in certain events.]—RIDGWAY *v.* WOODHOUSE (1844), 7 Beav. 437; 3 L. T. O. S. 19; 49 E. R. 1134.

408. —— Land to be let out to poor at low rent.]—CRAFTON *v.* FRITH (1851), 4 De G. & Sm. 237; 20 L. J. Ch. 198; 17 L. T. O. S. 137; 15 Jur. 737; 64 E. R. 813.

409. Investment pending purchase—To satisfaction of trustees—Valid.]—GRIMMETT *v.* GRIMMETT (1754), Amb. 210; Dick. 251; 27 E. R. 140, L. C.

Annotations :—**Consd.** English *v.* Orde (1754), Duke B. 432; Widmore *v.* Woodroffe (1766), Amb. 636. **Distd.** Grieves *v.* Case (1792), 2 Cox, Eq. Cas. 301. **Consd.** Kirkbank *v.* Hudson (1819), Dan. 259. **Distd.** Mann *v.* Burlingham (1836), 1 Keen, 235. **Consd.** Warren *v.* Rudall, Hall *v.* Warren (1858), 4 K. & J. 603; Lewis *v.* Allenby (1870), L. R. 10 Eq. 668; *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Refd.** A.-G. *v.* Tyndall (1764), 2 Eden, 207; Swann *v.* Fonnereau (1796), 3 Ves. 41. **Mentd.** Carter *v.* Green (1857), 3 K. & J. 591.

410. —— No alternative to trustees—Void.]—GRIEVES *v.* CASE (1792), 2 Cox, Eq. Cas. 301; 4 Bro. C. C. 67; 1 Ves. 548; 30 E. R. 139, L. C.

Annotations :—**Consd.** Cogan *v.* Stephens (1835), 5 L. J. Ch. 17; Howard *v.* Fingall (1853), 22 L. T. O. S. 12. **Refd.** Morice *v.* Durham (1805), 10 Ves. 522; Kirkbank *v.* Hudson (1819), Dan. 259.

411. Discretion of trustees—Valid—"Or otherwise."]—SORRESBY *v.* HOLLINS (1740), 9 Mod. Rep. 221; cited in Amb. 211; 88 E. R. 410, L. C.

Annotations :—**Foll.** Grimmett *v.* Grimmett (1754), Amb. 210. **Distd.** Widmore *v.* Woodroffe (1766), Amb. 636. **Consd.** Swann *v.* Fonnereau (1796), 3 Ves. 41. **Apprvd. & Foll.** Faversham Corpn. *v.* Ryder (1854), 5 De G. M. & G. 350. **Foll.** Alexander *v.* Brame (1855), 7 De G. M. & G. 525. **Consd.** *Re* Archbold (1855), 25 L. T. O. S. 245; Dunn *v.* Bownas (1855), 1 K. & J. 596; Edwards *v.* Hall (1855), 6 De G. M. & G. 74; Carter *v.* Green (1857), 3 K. & J. 591. **Foll.** London University *v.* Yarrow (1857), 1 De G. & J. 72. **Consd.** Dent *v.* Allcroft (1861), 30 Beav. 335; Lewis *v.* Allenby (1870), L. R. 10 Eq. 668. **Expld.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Refd.** A.-G. *v.* Tyndall (1764), Amb. 614; Hilliard *v.* Taylor (1773), Dick. 475; Curtis *v.* Hutton (1808), 14 Ves. 537; Kirkbank *v.* Hudson (1819), 7 Price, 212; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Warren *v.* Rudall, Hall *v.* Warren (1858), 4 K. & J. 603; Jeffries *v.* Alexander (1860), 8 H. L. Cas. 594; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212.

412. —— —— "Or in the public funds."]—CURTIS *v.* HUTTON (1808), 14 Ves. 537; 33 E. R. 627.

Annotations :—**Consd.** Williams *v.* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84. **Expld.** Whicker *v.* Hume (1851), 14 Beav. 509. **Refd.** *Re* Hamilton, Cadogan *v.* Fitzroy, [1896] 2 Ch. 617.

413. —— —— "As money is of more uncertain value than land, I give them power to make such purchase as they shall think best for perpetuating the gift."]—A.-G. *v.* GODDARD (1823), Turn. & R. 348; 37 E. R. 1134.

Annotation :—**Consd.** Martin *v.* Wellstead (1854), 23 L. J. Ch. 927.

414. —— —— Full power to "change the securities or funds."]—GRAHAM *v.* PATERNOSTER (1862), 31 Beav. 30; 31 L. J. Ch. 444; 8 Jur. N. S. 127; 10 W. R. 209; 54 E. R. 1048.

415. —— —— Power to invest on Government or real securities—Fund always invested in public funds.]—*Re* BEAUMONT'S TRUSTS (1863), 32 Beav. 191; 55 E. R. 75.

Annotation :—**Consd.** *Re* Hamilton, Cadogan *v.* Fitzroy, [1896] 2 Ch. 617.

416. Investment on mortgage security—Security on land contemplated—Void.]—BAKER *v.* SUTTON (1836), 1 Keen, 224; 5 L. J. Ch. 264; 48 E. R. 292.

Annotations :—**Dbtd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. *Baker* v. *Sutton*, I take to have been overruled if & so far as it differs from *Lewis* v. *Allenby* (1870), L. R. 10 Eq. 668 (RIGBY, L.J.). **Refd.** Townsend *v.* Carus (1844), 3 Hare, 257; *Re* Lloyd, Greame *v.* A.-G. (1893), 10 T. L. R. 66; *Re* White, White *v.* White, [1893] 2 Ch. 41; Dunne *v.* Byrne, [1912] A. C. 407.

417. Purchase by trustee in execution of trust—Void.]—A.-G. *v.* ACKLAND (1830), 1 Russ. & M. 243; 39 E. R. 94.

418. Death of testator before 1891 Act—Gift of personalty in remainder—Power to invest in real securities—Trustees to divide property as it stood at death of the tenant for life.]—*Re* CORCORAN, CORCORAN *v.* RIDDELL (1892), 62 L. J. Ch. 267; 67 L. T. 754; 41 W. R. 311; 9 T. L. R. 110; 3 R. 183.

Annotation :—**Expld. & Distd.** *Re* Hamilton, Cadogan *v.* Fitzroy, [1896] 2 Ch. 617.

419. —— —— —— Valid though power exercised.]—*Re* HAMILTON, CADOGAN *v.* FITZROY, [1896] 2 Ch. 617; 65 L. J. Ch. 815; 75 L. T. 113; 12 T. L. R. 519; 40 Sol. Jo. 651, C. A.

Annotation :—**Refd.** *Re* Clarke's Settlement Trust, Wanklyn *v.* Streatfeild, [1916] 1 Ch. 467.

Compare cases in Sect. 5, sub-sect. 4, *post*.

420. Under 1891 Act—Continuing trust to let houses at less than value—Valid—Working Classes Dwellings Act, 1890 (c. 16).]—Testator bequeathed personalty to trustees upon trust to purchase land & build houses thereon, & let them at an undervalue to the poor of L. & other populous places as a continuing trust :—*Held :* (1) the words "charitable uses" in 1891 Act, s. 7, mean the same thing as "purposes of the charity" in s. 8; (2) the charitable uses in the present case were the continuing trust to let the houses at less than their value, not the direction to purchase land & build houses, & that trust was not affected by s. 7, but was a valid charitable gift.

(3) *Semble :* Working Classes Dwellings Act, 1890, does not apply to charities.—*Re* SUTTON, LEWIS *v.* SUTTON, [1901] 2 Ch. 640; 70 L. J. Ch. 747; 85 L. T. 411; 66 J. P. 39; 17 T. L. R. 703; 45 Sol. Jo. 691.

SUB-SECT. 2.—FOR PROVISION OF BUILDINGS.

A. To "Build."

421. School—Valid—Land already in mortmain.]—A.-G. *v.* BOWLES (1754), 3 Atk. 806; 2 Ves. Sen. 547; 26 E. R. 1260, L. C.

Annotations :—**Dbtd.** A.-G. *v.* Tyndall (1764), Amb. 614. The precedent of *A.-G. v. Bowles* has no influence on me; it is contrary to the spirit of the statute (LORD HENLEY, C.); A.-G. *v.* Whitchurch (1796), 3 Ves. 141. **Consd.** Chapman *v.* Brown (1801), 6 Ves. 404; Giblett *v.* Hobson (1834), 3 My. & K. 517; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Edwards *v.* Hall (1853), 11 Hare, 1; Dunn *v.* Bownas (1855), 1 K. & J. 596; Carter *v.* Green (1857), 3 K. & J. 591. **Dbtd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. *A.-G.* v. *Bowles* was undoubtedly a wrong decision (LORD CRANWORTH, C.). **Refd.** A.-G. *v.* Downing (1766), Amb. 550; A.-G. *v.* Hyde (1775), Amb. 751; Foy *v.* Foy (1785), 1 Cox, Eq. Cas. 163; Mather *v.* Scott (1837), 2 Keen, 172; Faversham Corpn. *v.* Ryder (1854), 5 De G. M. & G. 350.

422. Parsonage house—Valid.]—GLUBB *v.* A.-G. (1759), Amb. 373; 27 E. R. 248.

Annotation :—**Refd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173.

423. —— ——.]—SEWELL *v.* CREWE-READ

s. *Apart from* 1891 *Act.*]—Money to be laid out in the purchase of heritable security in Scotland not within 43 Eliz. c. 4.—OLIPHANT *v.* HENDRIE (1784), 1 Bro. C. C. 571.—SCOT.

(1866), L. R. 3 Eq. 60 ; 36 L. J. Ch. 136 ; 31 J. P. 228.

Annotations :—**Refd.** *Re* Watnough's Trusts (1869), 17 W. R. 959 ; *Re* Cox, Cox *v.* Davie (1877), 7 Ch. D. 204.

424. —— ——.]—CRESSWELL *v.* CRESSWELL (1868), L. R. 6 Eq. 69 ; 37 L. J. Ch. 521 ; 18 L. T. 392 ; 32 J. P. 564 ; 16 W. R. 699.

Annotation :—**Consd.** *Re* Cox, Cox *v.* Davie (1877), 7 Ch. D. 204.

425. Hospital—Void—Land not in mortmain.]—PELHAM *v.* ANDERSON (1764), 2 Eden, 296 ; 1 Bro. C. C. 444, n. ; 28 E. R. 912, L. C.

Annotations :—**Consd.** Chapman *v.* Brown (1801), 6 Ves. 404. **Refd.** Giblett *v.* Hobson (1834), 5 Sim. 651 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173.

426. Almshouses—Void—Residuary bequest to charity provided they furnished ground for such almshouses.]—A.-G. *v.* DAVIES (1804), 9 Ves. 535 ; 32 E. R. 710, L. C.

Annotations :—**Expld.** Giblett *v.* Hobson (1834), 3 My. & K. 517. **Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; Church Bldg. Soc. *v.* Barlow (1853), 22 L. J. Ch. 339 ; Incorporated Soc. for Promoting the Enlargement, Building & Repairing of Churches & Chapels *v.* Barlow (1853), 21 L. T. O. S. 28. **Expld.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Consd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338 ; Dent *v.* Allcroft (1861), 30 Beav. 335. **Refd.** A.-G. *v.* Hinxman (1820), 2 Jac. & W. 270 ; Pritchard *v.* Arbouin (1827), 3 Russ. 456 ; Mather *v.* Scott (1837), 2 Keen, 172 ; Dixon *v.* Butler (1839), 3 Y. & C. Ex. 677 ; Mitford *v.* Reynolds (1842), 1 Ph. 185 ; Faversham Corpn. *v.* Ryder (1854), 2 Eq. Rep. 749 ; *Re* Archbold (1855), 25 L. T. O. S. 245 ; Dunn *v.* Bowmas (1855), 1 K. & J. 596 ; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272.

427. —— ——.]—GIBLETT *v.* HOBSON (1834), 3 My. & K. 517 ; 4 L. J. Ch. 41 ; 40 E. R. 197, L. C.

Annotations :—**Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338 ; Hartehorne *v.* Nicholson (1858), 26 Beav. 58 ; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272.

428. —— ——.]—SMITH *v.* OLIVER (1849), 11 Beav. 481 ; 18 L. J. Ch. 80 ; 13 Jur. 159 ; 50 E. R. 903.

429. Chapel — Void.] — CHAPMAN *v.* BROWN (1801), 6 Ves. 404 ; 31 E. R. 1115.

Annotations :—**Consd.** A.-G. *v.* Hinxman (1820), 2 Jac. & W. 270 ; Cherry *v.* Mott (1836), 1 My. & Cr. 123 ; Mitford *v.* Reynolds (1842), 1 Ph. 185. **Distd.** Mitford *v.* Reynolds (1848), 16 Sim. 105. **Expld.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173. **Consd.** Cramp *v.* Playfoot (1858), 4 K. & J. 479 ; Ewan *v.* Morgan (1858), 32 L. T. O. S. 19. **Dbtd.** Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521. **Distd.** Hunter *v.* Bullock (1872), L. R. 14 Eq. 45 ; Dawson *v.* Small (1874), L. R. 18 Eq. 114. **Dbtd.** *Re* Williams (1877), 5 Ch. D. 735. **Consd.** *Re* Birkett (1878), 9 Ch. D. 576 ; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Refd.** Giblett *v.* Hobson (1834), 5 Sim. 651 ; Carter *v.* Green (1857), 3 K. & J. 591 ; Champney *v.* Davy (1879), 11 Ch. D. 949. **Mentd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74 ; Fowler *v.* Fowler (1864), 33 Beav. 616 ; Gillam *v.* Taylor (1873), L. R. 16 Eq. 581.

430. —— ——.]—PRITCHARD *v.* ARBOUIN (1827), 3 Russ. 456 ; 38 E. R. 646 ; *sub nom.* PRICHARD *v.* ARBOUIN, 5 L. J. O. S. Ch. 175.

Annotations :—**Consd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Refd.** Mather *v.* Scott (1837), 2 Keen, 172 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272.

431. Church—Valid—Trustees only to apply bequest if church finished & consecrated.]—DIXON *v.* BUTLER (1839), 3 Y. & C. Ex. 677 ; 160 E. R. 874.

Annotations :—**Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Folld.** *Re* Hawkins (1864), 34 L. J. Ch. 80 ; Sewell *v.* Crewe-Read (1866), L. R. 3 Eq. 60.

432. —— **Void—Unless site in existence or purchase of land expressly forbidden.]**—PRATT *v.* HARVEY (1871), L. R. 12 Eq. 544 ; 25 L. T. 200 ; 19 W. R. 950.

Annotations :—**Consd.** Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597. **Refd.** *Re* Cox, Cox *v.* Davie (1877), 7 Ch. D. 204.

Additions to existing buildings.]—*See* Sub-sect. 2, G., *post.*

Gifts to societies.]—*See* Sub-sect. 3, *post.*

B. To "Erect."

433. School—Valid—Object attainable by hiring house.]—CANTWELL *v.* BAKER (1747), cited in 2 Ves. Sen. 185 ; 28 E. R. 120, L. C.

Annotation :—**Refd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173.

See, also, No. 475, *post.*

434. —— —— **Direction forbidding purchase of land.]**—HENSHAW *v.* ATKINSON (1818), 3 Madd. 306 ; 56 E. R. 517.

Annotations :—**Consd.** A.-G. *v.* Hinxman (1820), 2 Jac. & W. 270. **Distd.** Mather *v.* Scott (1837), 2 Keen, 172. **Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; Edwards *v.* Hall (1853), 11 Hare, 1 ; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338 ; Dent *v.* Allcroft (1861), 30 Beav. 335. **Folld.** Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597. **Refd.** A.-G. *v.* Hodgson (1846), 15 Sim. 146 ; Cawood *v.* Thompson (1853), 1 Eq. Rep. 169 ; Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206. **Mentd.** A.-G. *v.* Manchester (1867), 15 L. T. 646.

435. —— **Void—Notwithstanding land in parish on which old school stood.]**—A.-G. *v.* HYDE (1775), Amb. 751 ; 27 E. R. 484, L. C.

Annotations :—**Consd.** Giblett *v.* Hobson (1834), 3 My. & K. 517 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173. **Refd.** Chapman *v.* Brown (1801), 6 Ves. 404 ; Edwards *v.* Hall (1853), 11 Hare, 1.

436. —— —— **Direction to purchase land.]**—A.-G. *v.* NASH (1792), 3 Bro. C. C. 588 ; 29 E. R. 715, L. C.

Annotations :—**Expld.** A.-G. *v.* Parsons (1803), 8 Ves. 186. **Consd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Refd.** Chapman *v.* Brown (1801), 6 Ves. 404 ; A.-G. *v.* Davies (1804), 9 Ves. 535 ; Giblett *v.* Hobson (1834), 5 Sim. 651 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173.

437. —— —— **Though surplus, if any, applicable to legitimate purpose.]**—CRAMP *v.* PLAYFOOT (1858), 4 K. & J. 479 ; 70 E. R. 200.

Annotations :—**Consd.** *Re* Williams (1877), 5 Ch. D. 735. **Refd.** Fowler *v.* Fowler (1864), 33 Beav. 616.

438. Hospital—Valid.]—VAUGHAN *v.* FARRER (1751), 2 Ves. Sen. 182 ; 28 E. R. 118, L. C.

Annotations :—**Consd.** A.-G. *v.* Wilson (1838), 2 Keen, 680. **Refd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173. **Mentd.** Chapman *v.* Brown (1801), 6 Ves. 404 ; Edwards *v.* Hall (1855), 6 De G. M. & G. 74.

439. —— **Void—If purchase of land necessary.]**—FOY *v.* FOY (1785), 1 Cox, Eq. Cas. 163 ; 29 E. R. 1110.

Annotations :—**Expld.** Barclay *v.* Wainwright (1797), 3 Ves. 462. **Consd.** Chapman *v.* Brown (1801), 6 Ves. 404. **Refd.** A.-G. *v.* Nash (1792), 3 Bro. C. C. 588.

440. Almshouses — Void — Although ground might be given.]—A.-G. *v.* TYNDALL (1764), Amb. 614 ; 2 Eden, 207 ; 27 E. R. 399, L. C.

Annotations :—**Consd.** A.-G. *v.* Downing (1766), Amb. 550 ; A.-G. *v.* Whitchurch (1796), 3 Ves. 141 ; A.-G. *v.* Davies (1804), 9 Ves. 535 ; Henshaw *v.* Atkinson (1818), 3 Madd. 306 ; Giblett *v.* Hobson (1834), 3 My. & K. 517 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; Carter *v.* Green (1857), 3 K. & J. 591. **Dbtd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Refd.** A.-G. *v.* Hyde (1775), Amb. 751 ; Chapman *v.* Brown (1801), 6 Ves. 404 ; A.-G. *v.* Parsons (1803), 8 Ves. 186 ; Kirkbank *v.* Hudson (1819), 7 Price, 212 ; Edwards *v.* Hall (1853), 1 W. R. 348 ; Warren *v.* Rudall, Hall *v.* Warren (1858), 4 K. & J. 603. **Mentd.** Waller *v.* Childs (1765), Amb. 524 ; A.-G. *v.* Caldwell (1766), Amb. 635 ; Foster *v.* Blagden (1771), Amb. 704 ; Hilliard *v.* Taylor (1773), Dick. 475 ; A.-G. *v.* Winchelsea (1791), 3 Bro. C. C. 373 ; Aldrich *v.* Cooper (1803), 8 Ves. 382.

441. —— **Valid—"When site obtained."]**—*Re* WHITE'S TRUSTS (1882), 51 L. J. Ch. 830 ; 47 L. T. 248 ; 30 W. R. 837 ; *subsequent proceedings* (1886), 33 Ch. D. 449.

442. Parsonage-house—Valid—Land belonging to parsonage.]—BRODIE *v.* CHANDOS (DUKE) (1773), 1 Bro. C. C. 444, n. ; 28 E. R. 1230, L. C.

Annotations :—**Expld.** A.-G. *v.* Hyde (1775), Amb. 751.

Sect. 3.—Assurances of personal estate: Sub-sect. 2, B., C., D., E., F. & G.]

Refd. A.-G. *v.* Hutchinson (1775), Dick. 519; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173.

443. Dwellings for poor women—Void—Trustees to entreat lord of manor to grant suitable spot of ground.] — MATHER *v.* SCOTT (1837), 2 Keen, 172; 6 L. J. Ch. 300; 48 E. R. 594.

Annotations :—**Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Apprvd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Consd.** *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272.

444. Buildings generally—Void—Unless testator distinctly points to land already in mortmain.]—TRYE *v.* GLOUCESTER CORPN. (1851), 14 Beav. 173; 21 L. J. Ch. 81; 18 L. T. O. S. 60; 15 Jur. 887; 51 E. R. 253; *sub nom.* ANON., 18 L. T. O. S. 48.

Annotations :—**Follo.** *Re* Clancy (1852), 16 Beav. 295. **Consd.** Faversham Corpn. *v.* Ryder (1854), 18 Beav. 318; Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Follo.** Philpott *v.* St. George's Hospital (1855), 21 Beav. 134. **Consd.** Dent *v.* Allcroft (1861), 30 Beav. 335. **Refd.** Cawood *v.* Thompson (1853), 1 Sm. & G. 409; Baldwin *v.* Baldwin (1856), 22 Beav. 419; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338; Hartshorne *v.* Nicholson (1858), 26 Beav. 58.

445. Chapel—Valid—Land vested in trustees at date of will.]—BOOTH *v.* CARTER (1867), L. R. 3 Eq. 757.

Annotations :—**N.F.** *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272. **Refd.** *Re* Cox, Cox *v.* Davie (1877), 7 Ch. D. 204.

446. —— Void—Unless direction forbidding purchase of land.]—*Re* WATMOUGH'S TRUSTS (1869), L. R. 8 Eq. 272; 38 L. J. Ch. 723; 22 L. T. 88; 33 J. P. 725; 17 W. R. 959.

Annotations :—**Follo.** Hawkins *v.* Allen (1870), L. R. 10 Eq. 246. **Consd.** Pratt *v.* Harvey (1871), 19 W. R. 950. **Refd.** *Re* Surfleet's Estate, Rawlings *v.* Smith (1911), 105 L. T. 582.

447. —— —— Site not distinctly defined.]—*Re* JONES, JONES *v.* WILLIAMS (1886), 2 T. L. R. 544.

448. Public pump and tank—& construction of well—Void.]—KIRKMANN *v.* LEWIS (1869), 38 L. J. Ch. 570; 21 L. T. 191; 17 W. R. 907.

449. Dispensary—Void—Although land in mortmain.]—*Re* COX, COX *v.* DAVIE (1877), 7 Ch. D. 204; 47 L. J. Ch. 72; 37 L. T. 457; 26 W. R. 74.

C. To "Establish."

450. School—Valid—Enumerated objects of gift not including purchase of land.]—A.-G. *v.* WILLIAMS (1794), 4 Bro. C. C. 526; 2 Cox, Eq. Cas. 387; 30 E. R. 178, L. C.

Annotations :—**Distd.** A.-G. *v.* Hull (1852), 9 Hare, 647; Longstaff *v.* Rennison (1852), 1 Drew. 28. **Follo.** Cawood *v.* Thompson (1853), 1 Sm. & G. 409. **Consd.** Edwards *v.* Hall (1853), 11 Hare, 1. **Follo.** Hill *v.* Jones (1854), 23 L. T. O. S. 253. **Distd.** Dunn *v.* Bownas (1855), 1 K. & J. 596. **Consd.** Ewan *v.* Morgan (1858), 32 L. T. O. S. 19. **Refd.** Martin *v.* Wellsted (1854), 18 J. P. 726; Tatham *v.* Drummond (1864), 4 De G. J. & Sm. 484.

451. —— —— Purchase of land not necessarily involved.]—HILL *v.* JONES (1854), 23 L. T. O. S. 253; 2 W. R. 657.

452. —— —— ——.]—HARTSHORNE *v.* NICHOLSON (1858), 26 Beav. 58; 27 L. J. Ch. 810; 22 J. P. 671; 4 Jur. N. S. 864; 53 E. R. 818.

453. —— —— Purchase of land precluded.]—DENT *v.* ALLCROFT (1861), 30 Beav. 335; 31 L. J. Ch. 211; 5 L. T. 705; 26 J. P. 148; 8 Jur. N. S. 112; 10 W. R. 184; 54 E. R. 918.

Annotation :—**Refd.** Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597.

454. —— Void—Purchase of land involved.]—A.-G. *v.* HULL (1852), 9 Hare, 647; 68 E. R. 672.

Annotation :—**Refd.** *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272.

455. —— —— —— School "now or hereafter to be built."]—LONGSTAFF *v.* RENNISON (1852), 1 Drew. 28; 21 L. J. Ch. 622; 19 L. T. O. S. 178; 16 Jur. 559; 61 E. R. 362.

Annotation :—**Distd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74.

456. —— —— ——.]—*Re* CLANCY (1852), 16 Beav. 295; 51 E. R. 792.

457. —— —— ——.]—*Re* GOLDSMITH, MOCATTA *v.* A.-G., [1889] W. N. 196.

458. Public botanical garden—Void.]—TOWNLEY *v.* BEDWELL (1801), 6 Ves. 194; 31 E. R. 1008, L. C.

Annotations :—**Consd.** Mitford *v.* Reynolds (1842), 1 Ph. 185. **Refd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484; Egerton *v.* Brownlow (1853), 4 H. L. Cas. 1; *Re* Allen, Hargreaves *v.* Taylor (1905), 74 L. J. Ch. 593.

459. Asylum for the blind—Valid—Direction forbidding purchase of land.]—HENSHAW *v.* ATKINSON (1818), 3 Madd. 306; 56 E. R. 517.

Annotations :—**Consd.** A.-G. *v.* Hinxman (1820), 2 Jac. & W. 270. **Distd.** Mather *v.* Scott (1837), 2 Keen, 172; A.-G. *v.* Hodgson (1846), 15 Sim. 146. **Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Edwards *v.* Hall (1853), 11 Hare, 1; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Follo.** Dent *v.* Allcroft (1861), 30 Beav. 335; Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597. **Refd.** Cawood *v.* Thompson (1853), 1 Eq. Rep. 169; Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206. **Mentd.** A.-G. *v.* Manchester (1867), 15 L. T. 646.

460. Receptacle for old men—Void—Gift over "if no such institution can be conveniently established"—Physical & not legal impediment contemplated.]—A.-G. *v.* HODGSON (1846), 15 Sim. 146; 15 L. J. Ch. 290; 7 L. T. O. S. 174; 10 J. P. 215; 10 Jur. 300; 60 E. R. 573.

Annotations :—**Follo.** *Re* Clancy (1852), 16 Beav. 295. **Distd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Consd.** Philpott *v.* St. George's Hospital (1855), 21 Beav. 134; Hall *v.* Warren (1861), 9 H. L. Cas. 420. **Refd.** *Re* Smith's Trusts (1865), L. R. 1 Eq. 79.

461. Almshouses — Void — Trustees to begin building as soon as possible after testator's death.]—MARTIN *v.* WELLSTEAD (1854), 23 L. J. Ch. 927; 23 L. T. O. S. 346; 18 J. P. 726; 18 Jur. 941; 2 W. R. 657.

462. —— Valid—Application of bequest to be "consistent with the laws in force."]—DENT *v.* ALLCROFT (1861), 30 Beav. 335; 31 L. J. Ch. 211; 5 L. T. 705; 26 J. P. 148; 8 Jur. N. S. 112; 10 W. R. 184; 54 E. R. 918.

Annotation :—**Refd.** Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597.

463. Hospital—Void—Acquisition of land necessary.]—DUNN *v.* BOWNAS (1855), 1 K. & J. 596; 19 J. P. 659; 69 E. R. 598; *sub nom. Re* ARCHBOLD, 25 L. T. O. S. 245; 3 W. R. 582.

Annotations :—**Refd.** Philpott *v.* St. George's Hospital (1855), 21 Beav. 134; Tatham *v.* Drummond (1864), 33 L. J. Ch. 438; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272.

464. Slaughterhouse—Void — Purchase of land involved.]—TATHAM *v.* DRUMMOND (1864), 4 De G. J. & Sm. 484; 5 New Rep. 24; 34 L. J. Ch. 1; 11 L. T. 324; 10 Jur. N. S. 1087; 13 W. R. 61; 46 E. R. 1006, L. C.

Annotations :—**Consd.** Cresswell *v.* Cresswell (1868), L. R. 6 Eq. 69. **Refd.** *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272; Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113.

465. Soup kitchen & cottage hospital—Valid—Gift to be applied so as not to violate Mortmain Acts.]—BISCOE *v.* JACKSON (1882), 51 L. J. Ch.

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in purchase of land.]—DAVIDSON *v.* BOOMER (1868), 15 Gr. 1.—CAN.

ART II. SECT. 3, SUB-SECT. 2. —C.

a. *Monastery—Or other religious or charitable institution.]*—A bequest to a trustee "for establishing a monastery or any other religious or charitable institution which he in his absolute discretion shall think fit, or partly for such purpose or purposes, & partly for masses for the repose of the souls of the testatrix's family," is not a good charitable bequest.—CHARITIES COMRS. *v.* M'CARTAN, [1917] 1 I. R. 388.—IR.

464 ; 46 L. T. 355, C. A. ; *subsequent proceedings* (1887), 35 Ch. D. 460, C. A.

466. Chapel—Valid—Gift to be applied so as not to violate Mortmain Acts.]—BISCOE *v.* JACKSON (1882), 51 L. J. Ch. 464 ; 46 L. T. 355, C. A. ; *subsequent proceedings* (1887), 35 Ch. D. 460, C. A.

467. Chapel or Church—Valid—Purchase of land not necessarily involved.]—*Re* MOSELEY, MOSELEY *v.* MOSELEY (1888), 4 T. L. R. 301.

468. Orphanage & relief homes—Valid—Purchase of land not necessarily involved.]—*Re* DE ROSAZ, RYMER *v.* DE ROSAZ (1889), 5 T. L. R. 606.

D. To "Endow."

469. Hospital—Valid—If hospital in existence.]—FOY *v.* FOY (1785), 1 Cox, Eq. Cas. 163 ; 29 E. R. 1110.

Annotations :—**Consd.** Chapman *v.* Brown (1801), 6 Ves. 404. **Refd.** A.-G. *v.* Nash (1791), 3 Bro. C. C. 588. **Mentd.** Barclay *v.* Wainwright (1797), 3 Ves. 462.

470. Churches & chapels—Valid—Churches & chapels in existence.]—EDWARDS *v.* HALL (1855), 6 De G. M. & G. 74 ; 25 L. J. Ch. 82 ; 26 L. T. O. S. 170 ; 20 J. P. 38 ; 1 Jur. N. S. 1189 ; 4 W. R. 111 ; 43 E. R. 1158, L. C. ; *affg.* (1853), 11 Hare, 1.

Annotations :—**Consd.** *Re* Holburne, Coates *v* Mackillop (1885), 53 L. T. 212. **Refd.** Dunn *v.* Bownas (1855), 1 K. & J. 596 ; Tatham *v.* Drummond (1864), 3 New Rep. 706. **Mentd.** Ware *v.* Cumberlege (1855), 20 Beav. 503 ; Linley *v.* Taylor (1859), 28 L. J. Ch. 626 ; Fisher *v.* Brierly (1860), 1 De G. F. & J. 643 ; Marsh *v.* A.-G. (1860), 30 L. J. Ch. 233 ; Alexander *v.* Brame (1861), 30 Beav. 153 ; Bennett *v.* Blain (1863), 15 C. B. N. S. 518 ; Entwistle *v.* Davis (1867), L. R. 4 Eq. 272 ; R. *v.* Southampton Port Comrs. (1870), L. R. 4 H. L. 449 ; Chandler *v.* Howell (1876), 4 Ch. D. 651 ; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185 ; Shepheard *v.* Beetham (1877), 6 Ch. D. 597 ; *Re* Corcoran, Corcoran *v.* Riddell (1892), 62 L. J. Ch. 267 ; *Re* Hollon, Forbes *v.* Hardcastle (1893), 68 L. T. 160 ; *Re* Pickard, Elmsley *v.* Mitchell, [1894] 2 Ch. 88 ; *Re* Somers-Cocks, Wegg-Prosser *v* Wegg-Prosser, [1895] 2 Ch. 449.

471. Future church—Valid.]—SINNETT *v.* HERBERT (1872), 7 Ch. App. 232 ; 41 L. J. Ch. 388 ; 26 L. T. 7 ; 36 J. P. 516 ; 20 W. R. 270, L. C.

Annotations :—**Refd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206 ; Littledale *v.* Bickersteth (1876), 24 W. R. 507 ; Champney *v.* Davey (1879), 11 Ch. D. 949 ; Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597 ; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212 ; *Re* Gyde, Ward *v.* Little (1898), 78 L. T. 449 ; Hunter *v.* A.-G., [1899] A. C. 309. **Mentd.** *Re* Williams (1877), 25 W. R. 689.

Gifts to societies.]—*See* Sub-sect. 3, *post.*

E. To "Found."

472. Charitable endowment—Valid.] — SALUSBURY *v.* DENTON (1857), 3 K. & J. 529 ; 26 L. J. Ch. 851 ; 30 L. T. O. S. 63 ; 21 J. P. 726 ; 3 Jur. N. S. 740 ; 5 W. R. 865 ; 69 E. R. 1219.

Annotations :—**Refd.** Hunter *v.* A.-G., [1899] A. C. 309. **Mentd.** Lambe *v.* Eames (1870), L. R. 10 Eq. 267 : Wilson *v.* Duguid (1883), 24 Ch. D. 244 ; *Re* Brierley, Brierley *v.* Brierley (1894), 43 W. R. 36.

473. Chapel—Void—Contemplates building.]—HOPKINS *v.* PHILLIPS (1861), 3 Giff. 182 ; 30 L. J. Ch. 671 ; 4 L. T. 700 ; 7 Jur. N. S. 1274 ; 66 E. R. 374.

Annotations :—**Follo.** *Re* Vere, Carter *v.* Brown (1906), 22 T. L. R. 273.

474. School—Void—Acquisition of land involved—Death of testator before 1891 Act.]—Testator by his will directed his trustees to lay out & employ the residue of his estate in founding at a certain town a school for all trades connected with the building & fitting out of steam & sailing ships :—*Held :* the gift involved the acquisition of land & the building thereon of a school house, & was void.—*Re* VERE, CARTER *v.* BROWN (1906), 22 T. L. R. 273.

See, also, No. 478, *post.*

F. To "Provide," "Maintain," "Support," etc.

475. "Provide" — School — Valid — Object attainable by hiring building.]—JOHNSTON *v.* SWANN (1818), 3 Madd. 457 ; 56 E. R. 573.

Annotations :—**Expld.** Giblett *v.* Hobson (1834), 5 Sim. 651. **Apprvd.** Hartshorne *v.* Nicholson (1853), 26 Beav. 58. **Consd.** *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T 212. **Refd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173. **Mentd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286 ; A.-G. *v.* Hodgson (1846), 15 Sim. 146 ; *Re* Piercy, Whitwham *v.* Piercy [1898], 1 Ch. 565.

See, also, No. 433, *ante.*

476. "Maintain, support & carry on"—School—Valid—Direction forbidding purchase of land.]—CAWOOD *v.* THOMPSON (1853), 1 Sm. & G. 409 ; 1 Eq. Rep. 169 ; 22 L. J. Ch. 835 ; 21 L. T. O. S. 207 ; 17 Jur. 798 ; 1 W. R. 381 ; 65 E. R. 179.

477. "Devote to purposes of charity"—Almshouses—Valid—Direction forbidding purchase of land.]—PHILPOTT *v.* ST. GEORGE'S HOSPITAL (PRESIDENT) (1857), 6 H. L. Cas. 338 ; 27 L. J. Ch. 70 ; 30 L. T. O. S. 15 ; 21 J. P. 691 ; 3 Jur. N. S. 1269 ; 5 W. R. 845 ; 10 E. R. 1326, H. L. ; *revsg.* (1855), 21 Beav. 134 ; *subsequent proceedings* (1859), 27 Beav. 107.

Annotations :—**Folld.** Dent *v.* Allcroft (1861), 30 Beav. 335. **Consd.** Cresswell *v.* Cresswell (1868), L. R. 6 Eq. 69. **Distd.** *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272. **Consd.** *Re* Cox, Cox *v.* Davie (1877), 7 Ch. D. 204. **Refd.** Hartshorne *v.* Nicholson (1853), 26 Beav. 58 ; Hall *v.* Warren (1861), 9 H. L. Cas. 420 ; Sewell *v.* Crewe-Read (1866), L. R. 3 Eq. 60 ; Sinnett *v.* Herbert (1871), L. R. 12 Eq. 201 ; Chamberlayne *v.* Brockett (1872), 21 W. R. 299 ; *Re* Hedgman, Morley *v.* Coxon (1878), 26 W. R. 674 ; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212. **Mentd.** Lechmere *v.* Curtler (1855), 3 Eq. Rep. 938 ; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544 ; Cotton *v.* Imperial & Foreign Agency & Investment Corpn., [1892] 3 Ch. 454.

478. "Support or found" — School — Gift alternative—Valid—First alternative not involving purchase of land.]—*Re* HEDGMAN, MORLEY *v.* CROXON (1878), 8 Ch. D. 156 ; 26 W. R. 674.

Annotation :—**Consd.** *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212.

G. To "Rebuild," "Repair," "Enlarge," etc.

479. "Repair"—Chapel — Valid.] — HARRIS *v.* BARNES (1767), Amb. 651 ; 27 E. R. 422, L. C.

Annotations :—**Refd.** A.-G. *v.* Parsons (1803), 8 Ves. 186 ; Giblet *v.* Hobson (1834), 4 L. J. Ch. 41.

480. —— Parsonage-houses—Valid.]—A.-G. *v.* CHESTER (BP.) (1785), 1 Bro. C. C. 444 ; 28 E. R. 1229, L. C.

Annotations :—**Consd.** Lyons *v.* East India Co. (1836), 1 Moo. P. C. C. 175 ; Wallis *v.* Solicitor-General for New Zealand, [1903] A. C. 173. **Refd.** A.-G. *v.* Parsons (1803), 8 Ves. 186 ; Henshaw *v.* Atkinson (1818), 3 Madd. 306 ; Giblet *v.* Hobson (1834), 4 L. J. Ch. 41 ; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338 ; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Mentd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206 ; Sinnett *v.* Herbert (1872), 7 Ch. App. 232 ; *Re* London University Medical Sciences Institute Fund, Fowler & Butlin *v.* A.-G. (1908), 99 L. T. 545.

481. "Rebuild, repair, alter or add to & improve" — Almshouses — Valid — Provided purchase of additional land not involved.]—A.-G. *v.* PARSONS (1803), 8 Ves. 186 ; 32 E. R. 325, L. C.

Annotations :—**Consd.** A.-G. *v.* Munby (1816), 1 Mer. 327 ; A.-G. *v.* Hinxman (1820), 2 Jac. & W. 270 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Refd.** Giblett *v.* Hobson (1834), 3 My. & K. 517 ; Mather *v.* Scott (1837), 6 L. J. Ch. 300 ; Dixon *v.* Butler (1839), 3 Y. & C. Ex. 677 ; Faversham Corpn. *v.* Ryder (1854), 2 Eq. Rep. 749 ; Edwards *v.* Hall (1855), 6 De G. M. & G. 74 ; Carter *v.* Green (1857), 3 K. & J. 591 ; Warren *v.* Rudall, Hall *v.* Warren (1858), 4 K. & J. 603 ; Dent *v.* Allcroft (1861), 30 Beav. 335.

482. Rebuilding almshouses—Proof that land already in mortmain—Old inscription & extract from local history admitted.]—SHAW *v.* PICKTHALL (1818), Dan. 92 ; 159 E. R. 860.

Sect. 3.—Assurances of personal estate: Sub-sect. 2, G. & H.; sub-sects. 3 & 4. Sect. 4: Sub-sects. 1 & 2.]

483. "Build two rooms on south side"—Rectory-house—Valid—Land in mortmain.]—A.-G. *v.* MUNBY (1816), 1 Mer. 327; 35 E. R. 695.

484. "Repair & enlarge"—School—Valid—Land in mortmain.]—INGLEBY *v.* DOBSON (1828), 3 Russ. 342; 38 E. R. 834.

485. "Enlarge" — Church — Valid — Purchase of additional land not involved.]—*Re* HAWKIN'S TRUSTS (1864), 33 Beav. 570; 34 L. J. Ch. 80; 10 L. T. 557; 10 Jur. N. S. 922; 12 W. R. 945; 55 E. R. 490.

Annotations:—**Mentd.** Lewis *v.* Mathews (1869), L. R. 8 Eq. 277; *Re* Gardner, Long *v.* Gardner (1892), 67 L. T. 552.

486. "Restore, alter & enlarge & improve"—Church, parsonage-house & school—Valid as to such objects as were found to be on land in mortmain.]—CHAMPNEY *v.* DAVY (1879), 11 Ch. D. 949; 48 L. J. Ch. 268; 40 L. T. 189; 27 W. R. 390.

Annotations:—**Folld.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Refd.** De Quetteville *v.* De Quetteville (1905), 92 L. T. 758. **Mentd.** *Re* Whorwood, Ogle *v.* Sherborne (1886), 55 L. T. 89.

H. Other Terms.

487. Take on lease—School—Valid.]—BLANDFORD *v.* THACKERELL (1793), 2 Ves. 238; 4 Bro. C. C. 394; 30 E. R. 612, L. C.

Annotations:—**Distd.** Leake *v.* Robinson (1817), 2 Mer. 363. **Consd.** Braund *v.* Devon (1868), 3 Ch. App. 800; Rooke *v.* Dawson, [1895] 1 Ch. 480. **Refd.** A.-G. *v.* Whitchurch (1796), 3 Ves. 141; Kirkbank *v.* Hudson (1819), Dan. 259.

488. "Purchase or rent"—School—Valid.]—DAVENPORT *v.* MORTIMER (1839), 3 Jur. 287.

489. "Hire"—Rooms for reception of poor persons—Valid.]—*Re* ROBSON, EMLEY *v.* DAVIDSON (1881), 19 Ch. D. 156; 51 L. J. Ch. 337; 45 L. T. 418; 30 W. R. 257, C. A.

Annotation:—**Consd.** *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947.

SUB-SECT. 3.—TO CHARITIES WHOSE FUNDS ARE LIABLE TO BE LAID OUT IN LAND.

490. Funds laid out in land—Queen Anne's Bounty—Void.]—WIDMORE *v.* WOODROFFE (1766), Amb. 636; Dick. 392; 1 Bro. C. C. 13, n., 33, n.; 27 E. R. 413, L. C.

Annotations:—**Folld.** Luckraft *v.* Pridham (1877), 6 Ch. D. 205. **Refd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338; *Re* Hunter, Hood *v.* A.-G., [1897] 2 Ch. 105. **Mentd.** Brandon *v.* Brandon (1819), 3 Swan. 312.

491. —— —— ——.]—MIDDLETON *v.* CLITHEROW (1798), 3 Ves. 734; 30 E. R. 1245, L. C.

Annotation:—**Folld.** Luckraft *v.* Pridham (1877), 6 Ch. D. 205.

492. Objects not involving purchase of land—Society for granting funds towards enlarging or building churches & chapels—No power to purchase land—Valid.]—CHURCH BUILDING SOCIETY *v.* BARLOW (1853), 3 De G. M. & G. 120; 22 L. J. Ch. 339; 21 L. T. O. S. 28; 17 Jur. 217; 43 E. R. 48, L. JJ.

Annotations:—**Refd.** Faversham Corpn. *v.* Ryder (1854), 5 De G. M. & G. 350. **Mentd.** *Re* Archbold, Dunn *v.* Bownas (1855), 3 W. R. 582.

493. —— **Society for promulgation of Gospel by opening & supporting Sunday schools & by erection or providing of places for religious worship—Land already bought—Valid.]**—CARTER *v.* GREEN (1857), 3 K. & J. 591; 26 L. J. Ch. 845; 29 L. T. O. S. 342; 21 J. P. 626; 3 Jur. N. S. 905; 5 W. R. 856; 69 E. R. 1245.

Annotations:—**Consd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Mentd.** Topham *v.* Portland (1863), 1 De G. J. & Sm. 517; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594.

494. Objects involving purchase of land—Association for buying impropriate tithes & revesting them in Church of England—Void.]—DENTON *v.* MANNERS (LORD) (1858), 2 De G. & J. 675; 27 L. J. Ch. 623; 31 L. T. O. S. 308; 22 J. P. 480; 4 Jur. N. S. 724; 6 W. R. 742; 44 E. R. 1151, L. JJ.

Annotation:—**Refd.** Burr *v.* Miller, [1872] W. N. 63.

495. —— **Church building fund—Void.]**—*Re* LEE'S TRUSTS (1872), 27 L. T. 808; 21 W. R. 168.

496. Some objects only involving purchase of land—Objects in absolute discretion of charity's trustees—Valid.]—WILKINSON *v.* BARBER (1872), L. R. 14 Eq. 96; 41 L. J. Ch. 721; 26 L. T. 937; 20 W. R. 763.

497. —— **Chapel building fund—Valid—Death of testator before 1891 Act.]**—*Re* SURFLEET'S ESTATE, RAWLINGS *v.* SMITH (1911), 105 L. T. 582; 56 Sol. Jo. 15.

SUB-SECT. 4.—TO DISCHARGE MORTGAGES, DEBTS, ETC.

498. Discharge of mortgage—On chapel—Void.]—CORBYN *v.* FRENCH (1799), 4 Ves. 418; 31 E. R. 213.

Annotations:—**Apld.** Chandler *v.* Howell (1876), 4 Ch. D. 651. **Folld.** *Re* Lynall's Trusts (1879), 12 Ch. D. 211. **Consd.** *Re* Jones, Jones *v.* Williams (1886), 2 T. L. R. 544. **Refd.** West *v.* Shuttleworth (1835), 2 My. & K. 684; Cherry *v.* Mott (1836), 1 My. & Cr. 123; Russell *v.* Kellett (1855), 3 Sm. & G. 264; Cocks *v.* Manners (1871), 40 L. J. Ch. 640; Sinnett *v.* Herbert (1872), 7 Ch. App. 232; Jervis *v.* Lawrence (1882), 22 Ch. D. 202. **Mentd.** Cary *v.* Abbot (1802), 7 Ves. 490; R. *v.* Bates (1816), 3 Price, 341; Bone *v.* Cook (1824), M'Cle. 168; Waite *v.* Templer (1829), 2 Sim. 524; Gittings *v.* M'Dermott (1834), 2 My. & K. 69; Shuttleworth *v.* Greaves (1838), 4 My. & Cr. 35; Taylor *v.* Beverley (1844), 1 Coll. 108; *Re* Crawford's Trusts (1854), 2 Drew. 230; *Re* Porter's Trust (1857), 4 K. & J. 188; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

499. Pay off debt—Secured by equitable charge—On meeting-house—Void.]—WATERHOUSE *v.* HOLMES (1828), 2 Sim. 162; 57 E. R. 750.

Annotation:—**Folld.** *Re* Lynall's Trusts (1879), 12 Ch. D. 211.

500. —— **On chapel—Valid.]**—*Re* JONES, JONES *v.* WILLIAMS (1886), 2 T. L. R. 544.

501. Payment of debts, dues, demands, charges & claims—Claimable against almshouses—Void.]—*Re* LYNALL'S TRUSTS (1879), 12 Ch. D. 211; 48 L. J. Ch. 684; 28 W. R. 146.

PART II. SECT. 3, SUB-SECT. 2.—H.

c. *Complete — Cathedral — Valid.*] —DILLON *v.* REILLY (1873), I. R. 10 Eq. 152.—**IR.**

d. —— *Church — Valid.*] —MORROW *v.* MCCONVILLE (1883), 11 L. R. Ir. 236.—**IR.**

PART II. SECT. 3, SUB-SECT. 4.

499 i. *Pay off debt—On chapel.*]—A testator gave his estate to a trustee upon trust for sale, & after payment of a legacy "to pay all the rest & residue unto the treasurer, for the time being, of the B. Methodist Church, to be applied in redeeming the debt existing against the church property":—*Held:* the residuary benefit intended was invalid both as to realty & personalty, because the direction was, as to money, that it should be applied in payment of incumbrances on the church property. —SMITH *v.* METHODIST CHURCH (1888), 16 O. R. 199.—**CAN.**

499 ii. —— *On church—Void—Unless work performed so as to exclude lien under Mechanic's Lien Act.*]—STEWART *v.* GESNER (1881), 29 Gr. 329.—**CAN.**

499 iii. —— —— *Valid.*]—*Re* CAMPBELL (1910), 1 O. W. N. 865.—**CAN.**

499 iv. —— —— *"& for such other purposes as trustees may deem wise"—No debt.*]—A testator bequeathed a sum of money to the trustees of a church "to be . . . used in the payment of any indebtedness on said church & for such other purposes as they may deem wise." At the time the will took effect there was no debt on the church:—*Held:* (1) the reference in the will meant outlay in connection with the church such as repair & maintenance or any obligation incurred for which the land was not liable; (2) the bequest was valid.—OSTROM *v.* ALFORD (1893), 24 O. R. 305.—**CAN.**

SECT 4.—**ASSURANCES INTER VIVOS.**

See, now, 1888 Act, s. 4.

SUB-SECT. 1.—FORM OF ASSURANCE.

See, now, 1888 Act, s. 4 (6).

502. Declaration of uses not in grant itself—Valid.]—DOE d. WILLIAMS *v.* LLOYD (1840), 1 Man. & G. 671 ; 1 Scott, N. R. 505 ; 10 L. J. C. P. 128 ; 133 E. R. 501.

Annotation :—**Mentd.** *Re* Holland, Gregg *v.* Holland, [1901] 2 Ch. 145.

503. —— Covenant for payment of money after death—Settlement of residue to charitable purposes—Assets almost entirely real—Intention to avoid Acts—Instruments void.]—JEFFRIES *v.* ALEXANDER (1860), 8 H. L. Cas. 594 ; 31 L. J. Ch. 9 ; 2 L. T. 748 ; 24 J. P. 643 ; 7 Jur. N. S. 221 ; 11 E. R. 562, H. L. ; *revsg.* S. C. *sub nom.* ALEXANDER *v.* BRAME (1855), 7 De G. M. & G. 525, L. JJ. ; *subsequent proceedings, sub nom.* ALEXANDER *v.* BRAME (No. 2) (1861), 30 Beav. 153.

Annotations :—**Distd.** Marsh *v.* A.-G. (1860), 3 L. T. 615. **Expld. & Apld.** Fox *v.* Lowndes (1875), L. R. 19 Eq. 453. **Consd.** *Re* Robson, Emley *v.* Davidson (1881), 19 Ch. D. 156. **Refd.** Brook *v.* Badley (1867), L. R. 4 Eq. 106. **Mentd.** Patch *v.* Shore (1862), 2 Drew. & Sm. 589 ; Richards *v.* Davies (1862), 13 C. B. N. S. 69 ; Coleman *v.* Llanelly Ry. & Dock Co. (1867), 17 L. T. 86 ; Cotton *v.* Imperial & Foreign Agency & Investment Corpn., [1892] 3 Ch. 454.

504. —— —— —— Assets partly real merely accidental—No intention to avoid Acts—Instruments valid.]—*Re* ROBSON, EMLEY *v.* DAVIDSON (1881), 19 Ch. D. 156 ; 51 L. J. Ch. 337 ; 45 L. T. 418 ; 30 W. R. 257, C. A.

Annotation :—**Consd.** *Re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 947.

505. Execution—By grantees unnecessary.]—GRIEVES *v.* CASE (1792), 2 Cox, Eq. Cas. 301 ; 4 Bro. C. C. 67 ; 1 Ves. 548 ; 30 E. R. 139, L. C.

Annotations :—**Consd.** Howard *v.* Fingall (1853), 22 L. T. O. S. 12. **Mentd.** Morice *v.* Durham (1805), 10 Ves. 522 ; Kirkbank *v.* Hudson (1819), Dan. 259 ; Cogan *v.* Stephens (1835), 5 L. J. Ch. 17.

506. Attestation—No attestation by two witnesses—Conveyance void.]—WICKHAM *v.* BATH (MARQUIS) (1865), L. R. 1 Eq. 17 ; 35 Beav. 59 ; 35 L. J. Ch. 5 ; 13 L. T. 313 ; 30 J. P. 36 ; 11 Jur. N. S. 988 ; 14 W. R. 21 ; 55 E. R. 816.

Annotation :—**Refd.** Churcher *v.* Martin (1889), 42 Ch. D. 312.

507. —— —— —— Notwithstanding subsequent declaration of trust duly attested.]—DOE d. BARBOUR *v.* MUNRO (1844), 12 M. & W. 845 ; 14 L. J. Ex. 147 ; 3 L. T. O. S. 77 ; 152 E. R. 1442.

Annotation :—**Refd.** A.-G. *v.* Munro (1848), 11 L. T. O. S. 348.

508. —— —— —— Notwithstanding subsequent deeds executed to cure defects.]—A.-G. *v.* GARDNER (1848), 2 De G. & Sm. 102 ; 10 L. T. O. S. 459 ; 12 Jur. 67 ; 64 E. R. 46.

Annotation :—**Refd.** Power *v.* Banks (1901), 70 L. J. Ch. 700.

SUB-SECT. 2.—MUST TAKE EFFECT IN POSSESSION.

See, now, 1888 Act, s. 4 (2).

509. Deed retained by grantor—Valid.]—A.-G. *v.* MUNBY (1816), 1 Mer. 327 ; 35 E. R. 695.

See, also, Nos. 503, 504, *ante.*

510. —— Grantee not taking possession—Void.]—A.-G. *v.* BRICHNELL (1837), 1 Jur. 540.

511. —— —— Inference of secret trust—Void.]—A.-G. *v.* POULDEN (1837), 8 Sim. 472 ; 59 E. R. 188 ; *subsequent proceedings* (1844), 3 Hare, 555.

Annotations :—**Refd.** Wallgrave *v.* Tebbs (1855), 2 K. & J. 313 ; Fisher *v.* Brierly (1860), 1 De G. F. & J. 643. **Mentd.** Bridgnorth Corpn. *v.* Collins (1847), 15 Sim. 538 ; *Re* Cattell, Cattell *v.* Cattell, [1907] 1 Ch. 567.

512. —— Reservation of benefit—Void.]—HOWARD *v.* FINGALL (1853), 22 L. T. O. S. 12 ; 1 W. R. 515.

513. —— Not to take effect till grantor's death—Void.]—WAY *v.* EAST (1853), 2 Drew. 44 ; 2 Eq. Rep. 275 ; 23 L. J. Ch. 209 ; 22 L. T. O. S. 192 ; 2 W. R. 114 ; 61 E. R. 635.

Annotations :—**Consd.** Wallgrave *v.* Tebbs (1855), 2 K. & J. 313. **Distd.** Fisher *v.* Brierly (1860), 1 De G. F. & J. 643.

514. —— Grantee entitled to immediate possession—Possession de facto not essential—Valid.]—FISHER *v.* BRIERLEY (1863), 10 H. L. Cas. 159 ; 1 New Rep. 452 ; 32 L. J. Ch. 281 ; 8 L. T. 37 ; 27 J. P. 280 ; 9 Jur. N. S. 313 ; 11 W. R. 404 ; 11 E. R. 986, H. L.

Annotation :—**Consd.** *Re* Patrick, Bills *v.* Tatham (1890), 63 L. T. 752.

515. Possession or interest retained by grantor—Resulting trust—Void.]—LIMBREY *v.* GURR (1819), 6 Madd. 151 ; 56 E. R. 1049.

Annotations :—**Consd.** Fisher *v.* Brierly (1860), 1 De G. F. & J. 643. **Distd.** Dawson *v.* Small (1874), L. R. 18 Eq. 114. **Refd.** Fowler *v.* Fowler (1864), 33 Beav. 616.

516. —— —— ——.]—MORRIS *v.* OWEN, MORRIS *v.* HUGHES, [1875] W. N. 134.

517. —— Reservation of rent—Right of pre-emption — Void.]—WEBSTER *v.* SOUTHEY (1887), 36 Ch. D. 9 ; 56 L. J. Ch. 785 ; 56 L. T. 879 ; 52 J. P. 36 ; 35 W. R. 622 ; 3 T. L. R. 628.

Annotations :—**Apld.** *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** Haigh & Baxter *v.* West (1893), 68 L. T. 531.

518. —— Invalidity of deed—Question of fact.]—DOE d. WILLIAMS *v.* LLOYD (1839), 5 Bing. N. C. 741 ; 8 Scott, 93 ; 10 L. J. C. P. 128 ; 3 Jur. 751 ; 132 E. R. 1286 ; *subsequent proceedings* (1840), 1 Man. & G. 671.

Annotation :—**Mentd.** *Re* Holland, Gregg *v.* Holland, [1901] 2 Ch. 145.

519. —— Lands conveyed to donor—Deed not enrolled.]—A convalescent home, consisting of two freehold houses, was founded by testator, who purchased the houses out of moneys collected by him or legacies left to him for the general purposes of the home. The houses were conveyed to him in his own name, & the conveyances were not enrolled in accordance with 1888 Act. By his will, after appointing pltfs. his exors., he left the houses constituting the home to his wife, to be conducted as a home, & he appointed her manager, treasurer, & secretary of the home. By a codicil to his will, testator appointed certain persons to be trustees of the home :—*Held :* the interest of testator in the home at the time of his death was that of a trustee only, & passed upon his death to pltfs. as his exors., & a scheme should be settled for the administration of the home.—*Re* FORBES, FORBES *v.* FORBES (1910), 27 T. L. R. 27.

520. Grant subject to lease—Determinable on death of grantor & lessee—Grantor residing with lessee—Void.]—A grant of lands for charitable purposes does not comply with the provisions of the Statute of Mortmain unless the grantor grant, *bonâ fide,* all the interest he has in the property to be conveyed, whether from rents to be received, or from actual possession at the time of the grant. —Therefore, where a man advanced in life, by a deed duly executed, attested, & enrolled, made a grant of real estate, including his dwelling-house, to trustees for charitable purposes, subject to a lease made shortly before the grant, at a

e. *Will — "Conveyance" within* 3 *Vict. c.* 74, *s.* 16.]—DOE d. BAKER *v.* CLARK (1850), 7 U. C. R. 44.—**CAN.**

f. *Reference to schedule — No schedule—Conveyance void.*]—A. executed a deed by which he purported to convey certain lands described in the schedule as an endowment for a school he had erected at A. for Maori girls. No schedule was added : —*Held :* nothing passed by the deed. —MCCAUL *v.* BOOTH (1889), 7 N. Z. L. R. 562.—**N.Z.**

Sect. 4.—Assurances inter vivos: Sub-sects. 2, 3, 4, 5, 6 & 7.]

peppercorn rent for twenty years, determinable on the death of the grantor & his sister, to his said sister, with whom he there resided & continued to reside, and who was acting in concert with him in the matter:—*Held:* that the grant was void.—A deed, attested by one witness, though executed & acknowledged for the purpose of enrolment in the presence of two persons who are parties to & execute the deed, but do not sign the attestation clause, is not a deed *sealed & delivered in the presence of two or more credible witnesses* within the meaning of the Statute of Mortmain.—A deed, so attested, executed by the grantor's sister & heiress-at-law after his decease, & purporting to confirm the grant:—*Held*, invalid.—WICKHAM *v.* BATH (MARQUIS) (1865), L. R. 1 Eq. 17; 35 Beav. 59; 35 L. J. Ch. 5; 13 L. T. 313; 30 J. P. 36; 11 Jur. N. S. 988; 14 W. R. 21; 55 E. R. 816.

Annotation:—**Consd.** Churcher *v.* Martin (1889), 42 Ch. D. 312.

521. Funds in bank—No declaration of trust—Gift for endowment of future church—Void.]—GIRDLESTONE *v.* CREED (1853), 10 Hare, 480; 1 W. R. 228; 68 E. R. 1016.

Annotation:—**Distd.** Sinnett *v.* Herbert (1872), 7 Ch. App. 232.

522. Contingent interest—Immediate grant—Valid.]—MILBANK *v.* LAMBERT (1860), 28 Beav. 206; 54 E. R. 344.

See, also, Nos. 524, 525, *post.*

SUB-SECT. 3.—WHAT RESERVATIONS MAY BE MADE.

See, now, 1888 Act, s. 4 (3), (4).

523. Power to regulate charity—Valid.]—GRIEVES *v.* CASE (1792), 2 Cox, Eq. Cas. 301; 4 Bro. C. C. 67; 1 Ves. 548; 30 E. R. 139, L. C.

Annotations:—**Refd.** Morice *v.* Durham (1805), 10 Ves. 522; Kirkbank *v.* Hudson (1819), Dan. 259; Howard *v.* Fingall (1853), 22 L. T. O. S. 12. **Mentd.** Cogan *v.* Stephens (1835), 5 L. J. Ch. 17.

524. Use of vault by grantor & family—Valid.]—DOE d. THOMPSON *v.* PITCHER (1815), 3 M. & S. 407; 105 E. R. 663.

Annotations:—**Mentd.** Howard *v.* Fingall (1853), 1 W. R. 515; Fisher *v.* Brierley (1863), 10 H. L. Cas. 159.

525. Grant in trust for "rector of G."—By rector for time being—Valid.]—A.-G. *v.* MUNBY (1816), 1 Mer. 327; 35 E. R. 695.

526. Clause for redemption in mortgage—Valid.]—DOE d. GRAHAM *v.* HAWKINS (1841), 2 Q. B. 212; 1 Gal. & Dav. 551; 10 L. J. Q. B. 285; 6 Jur. 215; 114 E. R. 83.

See, also, Nos. 512, 513, 515, 517, *ante.*

SUB-SECT. 4.—TIME OF GIFT BEFORE DEATH OF DONOR.

See, now, 1888 Act, s. 4 (7), (8).

527. Within year—Void—Not set up by recital in subsequent will.]—A.-G. *v.* MUNBY (1816), 1 Mer. 327; 35 E. R. 695.

528. —— —— Lease reserving peppercorn rent in consideration of money being expended for improvement of church—Not lease for full & valuable consideration.]—DOE d. WELLARD *v.* HAWTHORN (1818), 2 B. & Ald. 96; 106 E. R. 302.

Annotation:—**Refd.** Bourne *v.* Keane, [1919] A. C. 815.

529. —— ——.]—PRICE *v.* HATHAWAY (1822), 6 Madd. 304; 56 E. R. 1107.

Annotation:—**Consd.** Hawkins *v.* Allen (1870), L. R. 10 Eq. 246.

530. —— Devise of property before execution of conveyance—Will not revoked.]—MATTHEWS *v.* VENABLES (1824), 2 Bing. 136; 9 Moore, C. P. 286; 2 L. J. O. S. C. P. 124; 130 E. R. 257.

Annotation:—**Refd.** Ellbeck *v.* Wood (1826), 1 Russ. 564.

531. —— Of declaration of trust by trustees—Void.]—HAWKINS *v.* ALLEN (1870), L. R. 10 Eq. 246; 40 L. J. Ch. 23; 23 L. T. 451; 34 J. P. 773; 18 W. R. 748.

532. —— Direction in will to executors to execute conveyance—In event of testator's death within year—Good equitable devise.]—By his will dated Mar. 1908, testator, by clause 2, gave all his real & personal estate, with certain exceptions, to his exors. upon the trusts thereinafter declared, & by clause 5, after referring to a technical trade school which testator had erected on his freehold land, & intended to endow, he directed his exors., in case he might not have executed a conveyance of the school & premises, & of other real & personal property, which by reason of his death within 12 months from its execution should have become void, to execute & enrol a conveyance. By deed dated Oct. 20, 1908, & duly enrolled, testator conveyed to a trustee the freehold lands & buildings described in the schedule thereto, upon trusts therein declared, for the maintenance of the school & the education of the scholars. Part I. of the schedule comprised the site of the school; Part II. comprised freehold ground-rents as an endowment for the school; & Part III. comprised the freehold residence of testator. Testator died in Aug. 1909:—*Held:* (1) the site of the school described in Part I. of the schedule to the deed of Oct. 20, 1908, passed by that deed by virtue of Technical & Industrial Institutions Act, 1892 (c. 29); (2) the remainder of the property described in Parts II. & III. of the schedule to the deed passed under testator's will to the exors.; (3) clause 5 of the will operated as a good equitable devise of that property to charitable uses.—*Re* STANLEY'S TRUST DEED, STANLEY *v.* A.-G. (1910), 26 T. L. R. 365.

533. After a year—Gift conditional on time limit—Effective from date of execution.]—TRYE *v.* GLOUCESTER CORPN. (1851), 14 Beav. 173; 21 L. J. Ch. 81; 18 L. T. O. S. 60; 15 Jur. 887; 51 E. R. 253; *sub nom.* ANON., 18 L. T. O. S. 48.

Annotations:—**Consd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Mentd.** *Re* Clancy (1852), 16 Beav. 295; Cawood *v.* Thompson (1853), 1 Sm. & G. 409; Faversham Corpn. *v.* Ryder (1854), 18 Beav. 318; Baldwin *v.* Baldwin (1856), 22 Beav. 419; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338; Hartshorne *v.* Nicholson (1858), 26 Beav. 58; Dent *v.* Allcroft (1861), 30 Beav. 335.

SUB-SECT. 5.—ENROLMENT.

See, now, 1888 Act, s. 4 (9).

534. Whether necessary—Conveyance of copyholds—Necessary.]—DOE d. HOWSON *v.* WATERTON (1819), 3 B. & Ald. 149; 106 E. R. 617.

Annotations:—**Refd.** Wilson *v.* Allen (1820), 1 Jac. & W. 611; Haigh *v.* West, [1893] 2 Q. B. 19.

535. —— Grant in relief of poor rate—No valuable consideration—Necessary.]—DOE d. PREECE *v.* HOWELLS (1831), 2 B. & Ad. 744; 9 L. J. O. S. K. B. 332; 109 E. R. 1320.

Annotation:—**Refd.** Webster *v.* Southey (1887), 36 Ch. D. 9.

536. —— Lands already in mortmain—Lease—Not necessary.]—WALKER *v.* RICHARDSON (1837), 2 M. & W. 882; Murp. & H. 251; 6 L. J. Ex. 229; 150 E. R. 1016.

Annotations:—**Follid.** A.-G. *v.* Glyn (1841), 12 Sim. 84.

PART II. SECT. 4, SUB-SECT. 5.
g. Unnecessary—If deed registered in County Registry.]—HALLOCK *v.* WILSON (1857), 7 C. P. 28.—**CAN.**

h. S. P. HAMBLEY *v.* FULLER (1872), 22 C. P. 141.—**CAN.**

Apld. Ashton *v.* Jones (1860), 28 Beav. 460. **Refd.** Myers *v.* Perigal (1851), 11 C. B. 90. **Mentd.** Lyon *v.* Reed (1844), 13 M. & W. 285; Nickells *v.* Atherstone (1847), 10 Q. B. 944; Doe d. Biddulph *v.* Poole (1848), 11 Q. B. 713; Davison *v.* Gent (1857), 1 H. & N. 744; Kearns *v.* Cordwainers' Co. (1859), 6 C. B. N. S. 388; *Re* Royal Naval School, Seymour *v.* Royal Naval School, [1910] 1 Ch. 806.

537. —— —— —— ——.]—A.-G. *v.* GLYN (1841), 12 Sim. 84; 59 E. R. 1062.

Annotations :—**Folld.** Ashton *v.* Jones (1860), 28 Beav. 460. **Mentd.** Magdalen Hospital Governors *v.* Knotts (1879), 4 App. Cas. 324.

538. —— —— **Under conveyance duly enrolled —Subsequent conveyance does not require enrolment.**]—ASHTON *v.* JONES (1860), 28 Beav. 460; 3 L. T. 49; 25 J. P. 36; 6 Jur. N. S. 970; 8 W. R. 633; 54 E. R. 443.

539. —— —— **Re-investment in land of proceeds of sale—Enrolment necessary.**]—*Ex p.* CHRIST'S HOSPITAL (GOVERNORS) (1864), 4 New Rep. 14; 10 L. T. 262; 12 W. R. 669.

540. —— **Mortgage with redemption clause—Executed prior to 9 Geo. 4, c. 85—Made valid by that Act without enrolment.**]—DOE d. GRAHAM *v.* HAWKINS (1841), 2 Q. B. 212; 1 Gal. & Dav. 551; 10 L. J. Q. B. 285; 6 Jur. 215; 114 E. R. 83.

541. —— **Lease—Land for workhouse—Want of enrolment cured by Poor Law Amendment Act, 1844 (c. 101).**]—WEBSTER *v.* SOUTHEY (1887), 36 Ch. D. 9; 56 L. J. Ch. 785; 56 L. T. 879; 52 J. P. 36; 35 W. R. 622; 3 T. L. R. 628.

Annotations :—**Refd.** Haigh & Baxter *v.* West (1893), 68 L. T. 531; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100.

See, also, No. 549, *post.*

542. Presumption of — Not from long enjoyment.]—WRIGHT *v.* SMYTHIES (1809), 10 East, 409; 103 E. R. 830.

Annotation :—**Consd.** Haigh *v.* West, [1893] 2 Q. B. 19.

543. —— —— **Copyholds.**]—DOE d. HOWSON *v.* WATERTON (1819), 3 B. & Ald. 149; 106 E. R. 617.

Annotations :—**Consd.** Haigh *v.* West, [1893] 2 Q. B. 19. **Refd.** Wilson *v.* Allen (1820), 1 Jac. & W. 611.

544. —— **From long enjoyment — Onus of proof of invalidity on party setting up invalidity.**]—A.-G. *v.* MOOR (1855), 20 Beav. 119; 52 E. R. 547.

Annotation :—**Consd.** Haigh *v.* West, [1893] 2 Q. B. 19.

545. —— —— **In absence of proof of non-enrolment.**]—The vestry of a parish had let the grazing on a highway made under an inclosure award ever since the award, viz., for 115 years :—*Held :* (1) a lawful origin must be presumed from the long usage; (2) the lawful origin to be presumed in this case was, that the soil of the highway had been granted to churchwardens & overseers, as trustees, under Charitable Uses Act, 1736 (c. 36), of lands belonging to the parish; (3) with regard to enrolment of the grant, in the absence of proof of non-enrolment, an enrolment if necessary might be presumed, or it might be presumed that no enrolment was necessary in this particular case. —HAIGH *v.* WEST, [1893] 2 Q. B. 19; 62 L. J. Q. B. 532; 69 L. T. 165; 57 J. P. 358, C. A.

Annotations :—*As to* (1) **Distd.** Neaverson *v.* Peterborough R. C., [1902] 1 Ch. 557. **Refd.** Eliot *v.* Bristol Corpn. (1895), 72 L. T. 752; Brown *v.* Dunstable Corpn., [1899] 2 Ch. 378. *As to* (2) **Distd.** A.-G. & Spalding R. C. *v.* Garner, [1907] 2 K. B. 480. **Refd.** Foley's Charity Trustees *v.* Dudley Corpn. (1909), 8 L. G. R. 320. *As to* (3) **Refd.** A.-G. *v.* Horner, [1913] 2 Ch. 140. *Generally*, **Mentd.** Wimbledon & Putney Commons Conservators *v.* Nicol (1894), 10 T. L. R. 247; Reynolds *v.* Presteign U. D. C. (1896), 65 L. J. Q. B. 400; Chesterfield *v.* Harris, [1908] 2 Ch. 397; C. L. Ry. *v.* City of London Land Tax Comrs., [1911] 2 Ch. 467.

546. Proof of — Indorsement on indenture — Memorandum of enrolment—Sufficient.]—DOE d. WILLIAMS *v.* LLOYD (1840), 1 Man. & G. 671; 1 Scott, N. R. 505; 10 L. J. C. P. 128; 133 E. R. 501.

547. Effect of non-enrolment — Enforcement of trust in equity.]—SYMON'S CASE (1581), Duke, B. 163, L. C.

548. —— **Conveyance for benefit of dissenting meeting-house—No obligation to appropriate subject matter—Void.**]—DOE d. TURNBULL *v.* BROWN (1828), 6 L. J. O. S. K. B. 287.

549. —— **Earlier deed not enrolled—Enrolment of later deed—Later deed valid.**]—A.-G. *v.* MUNRO or MONRO (1845), 1 Holt, Eq. 103; 5 L. T. O. S. 124; 9 J. P. 309; 9 Jur. 461; 71 E. R. 686; *subsequent proceedings* (1848), 2 De G. & Sm. 122.

Annotation :—**Mentd.** A.-G. *v.* Hardy (1851), 1 Sim. N. S. 338.

550. —— —— —— **Earlier deed void.**]—A.-G. *v.* GARDNER (1843), 2 De G. & Sm. 102; 10 L. T. O. S. 459; 12 Jur. 67; 64 E. R. 46.

Annotation :—**Refd.** Power *v.* Banks (1901), 70 L. J. Ch. 700.

551. —— **Recovery of possession by reversioner.**]—BUNTING *v.* SARGENT (1879), 13 Ch. D. 330; 49 L. J. Ch. 109; 41 L. T. 643; 28 W. R. 123.

552. —— **Death of grantor within year—Deed not voidable but absolutely void.**]—Real estate was by will expressed to be conveyed to trustees upon charitable trusts. The deed was not enrolled, & the grantor died within a year after the execution of the deed. On his death the trustees named in the deed entered into possession, & applied the rents & profits according to the trusts of the deed :—*Held :* (1) the deed was not voidable only, but was absolutely void under Charitable Uses Act, 1735 (9 Geo. 2, c. 36), s. 3, & was not valid as conveying the legal estate, & void only as creating charitable trusts; (2) the trustees of the deed, having been in possession more than twelve years prior to the commencement of an action against them by persons claiming under the grantor, the action was barred by Stat. Limitations.

One of the trustees was the general devisee & legatee of the grantor :—*Held :* (3) the trustees could not be held mere licensees of the devisee & legatee; & the accident of his being one of the trustees did not operate to defeat their title.—CHURCHER *v.* MARTIN (1889), 42 Ch. D. 312; 58 L. J. Ch. 586; 61 L. T. 113; 37 W. R. 682.

Annotations :—*As to* (1) **Distd.** Patrick *v.* Simpson (1889), 24 Q. B. D. 128. *Generally*, **Refd.** *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149.

553. Operation of enrolled deed—Effective from date of execution.]—TRYE *v.* GLOUCESTER CORPN. (1851), 14 Beav. 173; 21 L. J. Ch. 81; 18 L. T. O. S. 60; 15 Jur. 887; 51 E. R. 253; *sub nom.* ANON., 18 L. T. O. S. 48.

Annotations :—**Mentd.** *Re* Clancy (1852), 16 Beav. 295; Cawood *v.* Thompson (1853), 1 Sm. & G. 409; Faversham Corpn. *v.* Ryder (1854), 18 Beav. 318; Edwards *v.* Hall (1855), 6 De G. M. & G. 74; Baldwin *v.* Baldwin (1856), 22 Beav. 419; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338; Hartshorne *v.* Nicholson (1858), 26 Beav. 58; Dent *v.* Allcroft (1861), 30 Beav. 335.

SUB-SECT. 6.—RECTIFICATION OR RESCISSION.

554. Rectification—In equity — Satisfied mortgage removed.]—EMANUEL COLLEGE, CAMBRIDGE (MASTER & FELLOWS) *v.* EVANS (1625), 1 Rep. Ch. 18; 21 E. R. 494.

555. Rescission — Misrepresentation — As to effect of deed — Deed set aside.]—HOWARD *v.* FINGALL (1853), 22 L. T. O. S. 12; 1 W. R. 515.

556. —— **Mistake—When rescission refused.**]—OGILVIE *v.* ALLEN (1899), 15 T. L. R. 294, H. L.

See, generally, EQUITY; MISREPRESENTATION & FRAUD; MISTAKE.

SUB-SECT. 7.—AVOIDANCE OF VOLUNTARY CONVEYANCE.

557. Appointment by tenant in tail—Without levying fine or suffering recovery—Remainderman

Sect. 4.—Assurances inter vivos: Sub-sect. 7. Sect. 5: Sub-sects. 1, 2, 3, 4 & 5.]

bound.]—TAY *v.* SLAUGHTER (1690), Prec. Ch. 16; 24 E. R. 8.

558. Not by subsequent conveyance for valuable consideration.]—NEWCASTLE-UPON-TYNE CORPN. *v.* A.-G. (1845), 12 Cl. & Fin. 402; 8 E. R. 1464, H. L.; S. C. in court below, *sub nom.* A.-G. *v.* NEWCASTLE CORPN. (1842), 5 Beav. 307.

Annotations:—**Refd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173. **Mentd.** *Re* Patten & Edmonton Union Grdns. (1883), 52 L. J. Ch. 787.

559. ——.]—A voluntary gift for charitable purposes is not covinous within 27 Eliz. c. 4, & is not avoided by a subsequent conveyance for value.—RAMSAY *v.* GILCHRIST, [1892] A. C. 412; 61 L. J. P. C. 72; 66 L. T. 806; 56 J. P. 711; 8 T. L. R. 594, P. C.

See, generally, FRAUDULENT AND VOIDABLE CONVEYANCES.

SECT. 5.—ASSURANCES BY WILL.

SUB-SECT. 1.—BY NUNCUPATIVE AND DEFECTIVE WILLS.

560. Nuncupative will—Devise of rent out of land—Valid.]—*Re* STODDARD (1623), Toth. 31; Duke, 81; 21 E. R. 114.

Annotation:—**Consd.** Jenner *v.* Harper (1714), 1 P. Wms. 247.

561. —— **—— Void.**]—JENNER *v.* HARPER (1714), 1 P. Wms. 247; Prec. Ch. 389; Gilb. Ch. 44; 24 E. R. 374; *sub nom.* GENNER *v.* HARPER, 1 Salk. 163, L. C.

—— **Of realty.**]—*See, now,* Wills (Soldiers & Sailors) Act, 1918 (7 & 8 Geo. 5, c. 58), s. 3; ROYAL FORCES.

562. Will void at law—Valid as appointment.]—COLLEDGE'S CASE (1616), Duke, 78.

563. —— ——.]—BRISTOL CORPN. *v.* WHITTON (1633), Duke, 81.

564. —— —— **Gift of chose in action.**]—*Re* HUNGATE, *Ex p.* SHERBORN (INHABITANTS) (1627), Duke, 79.

565. —— —— **Devisee mis-named.**]—A.-G. *v.* PLATT (1675), Cas. *temp.* Finch, 221; 23 E. R. 122.

566. —— —— **Surrender of copyholds to use of will — Defective attestation of will.**]—A.-G. *v.* BAINS (1708), Prec. Ch. 270; 3 Rep. Ch. 150; 2 Vern. 597; Gilb. Ch. 5; 24 E. R. 131, L. C.

Annotations:—**Folld.** Jenner *v.* Harper (1714), 1 P. Wms. 247. **Refd.** A.-G. *v.* Downing (1769), Dick. 414. **Mentd.** Tufnell *v.* Page (1740), 2 Atk. 37.

567. —— —— —— **Defective execution of will.**]—A.-G. *v.* SAWTELL (1742), 2 Atk. 497; 26 E. R. 700, L. C.

Necessity for surrender, *see, now,* Wills Act, 1837 (c. 26), s. 3.

568. —— **Not valid as appointment—Devise of freeholds—Defective attestation of will.**]—A.-G. *v.* BAINS (1708), Prec. Ch. 270; 3 Rep. Ch. 150; 2 Vern. 597; Gilb. Ch. 5; 24 E. R. 131, L. C.

Annotations:—**Folld.** Jenner *v.* Harper (1714), 1 P. Wms. 247. **Refd.** A.-G. *v.* Downing (1769), Dick. 414. **Mentd.** Tufnell *v.* Page (1740), 2 Atk. 37.

569. —— **Good in equity—Devise of land to churchwardens.**]—PENNIMAN *v.* JENNINGS (1626), Toth. 34; Duke, 82; 21 E. R. 115.

Statutory requirements as to wills.]—*See* WILLS.

570. Will void for want of capacity — Valid as declaration of trust—Feme covert—Administering to former husband.]—DAMUS' CASE (1615), Duke, 72.

571. —— **Wholly void—Lunacy or infancy.**]—COLLEDGE'S CASE (1616), Duke, 78.

572. —— ——.] — BRAMBLE *v.* HAVERING (POOR) (1639), Duke, 83.

Testamentary capacity generally, *see* ALIENS, Vol. I., pp. 133, 138; CRIMINAL LAW & PROCEDURE; HUSBAND & WIFE; INFANTS & CHILDREN; LUNATICS & PERSONS OF UNSOUND MIND; ROYAL FORCES; WILLS.

573. Defective execution of testamentary power of appointment—Good in favour of charity.]—INNES *v.* SAYER (1851), 3 Mac. & G. 606; 21 L. J. Ch. 190; 18 L. T. O. S. 129; 16 Jur. 21; 42 E. R. 393, L. C.; *affg.* S. C. *sub nom.* SAYER *v.* SAYER, INNES *v.* SAYER (1849), 7 Hare, 377.

Annotations:—**Consd.** *Re* Huddleston, Bruno *v.* Eyston, [1894] 3 Ch. 595. **Refd.** Minchin *v.* Minchin (1871), 19 W. R. 993.

See, generally, POWERS.

Creation of charitable trusts by act of party.]—*See* Part III., Sect. 1, *post.*

SUB-SECT. 2.—WHO MAY DEVISE LAND IN MORTMAIN.

574. Citizens & freemen of London—Custom.]—LONDON (CITY OF) CASE (1610), 8 Co. Rep. 121 b; 77 E. R. 658, Ex. Ch.

Annotations:—**Consd.** Hutchins *v.* Player (1663), O. Bridg. 272; Winton *v.* Wilks (1705), 2 Ld. Raym. 1129. **Refd.** Fermor *v.* Brooke (1590), Cro. Eliz. 203; Dublin Corpn. Case (1620), Palm. 1; City of London *v.* Vanacker (1699), 1 Ld. Raym. 496; Broadbent *v.* Wilks (1742), Willes, 360; Clark *v.* Denton (1830), 1 B. & Ad. 92. **Mentd.** Langham's Case (1641), March, 179; R. *v.* Kilderby (1669), 1 Saund. 311; Thomas *v.* Sorrel (1673), 3 Keb. 223; Merchants Adventurers *v.* Rebon (1686), Comb. 53; Groenveit *v.* Burwell (1699), 1 Ld. Raym. 454; City of London *v.* Wood (1702), 12 Mod. Rep. 669; Mitchel *v.* Reynolds (1711), 1 P. Wms. 181; Parry *v.* Berry (1717), 1 Com. 269; London (Chamberlain) *v.* Compton (1825), 4 L. J. O. S. K. B. 49; Reynolds *v.* Barford (1844), 7 Man. & G. 449; Cox *v.* Hakes (1890), 15 App. Cas. 506; Kruse *v.* Johnson, [1898] 2 Q. B. 91.

575. —— ——.]—LANCELOT *v.* ALLEN (1632), Cro. Car. 248; W. Jo. 251; 79 E. R. 818.

576. —— ——.]—HUMPHRYS *v.* KNIGHT (1636), Cro. Car. 455; 79 E. R. 994; *sub nom.* KNIGHT *v.* HUMPHREYS, W. Jo. 387.

577. —— —— **Not lands out of London.**]—MIDDLETON *v.* CATER (1793), 4 Bro. C. C. 409; 29 E. R. 962, L. C.

Annotation:—**Mentd.** Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262.

578. Lord of manor held by knight service—Subject to Crown's interests in estate—& heir's third part.]—ASCOUGH'S CASE (1639), Cro. Car. 526; 79 E. R. 1055; *sub nom.* ASCOUGH *v.* PHILLIPS, W. Jo. 428.

Annotations:—**Mentd.** A.-G. *v.* Allgood (1743), Park. 1; A.-G. *v.* Hines (1758), Park. 182.

SUB-SECT. 3.—DATE OF WILL.

579. Will before Charitable Uses Act, 1735 (9 Geo. 2, c. 36)—Death after—Devise valid.]—ASHBURNHAM *v.* BRADSHAW (1740), West. *temp.* Hard. 505; 2 Atk. 36; Barn. Ch. 6; 7 Mod. Rep. 239; 25 E. R. 1056, L. C.

Annotations:—**Consd.** A.-G. *v.* Heartwell (1764), Amb. 451; A.-G. *v.* Downing (1767), Wilm. 1. **Refd.** Doe d. Morris *v.* Underdown (1741), Willes, 293; A.-G. *v.* Lloyd (1747), 3 Atk. 551; Moon *v.* Durden (1848), 2 Exch. 22.

580. —— —— **Unsurrendered copyholds—Valid.**]—A.-G. *v.* ANDREWS (1749), 1 Ves. Sen. 225; 27 E. R. 996, L. C.

Annotations:—**Mentd.** Habergham *v.* Vincent (1793), 4 Bro. C. C. 353; Doe d. Cook *v.* Danvers (1806), 3 Smith, K. B. 291.

581. —— **Codicil after—Addition of trustees & attempted addition of further land—Valid.**]—WILLET *v.* SANDFORD (1748), 1 Ves. Sen. 178, 186; cited in Amb. 452; 27 E. R. 967, 972, L. C.

Annotations:—**Distd.** A.-G. *v.* Heartwell (1764), 2 Eden, 234. **Consd.** A.-G. *v.* Downing (1767), Wilm. 1. **Expld.** Young

v. Grove (1847), 4 C. B. 668. **Mentd.** Doe d. Murch *v.* Marchant (1843), 6 Man. & G. 813.

582. —— —— Will directing personalty to be laid out in land—Codicil operative as new will—Bequest of personalty void.]—A.-G. *v.* HEARTWELL (1764), Amb. 451; 2 Eden, 234; 27 E. R. 298, L. C.

583. —— Giving power of appointment—Exercise of power by will after—Valid.]—A.-G. *v.* BRADLEY (1760), 1 Eden, 482; 28 E. R. 772.

584. Will before 1891 Act—Death after—Such part of residue "as may by law be given"—Valid for whole residue.]—Testator, who died after 1891 Act, by his will, made before the Act, gave to a charity such part of residue as might by law be given for charitable purposes, with a separate gift of the remainder to A.:—*Held:* the Act applied, & in the absence of a contrary intention the whole of the residue, realty as well as personalty, went to the charity.—*Re* BRIDGER, BROMPTON HOSPITAL FOR CONSUMPTION *v.* LEWIS, [1894] 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. 204; 42 W. R. 179; 10 T. L. R. 153; 38 Sol. Jo. 111; 7 R. 78, C. A.

Annotations:—**Consd.** *Re* Hume, Forbes *v.* Hume, [1895] 1 Ch. 422; *Re* Harris, Harris *v.* Harris, [1912] 2 Ch. 241; *Re* Groos, Groos *v.* Groos, [1915] 1 Ch. 572. **Reid.** *Re* Rayer, Rayer *v.* Rayer, [1903] 1 Ch. 685; *Re* Turnbull, Skipper *v.* Wade, [1905] 1 Ch. 726; *In the Estate of* Yates, [1919] P. 93; *Re* Bennett, Gibson *v.* A.-G., [1920] 1 Ch. 305.

585. Will after 1891 Act—Clauses in use prior to Act inserted—"Such part of personal estate as may lawfully be appropriated to such purposes"—Valid for whole personal estate.]—Testator gave his residuary real & personal estate on trust for sale & conversion, & directed his trustees thereout in the first place to pay or retain all the expenses incidental to the execution of certain trusts & powers, & his debts & funeral & testamentary expenses, & in the next place to pay legacies to certain nephews, & after payment thereof to pay legacies to certain nieces. He gave legacies to eleven charities, & directed that they should be paid "exclusively out of such part of my personal estate as may lawfully be appropriated to such purposes & in preference to any other payments thereout." The will was made after the passing of 1891 Act:—*Held:* construing the will with reference to the law after the passing of that Act, the charitable legacies were a first charge upon the whole of testator's personal estate not specifically bequeathed, in preference to all other payments, but were not payable out of the proceeds of sale of real estate.—*Re* HARRIS, HARRIS *v.* HARRIS, [1912] 2 Ch. 241; 81 L. J. Ch. 512; 106 L. T. 755.

SUB-SECT. 4.—WILLS GIVING TRUSTEES CHOICE OF OBJECTS.

586. General rule.]—The circumstance that trustees of a charity to which money is bequeathed may consistently with their trust apply the fund in a manner which would be illegal under Charitable Uses Act, 1735 (9 Geo. 2, c. 36), is not, of itself, sufficient ground for withholding the fund. The question is whether they must so apply it. If the Court sees that the trust can be duly performed without necessarily applying any part of the fund in an illegal manner it will declare the trustees entitled, but with a further declaration in the case supposed above, to prevent the illegal application. With these declarations the Court will hand over the fund to the trustees.—CARTER *v.* GREEN (1857), 3 K. & J. 591; 26 L. J. Ch. 845; 29 L. T. O. S. 342; 21 J. P. 626; 3 Jur. N. S. 905; 5 W. R. 856; 69 E. R. 1245.

Annotations:—**Apld.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Mentd.** Topham *v.* Portland (1863), 1 De G. J. & Sm. 517; Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594.

587. Residuary estate—Consisting partly of impure personalty—Application to charities exempt from Mortmain Acts—Valid.]—LEWIS *v.* ALLENBY (1870), L. R. 10 Eq. 668; 18 W. R. 1127; *subsequent proceedings* (1871), 25 L. T. 785.

Annotations:—**Distd.** *Re* Hewitt's Estate, Gateshead Corpn. *v.* Hudspeth (1883), 53 L. J. Ch. 132; *Re* Clark, Husband *v.* Martin (1885), 54 L. J. Ch. 1080. **Consd.** *Re* Levitt (1885), 1 T. L. R. 578. **Folld.** *Re* Seton Smith, Bright Smith *v.* A.-G. (1894), 73 L. T. 732, n.; *Re* Piercy, Whitwham *v.* Piercy (1898), 65 L. J. Ch. 364. **Consd.** *Re* Piercy, Whitwham *v.* Piercy (1898), 67 L. J. Ch. 297.

588. —— —— —— ——.] — *Re* LEVITT (DECEASED) (1885), 1 T. L. R. 578.

589. —— —— —— ——.]—*Re* OVEY, BROADBENT *v.* BARROW (1885), 31 Ch. D. 113; 55 L. J. Ch. 103; 53 L. T. 723; 34 W. R. 100.

Annotation:—**Reid.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565.

590. —— —— —— ——.]—*Re* SETON SMITH, BRIGHT SMITH *v.* A.-G. (1894), 73 L. T. 732, n.

Annotation:—**Reid.** *Re* Piercy, Whitwham *v.* Piercy (1898), 67 L. J. Ch. 297.

591. —— —— —— ——.]—Testator, who died before 1888 Act, by his will gave real & personal estate upon trust for sale & conversion, & directed his trustees to apply one-tenth of the fund to such charitable institutions & objects as his trustees might determine:—*Held:* (1) the gift applied & extended not only to the pure, but also to the impure personal estate & the proceeds of the real estate of testator, & conferred upon the trustees a power of selection; (2) if & so far as the trustees selected charitable institutions & objects exempted from the operation of Charitable Uses Act, 1735 (9 Geo. 2, c. 36), the names of the charitable institutions & objects selected would be read into the will, and the gift would be a good charitable gift in their favour; (3) as to the impure personalty & the proceeds of the sale of real estate, no exercise of the power of selection in favour of an unexempted charitable institution or object would operate as a valid gift.

(4) If a gift of this kind gives the trustees a discretion enabling them to select such as are valid from a class including valid & invalid objects, that is sufficient to prevent the gift from being voided by that Act.—*Re* PIERCY, WHITWHAM *v.* PIERCY, [1898] 1 Ch. 565; 67 L. J. Ch. 297; 78 L. T. 277; 46 W. R. 503; 42 Sol. Jo. 395, C. A.

592. —— —— Insufficient indication of testator's intention—Void.]—*Re* CLARK, HUSBAND *v.* MARTIN (1885), 54 L. J. Ch. 1080; 52 L. T. 406; 33 W. R. 516.

Annotations:—**Distd.** *Re* Seton Smith, Bright Smith *v.* A.-G. (1894), 73 L. T. 732, n. **Consd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565.

SUB-SECT. 5.—SALE OF LAND ASSURED.

593. Under 1891 Act—Necessity for—Land made inalienable within year of testator's death—By trustees under private Act.]—*Re* VERRALL, NATIONAL TRUST FOR PLACES OF HISTORIC INTEREST OR NATURAL BEAUTY *v.* A.-G., No. 217, *ante*.

—— —— Land subject to trust for sale & proceeds of sale to charity.]—*See* Sect. 2, sub-sect. 1, *ante*.

PART II. SECT. 5, SUB-SECT. 5.

j. *Under R. S. O.*, 1897, *c.* 112—*Postponement of sale.*]—A testator directed his farm to be sold at the expiration of four years & the proceeds paid over to the treasurer of the B. county poor house to be expended in luxuries for the inmates:—*Held:* the provision postponing the sale for more than two years, contrary to s. 4 of above Act, was invalid, unless the period were extended by the ct. or judge.—*Re* BROWN, BROWN *v.* BROWN (1900), 32 O. R. 323.—**CAN.**

k. *Under R. S. O.*, 1914, *c.* 103—

Sect. 5.—Assurances by will: Sub-sect. 5. Sect. 6: Sub-sects. 1 & 2.]

594. —— Extension of time—Jurisdiction of court.]—Where land had been devised to a charity the ct. has jurisdiction under 1891 Act, s. 5, when & so often as the circumstances render it desirable, to extend the time for sale beyond the year from testator's death, & the power of granting an extension of time is not confined merely to an extension for the purpose of carrying into effect a contract for sale made within the year from the death.—*Re* SIDEBOTTOM, BEELEY *v.* SIDEBOTTOM, [1901] 2 Ch. 1; 70 L. J. Ch. 448; 85 L. T. 366, C. A.; *subsequent proceedings, sub nom. Re* SIDEBOTTOM, BEELEY *v.* WATERHOUSE, [1902] 2 Ch. 389, C. A.

Annotation :—**Refd.** *Re* Ryland, Roper *v.* Ryland, [1903] 1 Ch. 467.

SECT. 6.—EXEMPTIONS FROM RESTRICTIONS ON ASSURANCES.

SUB-SECT. 1.—TO PUBLIC BODIES, HOSPITALS AND INSTITUTIONS.

595. By public Act—Municipal corporation—Hospital governed by—Devise of land to poor people in hospital valid.]—READING CORPN. *v.* LANE (1601), Toth. 32; Duke, 81; 21 E. R. 115.

596. —— —— May found hospital—39 Eliz. c. 5.]—NEWCASTLE-UPON-TYNE CORPN. *v.* A.-G. (1845), 12 Cl. & Fin. 402; 8 E. R. 1464, H. L.; *affg.* S. C. *sub nom.* A.-G. *v.* NEWCASTLE CORPN. (1842), 5 Beav. 307.

Annotations :—**Mentd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; *Re* Patten & Edmonton Union Grdns. (1883), 52 L. J. Ch. 787.

597. —— Bequest to municipal corporation of leaseholds & residue of personalty—Scientific & literary objects—8 & 9 Vict. c. 43—Valid.]—HARRISON *v.* SOUTHAMPTON CORPN. (1854), 2 Sm. & G. 387; 23 L. J. Ch. 919; 23 L. T. O. S. 330; 18 J. P. 488; 18 Jur. 669; 2 W. R. 659; 65 E. R. 448.

Annotations :—**Refd.** Carne *v.* Long (1858), 31 L. T. O. S. 229. **Mentd.** *Re* Nottage, Jones *v.* Palmer (1895), 64 L. J. Ch. 695.

598. —— Conveyance of land to parish officers for poor-house—Officers authorised to take land & sell same when no longer required—Valid.]—BURNABY *v.* BARSBY (1859), 4 H. & N. 690; 33 L. T. O. S. 286; 23 J. P. 503; 7 W. R. 693; 157 E. R. 1012; *sub nom.* BARNABY *v.* BARDSLEY, 28 L. J. Ex. 326.

Annotation :—**Dbtd.** Webster *v.* Southey (1887), 36 Ch. D. 9.

599. —— Lands sold under Defence Acts, 1842–1873—Power of hospital to acquire lands in mortmain—Reinvestment of proceeds valid.]—The words "or of a statute for the time being in force" in 1888 Act, s. 1, are satisfied by Defence Act, 1842 (c. 90), s. 26, which provides that the purchase-money of lands taken under the latter Act may be laid out in the purchase of other lands to be conveyed to or upon the same uses or trusts as the lands taken stood settled at the time of the payment of such purchase-money. A licence in mortmain is not therefore required when the governors of a hospital, with power to acquire & hold lands in mortmain, wish to purchase land with the money paid to them for other land acquired from them by the Secretary of State for War under Defence Acts, 1842–1873.—*Ex p.* ST. THOMAS' HOSPITAL (1908), *Times*, Oct. 23.

600. By private Act—Power of municipal corporation to acquire land by gift or devise—Before Charitable Uses Act, 1735 (9 Geo. 2, c. 36)—Subsequent private Acts confirming incorporating Act—Bequest of proceeds of sale void.]—LUCKRAFT *v.* PRIDHAM (1877), 6 Ch. D. 205; 46 L. J. Ch. 744; 37 L. T. 204; 42 J. P. 86; 26 W. R. 33, C. A.

Annotations :—**Consd.** *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** Webster *v.* Southey (1887), 36 Ch. D. 9.

601. —— Power of institution to take money given, devised or bequeathed—Bequest of impure personalty void.]—NETHERSOLE *v.* SCHOOL FOR THE INDIGENT BLIND (1870), L. R. 11 Eq. 1; 40 L. J. Ch. 26; 23 L. T. 723; 35 J. P. 279; 19 W. R. 174.

Annotation :—**Consd.** Chester *v.* Chester (1871), L. R. 12 Eq. 444.

602. —— Power of hospital to acquire realty by will—Implied power of testator to devise land.]—PERRING *v.* TRAIL (1874), L. R. 18 Eq. 88; 43 L. J. Ch. 775; 30 L. T. 248; 22 W. R. 512.

Annotations :—**Distd.** Luckraft *v.* Pridham (1877), 6 Ch. D. 205. **Consd.** *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100.

603. —— Power of hospital to acquire land—Bequest of mixed fund of pure & impure personalty—Valid.]—*Re* BRADLEY, OLDERSHAW *v.* GOVERNESSES BENEVOLENT INSTITUTION (1887), 3 T. L. R. 668.

604. —— Power of corporation to purchase, take & dispose of lands & other property—Construction.]—*Re* VERRALL, NATIONAL TRUST FOR PLACES OF HISTORIC INTEREST OR NATURAL BEAUTY *v.* A.-G., No. 217, *ante*.

605. By charter—Power of hospital to accept & take real estate—Form of grant must be in form prescribed by Mortmain Acts—To enable corporation to take land.]—ROBINSON *v.* LONDON HOSPITAL (GOVERNORS) (1853), 10 Hare, 19; 22 L. J. Ch. 754; 68 E. R. 821.

Annotations :—**Consd.** Simmons *v.* Rose (1856), 6 De G. M. & G. 411; Calvert *v.* Armitage (1863), 1 Hem. & M. 446; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** Perring *v.* Trail (1874), L. R. 18 Eq. 88.

By custom—Citizens & freemen of London.]—*See* Sect. 5, sub-sect. 2, *ante*.

SUB-SECT. 2.—TO CHURCHES, ETC.

Whether gifts to churches, etc. are gifts for charitable purposes.]—*See* Part I., Sect. 4, *ante*.

Whether gifts for building & maintenance of churches within Mortmain Acts.]—*See* Part II., Sect. 3, sub-sect. 2, *ante*.

Postponement of Sale.]—*Re* TORONTO HUMANE SOCIETY (1920), 18 O. W. N. 414.—**CAN.**

l. —— *Restraint on alienation—Invalid.*]—*Re* HAGERMAN (1918), 13 O. W. N. 406.—**CAN.**

m. *Under R. S. O., 1877, c. 216, s. 19—Life estate—Commencement of period.*]—The seven years during which a religious institution may hold land after its "acquisition" under R. S. O., 1877, c. 216, s. 19, or R. S. O., 1897, c. 307, s. 21, does not run, in the case of a devise subject to a life estate, until the expiry of the life estate.—*Re* NAYLOR (1902), 5 O. L. R. 153; 1 O. W. R. 809; 23 C. L. T. Occ. N. 69.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

n. *By private Act — Power of Church Society of Toronto to hold land without license.*]—CHURCH SOCIETY OF THE DIOCESE OF TORONTO *v.* CRANDELL (1860), 8 Gr. 34.—**CAN.**

o. —— *Power of Toronto General Hospital to acquire realty by will.*]—BURLAND *v.* GILLESPIE (1888), 16 O. R. 486.—**CAN.**

p. —— *Power to acquire real estate.*]—*Re* YOUART (1907), 10 O. W. R. 373.—**CAN.**

q. *By license of Crown—Power to corporation to hold land—Grant prior to 32 Geo. 3, c. 31—Valid.*]—INCORPORATED SOCIETY *v.* RICHARDS (1841), 4 I. Eq. R. 177; 1 Dr. & War. 258; 1 Con. & Law. 58.—**IR.**

PART II. SECT. 6, SUB-SECT. 2.

r. *Under Charitable Donations & Bequests Act, 1844 (c. 97)—To build church—Death within three months—Valid.*]—POLLOCK *v.* DAY (1863), 14 I. Ch. R. 297.—**IR.**

s. —— *To religious community—Trust for sale—Death within*

606. Under 43 Eliz. c. 4—Parson a corporation for taking land devised to church.]—A.-G. *v.* RUPER (1722), 2 P. Wms. 125; 2 Eq. Cas. Abr. 293, pl. 18; 24 E. R. 667.

Annotations :—**Folld.** De Windt *v.* De Windt (1854), 2 Eq. Rep. 1107. **Refd.** Cooper *v.* Law (1859), 5 Jur. N. S. 1263.

See, further, Part VII., Sect. 2, *post*.

607. Under Gifts for Churches Act, 1803 (c. 108) —Bequest limited to £500—Will executed more than three months before testator's death—Valid.]—DIXON *v.* BUTLER (1839), 3 Y. & C. Ex. 677; 160 E. R. 874.

Annotations —**Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173. **Apprvd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Folld.** *Re* Hawkins (1864), 34 L. J. Ch. 80; Sewell *v.* Crewe-Read (1866), L. R. 3 Eq. 60.

608. —— —— **Bequest exceeding £500 reduced to £500.**]—*Re* IRELAND (1843), 1 L. T. O. S. 166, L. C.

609. —— **Bequest of money for building & endowing church — Within Act.**] — GIRDLESTONE *v.* CREED (1853), 10 Hare, 480; 1 W. R. 228; 68 E. R. 1016.

Annotation :—**Distd.** Sinnett *v.* Herbert (1872), 7 Ch. App. 232.

610. —— —— ——.]—*Re* LEE'S TRUSTS (1872), 27 L. T. 808; 21 W. R. 168.

611. —— **Gift for enlarging, building & repairing churches generally — Not within Act.**] — INCORPORATED CHURCH BUILDING SOCIETY *v.* COLES (1855), 5 De G. M. & G. 324; 24 L. J. Ch. 713; 25 L. T. O. S. 111; 19 J. P. 341; 1 Jur. N. S. 761; 3 W. R. 396; 43 E. R. 895, L. C.

Annotations :—**Consd.** Fisher *v.* Brierley (1860), 29 L. J. Ch. 477. **Refd.** Cresswell *v.* Cresswell (1868), 18 L. T. 392.

612. —— **Gift for building church & schools— Interest reserved to donor—Valid.**]—FISHER *v.* BRIERLEY (1863), 10 H. L. Cas. 159; 1 New Rep. 452; 32 L. J. Ch. 281; 27 J. P. 280; 9 Jur N. S. 313; 11 W. R. 404; 11 E. R. 986, H. L.

Annotation :—**Refd.** *Re* Patrick, Bills *v.* Tatham (1890), 63 L. T. 752.

613. —— **Repair of vault & tombstone—Not within Act.**]—*Re* RIGLEY'S TRUSTS (1866), 36 L. J. Ch. 147; 15 L. T. 499; 15 W. R. 190.

Annotations :—**Folld.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Refd.** Champney *v.* Davy (1879), 11 Ch. D. 949.

Validity of gifts for repair of tombstones generally, *see* Part I., Sect. 6, sub-sect. 1, *ante*.

614. —— **Gift to keep churchyard in repair— Valid.**]—*Re* VAUGHAN, VAUGHAN *v.* THOMAS (1886), 33 Ch. D. 187; 55 L. T. 547; 51 J. P. 70; 35 W. R. 104; 2 T. L. R. 725.

Annotations :—**Consd.** *Re* Manser, A.-G. *v.* Lucas, [1905] 1 Ch. 68; *Re* Pardoe, McLaughlin, *v.* A.-G., [1906] 2 Ch. 184. **Refd.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715.

615. —— —— —— **Effect of 1891 Act, s. 7.**]—(1) The restriction contained in the Gifts for Churches Act, 1803, s. 1, is impliedly repealed by 1891 Act, s. 7. (2) *Held :* a residuary gift by testatrix of property exceeding £500 in value for the maintenance of a churchyard was a valid charitable gift.—*Re* DOUGLAS, DOUGLAS *v.* SIMPSON, [1905] 1 Ch. 279; 74 L. J. Ch. 196; 92 L. T. 78; 21 T. L. R. 140.

Validity of gifts for repair of churchyards generally, *see* Part I., Sect. 4, *ante*.

616. —— **Gift of mixed personalty—Trustees entitled to £500 out of impure personalty as well as whole of pure personalty.**]—SINNETT *v.* HERBERT (1872), 7 Ch. App. 232; 41 L. J. Ch. 388; 26 L. T. 7; 36 J. P. 516; 20 W. R. 270, L. C.

Annotations :—**Folld.** Champney *v.* Davy (1879), 11 Ch. D. 949. **Mentd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206; Littledale *v.* Bickersteth (1876), 24 W. R. 507; *Re* Williams (1877), 25 W. R. 689; *Re* Jackson, Biscoe *v.* Jackson (1882), 46 L. T. 355; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212; *Re* Gyde, Ward *v.* Little (1898), 78 L. T. 449; Hunter *v.* A.-G., [1899] A. C. 309.

617. —— —— **Apportionment.**] — CHAMPNEY *v.* DAVY (1879), 11 Ch. D. 949; 48 L. J. Ch. 268; 40 L. T. 189; 27 W. R. 390.

Annotations :—**Refd.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Mentd.** *Re* Whorwood, Ogle *v.* Sherborne (1886), 55 L. T. 39; De Quetteville *v.* De Quetteville (1905), 92 L. T. 758.

three months—Void.]—BEARDWOOD *v.* COATES (1870), 18 W. R. 1154.—**IR.**

t. —— *Association for propagation of Roman Catholic Faith—Death within three months—Void.*]—DONNELLAN *v.* O'NEILL (1870), 18 W. R. 1188. —**IR.**

a. —— *Gift for masses — Death within three months—Void.*]—BOYLE *v.* BOYLE (1877), I. R. 11 Eq. 433.—**IR.**

b. —— *Death within three months —Void so far as payable out of land.*]—KEHOE *v.* WILSON (1880), 7 L. R. Ir. 10.—**IR.**

c. —— *Foreign missions — Death within three months.*]—A. gave house property & lands to trustees upon trust to pay one-twentieth of the yearly income therefrom to the Foreign Missions of the Presbyterian Church in Ireland. A. died within three months of the making of the will :—*Held :* a valid charitable bequest, inasmuch as it was not a bequest for pious or charitable uses in Ireland.—*Re* BROWN (DECEASED), BROWN *v.* HARRISON (1900), 35 I. L. T. 25.—**IR.**

d. —— *Death within three months of codicil—After three months of will —Confirmation.*]—Testator, by will executed more than three months prior to his death gave his residue, consisting partly of lands, to a charity. By two codicils, both executed less than three months prior to his death, testator made additional bequests to certain persons, the only effect of which was to reduce the residue, & otherwise he confirmed his will :—*Held :* the devise of the lands for charitable purposes was not invalidated. —*Re* MOORE (DECEASED), LONG *v.* MOORE, [1907] 1 I. R. 315; 41 I. L. T. 150.—**IR.**

e. —— *Foreign charity — Death within three months.*]— A. gave the residue of her property to certain charities, one of which was Dr. Barnardo's Homes in London. The only property applicable for the discharge of the charitable legacies consisted of a farm of land held under a judicial tenancy. The testator died within three months after making her will :—*Held :* the gift failed.—*Re* KNOX (DECEASED), SNODGRASS *v.* GAMBLE, [1910] 1 I. R. 20.—**IR.**

f. —— *Devise to parish priest— Death within three months.*]—A., after giving a life estate to his wife, devised two houses to the parish priest of U., on condition of paying £10 yearly to P., & also £1 yearly for masses for the repose of the souls of deceased members of his family. Testator died two days after the execution of the will. His widow died twenty-three years afterwards. At that date the priest of the parish of U. was the third in succession in charge of the parish since testator's death :—*Held :* the devise of the houses to the parish priest of U. was void as contravening above Act, the testator having died within three months of the date of the will.—*Re* CORCORAN (DECEASED), CORCORAN *v.* O'KANE, [1913] 1 I. R. 1.—**IR.**

g. —— *Presbyterian charities — Death within three months.*]—A. by will directed that his property should be sold & the residue invested, & the interest paid to his wife for life, & after her death to divide one half, subject to certain legacies, between the P. Orphan Society, the P. Jewish Mission, the P. Foreign Mission, & the P. Colonial Mission. Testator died within three months of the execution of the will. On the death of the widow :—*Held :* (1) the words "in Ireland" of above Act in s. 16 are to be read in connection with the words "no donation, devise, or bequest," & not with the words "pious or charitable uses"; (2) the gifts failed so far as they were payable out of the proceeds of the sale of land.—*Re* ORR, M'DERMOTT *v.* ANDERSON, [1915] 1 I. R. 191. —**IR.**

h. *Under R. S. O.*, 1877, *c.* 216, *& 38 Vict. c.* 75—*For manse—Death within six months of codicil—After six months of will—Valid.*]—HOLMES *v.* MURRAY (1887), 13 O. R. 756.—**CAN.**

k. —— *Death after six months— Life estate—"Acquisition"—Valid— Power to hold seven years.*]—*Re* NAYLOR (1902), 1 O. W. R. 809.—**CAN.**

l. *Under R. S. O.*, 1887, *c.* 237, *s.* 23—38 *Vict. c.* 76, *s.* 10—*Parsonage house.*]—A. by his will, made more than six months prior to his death, gave after his wife's death a house to the trustees of A. church for a manse, if required, or that it might be kept in good repair, & rented for the benefit of the congregation :—*Held :* the devise was valid, for R. S. O., 1887, *c.* 237, *s.* 23, & 38 Vict. *c.* 76, *s.* 10, enabled the trustees to take land for a minister's residence, if actually used as such, although it could not be held merely for the purposes of rental; that an intention not to so use it would not be presumed from the non-suer for the short period that had elapsed since the widow's death; but that, in any event, the effect of such non-user would be that the interest of the trustees in the property could be sold within seven years, as provided for by that section, or that the property would revert to the testator's heirs; &, semble, that the trustees could legally

Sect. 6.—Exemptions from restrictions on assurances: Sub-sects. 2, 3 & 4.]

618. —— Devise of land with existing church—Secret trust to convey same as parish or district church in perpetuity—Valid.]—O'BRIEN *v.* TYSSEN (1884), 28 Ch. D. 372; 54 L. J. Ch. 284; 51 L. T. 814; 33 W. R. 428; 1 T. L. R. 168.

619. —— Gift for new clock or choir fund—Valid as to clock — Invalid as to fund.] — *Re* HENDRY, WATSON *v.* BLAKENEY (1887), 56 L. T. 908; 35 W. R. 730; 3 T. L. R. 581.

620. —— Gift by married woman—Void—Married Women's Property Act, 1882 (c. 75), s. 1 (1).]—*Re* SMITH'S ESTATE, CLEMENTS *v.* WARD (1887), 35 Ch. D. 589; 56 L. J. Ch. 726; 56 L. T. 850; 51 J. P. 692; 35 W. R. 514; 3 T. L. R. 567.

Annotations:—**Refd.** *Re* Drummond & Davie's Contract, [1891] 1 Ch. 524; *Re* Douglas, Douglas *v.* Simpson, [1905] 1 Ch. 279.

621. Under New Parishes Act, 1843 (c. 37)—Building & endowment of church—Transfer to Ecclesiastical Commissioners on creation of separate district—Valid.]—BALDWIN *v.* BALDWIN (No. 2) (1856), 22 Beav. 419; 26 L. J. Ch. 121; 28 L. T. O. S. 29; 20 J. P. 500; 2 Jur. N. S. 773; 4 W. R. 774; 52 E. R. 1170.

622. Under private Act—By which church vested in parson, churchwardens & parishioners in free alms for ever—Corporation only for purposes of taking such church.]—*Re* ST. ALPHAGE, LONDON WALL, No. 169, *ante*.

SUB-SECT. 3.—TO UNIVERSITIES, COLLEGES, ETC.

623. University—Under 43 Eliz., c. 4—Gift of impure personalty—Founding scholarships—Valid.]—*Re* LEVITT (DECEASED) (1885), 1 T. L. R. 578.

624. College—Under 43 Eliz., c. 4—Devise of land to—To found scholarships—Valid.]—FLOOD'S CASE (1616), Hob. 136; 80 E. R. 285; *sub nom.* JESUS COLLEGE, OXFORD, CASE, Duke, 78.

Annotations:—**Folld.** R. *v.* Newman (1670), 1 Lev. 284. **Refd.** A.-G. *v.* Downing (1767), Wilm. 1.

625. —— —— —— Devise merely to make testator's house unalienable—For benefit of fellows—Void.]—A.-G. *v.* WHORWOOD (1750), 1 Ves. Sen. 534; 27 E. R. 1188, L. C.

Annotations:—**Consd.** Cary *v.* Abbot (1802), 7 Ves. 490; Morice *v.* Durham (1805), 10 Ves. 522; A.-G. *v.* Haberdashers' Co. (1834), 1 My. & K. 420.

626. —— —— —— Devise to "fellows" of college—Valid.]—A.-G. *v.* TANCRED (1757), Amb. 351; 1 Eden, 10; 27 E. R. 234; *sub nom.* CHRIST'S COLLEGE, CAMBRIDGE, CASE, 1 Wm. Bl. 90.

Annotation:—**Expld.** A.-G. *v.* Sibthorp (1830), 2 Russ. & M. 107.

627. —— —— —— Grant not beneficially—In trust for other objects—Void.]—A.-G. *v.* MUNBY (1816), 1 Mer. 327; 35 E. R. 695.

628. —— —— Devise of advowson to—Valid.]—BENE'T [OR CORPUS CHRISTI] COLLEGE, CAMBRIDGE *v.* LONDON (BP.) (1778), 2 Wm. Bl. 1182; 96 E. R. 697.

629. School—Under Schools Sites Act, 1842, (c. 38)—Purchase of land for erection & endowment of infant school-house—Valid.]—*Re* BEDMINSTER PARISH & CHURCH LANDS (1850), 16 L. T. O. S. 122.

SUB-SECT. 4.—SCOTLAND, IRELAND AND THE COLONIES.

630. Scotland — Personalty to be laid out in purchase of land or heritable security—Valid.]—OLIPHANT *v.* HENDRIE (1784), 1 Bro. C. C. 571; 28 E. R. 1304, L. C.

Annotations:—**Consd.** Mackintosh *v.* Townsend (1809), 16 Ves. 330. **Refd.** Lyons *v.* East India Co. (1836), 1 Moo. P. C. C. 175.

631. —— —— ——.]—MACKINTOSH *v.* TOWNSEND (1809), 16 Ves. 330; 33 E. R. 1009, L. C.

632. —— —— No option to purchase lands in Scotland—Void.]—A.-G. *v.* Mill (1831), 5 Bli. N. S. 593; 2 Dow. & Cl. 393; 5 E. R. 440, H. L.; *affg.* (1827), 3 Russ. 328, L. C.

Annotations:—**Consd.** Williams *v.* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84; Canterbury Corpn. *v.* Wyburn & Melbourne Hospital, [1895] A. C. 89. **Refd.** Faversham Corpn. *v.* Ryder (1854), 5 De G. M. & G. 350.

633. —— Real estate in England—Void.]—CURTIS *v.* HUTTON (1808), 14 Ves. 537; 33 E. R. 627.

Annotations:—**Expld.** Whicker *v.* Hume (1851), 14 Beav. 509. **Refd.** Williams *v.* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84; *Re* Hamilton, Cadogan *v.* Fitzroy, [1896] 2 Ch. 617.

634. —— —— Devise by domiciled Scotsman—Lex loci rei sitæ—Void.]—A domiciled Scotsman by testamentary disposition gave leaseholds situate in England on charitable trusts which it was admitted were void under Charitable Uses Act, 1735 (9 Geo. 2, c. 36):—*Held:* the devolution of the beneficial interest in the leaseholds was governed by the *lex loci rei sitæ*, & passed to the next-of-kin according to the English Inheritance Act, 1833 (c. 106) Statute of Distributions, and not according to Scots law.—DUNCAN *v.* LAWSON (1889), 41 Ch. D. 394; 58 L. J. Ch. 502; 60 L. T. 732; 53 J. P. 532; 37 W. R. 524; 5 T. L. R. 402.

Annotations:—**Consd.** Pepin *v.* Bruyère, [1902] 1 Ch. 24. **Refd.** *Re* Stokes, Stokes *v.* Ducroz (1890), 62 L. T. 176; *Re* Hoyles, Row *v.* Jagg, [1910] 2 Ch. 333.

635. —— —— —— —— ——.]—Testator, a domiciled Scotsman resident in England, by a

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sell.—SILLS *v.* WARNER (1896), 27 O. R. 266.—**CAN.**

m. *Under 47 Vict. c. 38, s. 6—Proceeds of land to Methodist church*—14 & 15 *Vict. c. 142—Void.*]—A bequest to the Methodist church payable out of realty, made by will executed within six months of the testator's death:—*Held:* void, above sect. not giving that church the powers of the Connexional Society of the Wesleyan Methodist Church in C. to take by devise without reference to the restrictions of Religious Institution Act, 14 & 15 Vict. c. 142.—TYRRELL *v.* SENIOR (1893), 20 A. R. 156.—**CAN.**

n. *Under 50 Vict. c. 91—Death within six months.*]—A. gave all her estate to trustees to sell, upon trust to invest the residue & pay the interest to the trustees of a church upon conditions, & on failure of compliance with the conditions to pay one-half of the moneys to H. Society, & the other half to F. Society for their sole use. By above Act these societies were authorised to receive gifts & devises of real & personal property, provided that no gift or devise of any real estate should be valid unless made by deed or will executed at least six months before the death of the testator. R. S. O., 1897, c. 307, s. 24, is to the same effect:—*Held:* the six months limitation contained in the above Acts was repealed by R. S. O., 1897, c. 112, s. 4.—*Re* BARRETT (1905), 10 O. L. R. 337; 25 C. L. T. 357; 5 O. W. R. 790.—**CAN.**

o. *Under Mortmain Act, 1897 (c. 112), & Mortmain Act, 1902 (c. 383)—Death within six months.*]—A residuary devise of realty to the Foreign Missionary Society of the P. Church in C. is valid under R. S. O., 1897, c. 112, s. 4, notwithstanding Mortmain Act, 1902 (c. 383), s. 7 (6), which requires "assurance" of land for charitable uses to be made six months before the donor's death, "assurances" in that section not including gifts by will; & also notwithstanding that 38 Vict. c. 75 requires wills of realty & impure personalty in favour of that church to be made six months before the testator's death.—MADILL *v.* MCCONNELL (1908), 16 O. L. R. 314; 11 O. W. R. 345; *affd.* 12 O. W. R. 124; 17 O. L. R. 209.—**CAN.**

p. *Under Mortmain Act, 1897 (c. 112)—Death within six months—Valid.*]—THOMAS *v.* MCTEAR (1909), 14 O. W. R. 386.—**CAN.**

PART II. SECT. 6, SUB-SECT. 4.

q. *Ireland—42 Eliz. c. 4—Applicable to.*]—POWERSCOURT *v.* POWERSCOURT (1824), 1 Mol. 616.—**IR.**

r. *Ireland—All Mortmain Acts prior to 10 Hen. 7, c. 22 Applicable to.*]—INCORPORATED SOCIETY *v.* RICHARDS (1841), 1 I. Eq. R. 177; 1 Dr. & War. 258; 1 Con. & Law. 58.—**IR.**

trust deed & disposition in Scottish form, gave his real & personal estate, which comprised English & Scottish real & heritable estate, to his trustees, & after directing payment of his debts, testamentary & funeral expenses, & giving certain legacies & annuities, gave the residue of his estate amongst charitable institutions. The personal estate was sufficient to meet all the debts, funeral & testamentary expenses, & annuities. By Scots law the funeral & testamentary expenses & legacies are paid, in the first instance, by the personalty, the annuities by the heritable estate. The heir-at-law claimed the whole of the English realty, on the ground that the charitable gifts were void as far as regarded it, & that it was not liable to contribute to the annuities by English law:—*Held:* though the charitable gifts failed so far as they affected the English realty, by reason of Charitable Uses Act, 1735 (9 Geo. 2, c. 36), yet the heir-at-law was not entitled to have it conveyed at once to him, free from the annuities, the trustees being entitled to retain it & to administer it according to Scots law, &, if necessary, to apply it to payment of the annuities.—*Re* HEWIT, LAWSON *v.* DUNCAN, [1891] 3 Ch. 568; 61 L. J. Ch. 76; 65 L. T. 48; 40 W. R. 188.

636. —— Legacy for charity in—Good & payable in England—Though void if charity in England.]—FORDYCE *v.* BRIDGES (1848), 2 Coop. *temp.* Cott. 324; 2 Ph. 497; 47 E. R. 1179, L. C.

Annotations:—**Refd.** Salusbury *v.* Denton (1857), 3 K. & J. 529. **Mentd.** Brassey *v.* Chalmers (1853), 4 De G. M. & G. 528; Watlington *v.* Waldron (1853), 4 De G. M. & G. 259; Fletcher *v.* Moore (1857), 29 L. T. O. S. 173.

637. India—Charitable Uses Act, 1735 (9 Geo. 2, c. 36), not applicable to.]—LYONS CORPN. *v.* EAST INDIA CO. (1836), 1 Moo. P. C. C. 175; 1 Moo. Ind. App. 175; 3 State Tr. N. S. 647; 12 E. R. 782, P. C.

Annotations:—**Consd.** Mitford *v.* Reynolds (1842), 1 Ph. 185; Maclean *v.* Cristall (1849), 7 Notes of Cases Supp. 17. **Refd.** A.-G. *v.* Brodie (1846), 6 Moo. P. C. C. 12; Whicker *v.* Hume (1851), 14 Beav. 509; Lyons *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91. **Mentd.** Adv.-Gen. of Bengal *v.* Ranee Surnomoye Dossee (1863), 2 Moo. P. C. C. N. S. 22; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381; Ram Coomar Coondoo *v.* Chunder Canto Mookerjee (1876), 2 App. Cas. 186; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538.

638. Ontario—Bequest of mortgages on freehold land in—By domiciled Englishman—Void.]—A domiciled Englishman, who died before the repeal of Charitable Uses Act, 1735 (9 Geo. 2, c. 36), by his will gave to charity his residuary estate, which included mtges. on land in Ontario; at the date of his death the law was the same in Ontario as in England:—*Held:* the gift of the mtges. was void.—*Re* HOYLES, ROW *v.* JAGG, [1911] 1 Ch. 179; 80 L. J. Ch. 274; 103 L. T. 817; 27 T. L. R. 131; 55 Sol. Jo. 169, C. A.; *subsequent proceedings*, [1912] 1 Ch. 67.

639. New South Wales—Charitable Uses Act, 1735 (9 Geo. 2, c. 36), not applicable to.]—WHICKER *v.* HUME (1858), 7 H. L. Cas. 124; 28 L. J. Ch. 396; 31 L. T. O. S. 319; 22 J. P. 591; 4 Jur. N. S. 933; 6 W. R. 813; 11 E. R. 50, H. L.

Annotations:—**Apprvd.** Jex *v.* McKinney (1889), 14 App. Cas. 77. **Refd.** Thurburn *v.* Steward (1871), L. R. 3 P. C. 478; Canterbury Corpn. *v.* Wyburn & Melbourne Hospital, [1895] A. C. 89. **Mentd.** Crookenden *v.* Fuller (1859), Sea. & Sm. 3; Lord *v.* Colvin (1859), 4 Drew. 366; Tardrew *v.* Howell, Parry *v.* Howell (1861), 9 W. R. 296; Moorhouse *v.* Lord (1863), 10 H. L. Cas. 272; Drevon *v.* Drevon (1864), 34 L. J. Ch. 129; Jopp *v.* Wood (1865), 4 De G. J. & Sm. 616; Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; Bradford *v.* Young (1884), 26 Ch. D. 656; *Re* Patience, Patience *v.* Main (1885), 29 Ch. D. 976; Concha *v.* Concha (1886), 11 App. Cas. 541; *Re* Berridge, Berridge *v.* Turner (1890), 62 L. T. 365; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; Winans *v.* A.-G., [1904] A. C. 287.

640. Victoria—1888 Act not applicable to—Gift to English corporation for purchase of land in England—By domiciled Victorian—Valid.]—1888 Act does not apply to Colonial wills. Where A., domiciled in Victoria, by his will gave money to an English corpn. for the purchase of land in England for a charitable purpose:—*Held:* the gift was governed by the law of Victoria, &, being valid by that law, bound the exors. to pay the legacy to the corpn.—CANTERBURY CORPN. *v.* WYBURN & MELBOURNE HOSPITAL, [1895] A. C. 89; 64 L. J. P. C. 36; 71 L. T. 554; 43 W. R. 430; 11 T. L. R. 30; 11 R. 331, P. C.

Annotation:—**Apld.** *Re* Hoyles, Row *v.* Jagg, [1910] 2 Ch. 333.

641. British Honduras—Charitable Uses Act, 1735 (9 Geo. 2, c. 36), not applicable to.]—*Held:* on the true construction of the local Acts & Ordinances, the above Act has not been introduced into British Honduras. Although the Act is included in the description of laws thereby introduced, yet its provisions do not satisfy the prescribed condition of applicability to the colony.—JEX *v.* MCKINNEY (1889), 14 App. Cas. 77; 58 L. J. P. C. 67; 60 L. T. 287; 37 W. R. 577; 5 T. L. R. 258, P. C.

Annotation:—**Consd.** Cooper *v.* Stuart (1889), 14 App. Cas. 286.

642. Grenada — Charitable Uses Act, 1735 (9 Geo. 2, c. 36), not applicable to.] — A.-G. *v.* STEWART (1817), 2 Mer. 143; 35 E. R. 895.

Annotations:—**Consd.** Lyons *v.* East India Co. (1836), 1 Moo. P. C. C. 175. **Apld.** Whicker *v.* Hume (1858), 7 H. L. Cas. 124. **Consd.** Jex *v.* McKinney (1889), 14 App. Cas. 77; Canterbury Corpn. *v.* Wyburn & Melbourne Hospital, [1895] A. C. 89. **Refd.** A.-G. *v.* Giles (1835), 5 L. J. Ch. 44; Jephson *v.* Riera (1835), 3 Knapp, 130; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381; **Mentd.** Santos *v.* Illidge (1860), 8 C. B. N. S. 861.

643. Penang—English statutes relating to mortmain not applicable to.]—YEAP CHEAH NEO *v.* ONG CHENG NEO (1875), L. R. 6 P. C. 381, P. C.

Annotations:—**Mentd.** Elliott *v.* Totnes Union (1892), 57 J. P. 151; *Re* Manser, A.-G. *v.* Lucas (1904), 74 L. J. Ch. 95; *Re* Howell, *Re* Buckingham, Liggins *v.* Buckingham (1914), 84 L. J. Ch. 209; Bourne *v.* Keane, [1919] A. C. 815.

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638 i. *Ontario—Charitable Uses Act, 1735—Applicable to.*]—DOE d. ANDERSON *v.* TODD (1845), 2 U. C. R. 82.—**CAN.**

638 ii. —— —— ——.]—WHITBY CORPN. *v.* LISCOMBE (1876), 23 Gr. 1.—**CAN.**

s. *British Columbia*—9 *Geo.* 2, c. 36.]—9 Geo. 2, c. 36, relating to charitable uses, is not in force in British Columbia.—*Re* PEARSE ESTATE (1903), 10 B. C. R. 280.—**CAN.**

t. *Manitoba—Charitable Uses Act, 1735—Applicable to.*]—LAW *v.* ACTON (1902), 22 C. L. T. 419; 14 Man. L. R. 246.—**CAN.**

s. *New Brunswick*—9 *Geo.* 2, c. 36, *not applicable.*]—RAY *v.* NEW BRUNSWICK ANNUAL CONFERENCE (1881), 6 S. C. R. 308.—**CAN.**

640 i. *Victoria—Dissolution of Colleges Act, 1547—Not applicable to.*]—Above Act, relating to gifts for superstitious uses, is not in force in the States of Commonwealth.—NELAN *v.* DOWNES (1917), 23 C. L. R. 546.—**AUS.**

Part III.—Charitable Trusts.

SECT. 1.—CREATION BY ACT OF PARTY.

SUB-SECT. 1.—MODES OF CREATION.

644. Application of Statute of Frauds—Land—Trust must be declared in writing.]—ADDLINGTON *v.* CANN (1744), 3 Atk. 141; 26 E. R. 885, L. C.

Annotations:—**Consd.** Boson *v.* Statham (1760), 1 Cox, Eq. Cas. 16; Muckleston *v.* Brown (1801), 6 Ves. 52; Stickland *v.* Aldridge (1804), 9 Ves. 516. **Expld.** Podmore *v.* Gunning (1836), Donnelly, 74. **Consd.** Wallgrave *v.* Tebbs (1855), 2 K. & J. 313. **Folld.** Tee *v.* Ferris (1856), 25 L. J. Ch. 437. **Refd.** A.-G. *v.* Duplessis (1752), Park. 144; Lomax *v.* Ripley (1855), 3 Sm. & G. 48. **Mentd.** Nichols *v.* Lee (1797), 3 Anst. 940; Briggs *v.* Penny (1851), 21 L. J. Ch. 265; Sweeting *v.* Sweeting (1863), 3 New Rep. 240.

645. —— —— ——.]—BOSON *v.* STATHAM (1760), 1 Cox, Eq. Cas. 16; 1 Eden, 508; 29 E. R. 1041.

Annotations:—**Consd.** Wallgrave *v.* Tebbs (1855), 2 K. & J. 313. **Refd.** Lomax *v.* Ripley (1855), 3 Sm. & G. 48; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 49 L. J. Ch. 514.

646. —— **Verbal promise—Form of promise not addressed to any one—But headed with name of fund—Insufficient "memorandum in writing."**]—*Re* HUDSON, CREED *v.* HENDERSON (1885), 54 L. J. Ch. 811; 33 W. R. 819; 1 T. L. R. 447.

Assurances by nuncupative wills & instruments invalid as wills.]—*See* Part II., Sect. 5, sub-sect. 1, *ante*.

Form of assurances inter vivos.]—*See* Part II., Sect. 4, sub-sect. 1, *ante*.

647. Application of Wills Act, 1837 (c. 26)—Memoranda — Invalid declaration of trust.] — Testator about eight years before his death, which occurred in 1889, called on H., & stated that he was about to dispose of his property in case of his death, & that after making provision for his relations he should give certain bonds to H. & C. to distribute amongst different charitable institutions, & asked H. to assist him in making out a list. Testator & H. & C. subsequently met together, & a memorandum was written by C. at the dictation of testator, to the effect that testator had handed over to H. & C. the securities named on the other side of the paper, to be given by them to the various charitable institutions specified. Testator signed this memorandum, & his signature was witnessed by an independent witness, & the securities, which were all payable to bearer, were handed over & placed by C. in a safe. Testator, however, received the interest on the securities & also withdrew some of the securities, & at various interviews with C. varied the names of the charitable institutions & the amounts payable to them, & the memorandum was accordingly altered or in part rewritten in pencil. Some short time before testator's death, C., at testator's instance, wrote another memorandum as a final expression of testator's wishes concerning the securities which were remaining, but did not ask testator to sign such memorandum, being of opinion that it was highly probable that after so many changes testator would withdraw the remaining securities, & the whole thing would end. Neither C. nor H. made any claim to the securities, but the charitable institutions contended that the memoranda operated as a declaration of trust:—*Held:* (1) there was unquestionably no valid declaration of trust & the memoranda were imperfect testamentary documents of an informal character; (2) the property which the memoranda purported to affect passed to the exors. as part of the property belonging to testator at his death.—*Re* SMITH, CHAMP *v.* MARSHALLSAY (1890), 64 L. T. 13.

648. By grant—Construction.]—A.-G. *v.* BOSTON CORPN. (1847), 1 De G. & Sm. 519; 63 E. R. 1175.

649. By will—Bequest not made to executors for own benefit—Trust uncertain—Next of kin entitled.]—BUCKLE *v.* BRISTOW (1864), 5 New Rep. 7; 11 L. T. 265; 10 Jur. N. S. 1095; 13 W. R. 68.

Annotations:—**Mentd.** Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381; *Re* Howell, *Re* Buckingham, Liggins *v.* Buckingham, [1914] 2 Ch. 173.

650. —— **Devise of real estate on charitable trusts—Whether property specifically devised.**]—Testator devised certain real estate, not including the subject-matter of this appeal, & bequeathed certain personal estate to applts., whom he appointed to be his exors. & trustees, upon trusts therein mentioned; & the will proceeded: "after all the purposes mentioned in the preceding clauses of this my will shall have been satisfied my exors. & trustees shall with the balance of the cash that shall then remain carry on & accomplish the following works, that is to say, on & over the spot now occupied by my property situate at V. in L. they shall cause to be erected a grand, solid, & substantial building which shall be & remain for the absolute use of my countrymen of the L. community for ever; the top floor of the building shall be supplied with a decent library which shall be available for the use of the educated portion of the community of L." Testator also appointed certain persons to be trustees of the building, with powers of management & power to appoint new trustees when necessary:—*Held:* the will must be construed as effecting a devise of the property at V. in fee simple to the trustees of the will.—TAYLOR *v.* SHAW, *Re* JONES (1920), 89 L. J. P. C. 124; 123 L. T. 643, P. C.

651. Recommendatory or precatory words—Trust created—"Recommend."]—KIRKBANK *v.* HUDSON (1819), Dan. 259; 7 Price, 212; 146 E. R. 951.

652. —— —— **"I trust that out of respect to my memory they will exercise such power in doing such charitable acts as they know I would most approve of."**]—PILKINGTON *v.* BOUGHEY (1841), 12 Sim. 114; 5 Jur. 1149; 59 E. R. 1075.

653. —— —— **"To apply" & "to be at disposal."**]—SALUSBURY *v.* DENTON (1857), 3 K. & J. 529; 26 L. J. Ch. 851; 30 L. T. O. S. 63; 21 J. P. 726; 3 Jur. N. S. 740; 5 W. R. 865; 69 E. R. 1219.

Annotations:—**Consd.** *Re* Brierley, Brierley *v.* Brierley (1894), 43 W. R. 36. **Refd.** Lambe *v.* Eames (1870), L. R. 10 Eq. 267; Hunter *v.* A.-G., [1899] A. C. 309. **Mentd.** Wilson *v.* Duguid (1883), 24 Ch. D. 244.

654. —— —— **Not by gift inter vivos accompanied by expression of wish as to disposal.**]—WHEELER *v.* SMITH (1860), 1 Giff. 300; 29 L. J. Ch. 194; 1 L. T. 430; 6 Jur. N. S. 62; 8 W. R. 173; 65 E. R. 928.

655. —— —— **Not by "desire."**]—MCCULLOCH *v.* MCCULLOCH (1863), 1 New Rep. 535; 11 W. R. 504.

PART III. SECT. 1.

648 1. *By grant—Construction.*]—A Crown grant of land was issued to natives "to hold on behalf of themselves & as trustees of a Church of England reserve as a site for a church, school & burial-ground":—*Held:* the words "as trustees" governed the whole grant, & the land was held on the public charitable trust expressed in the grant.—*Re* HONE TUTERE, [1920] N. Z. L. R. 733.—N.Z.

656. —— —— Not by "special desire."]—C., by his will dated Aug. 1, 1898, bequeathed to A. & L. equally the rest of his stocks & shares, subject to a legacy, & he specially desired that the sums bequeathed should be specifically left by the legatees to such charitable institutions of a distinct & undoubted Protestant nature as A. & L. might select & in such proportion as they might determine: —*Held:* no charitable trust was created, & A. & L. took absolutely.—*Re* CONOLLY, CONOLLY *v.* CONOLLY, [1910] 1 Ch. 219; 79 L. J. Ch. 148; 101 L. T. 783; 26 T. L. R. 189.

657. —— —— "I wish."]—Testatrix by her will gave a legacy to R. of £2,300, with a gift over to his issue in case of his death in the lifetime of testatrix. By codicil made the same day she said, "I wish R. to use £1,000 part of the legacy given to him" for a certain charitable purpose. By a second codicil she said, "I wish R. to use the balance of the legacy given to him for such charitable purposes as he shall in his absolute discretion think fit." R., by deed-poll, disclaimed the legacy:—*Held:* (1) the legacy was given for the charitable purposes expressed in the two codicils; (2) a scheme should be directed.—*Re* BURLEY, ALEXANDER *v.* BURLEY, [1910] 1 Ch. 215; 79 L. J. Ch. 182; 101 L. T. 805; 26 T. L. R. 127.

Annotation:—As to (1) **Refd.** *Re* Conolly, Conolly *v.* Conolly, [1910] 1 Ch. 219.

658. Commoners having right of turbary—Common compulsorily acquired by railway company—Part purchase-money to be held as charitable trust for commoners.]—Prior to 1802 the occupiers of certain cottages were accustomed to cut turf on large tracts of commonable & waste lands of a manor. In that year an Inclosure Act was passed by which comrs. were empowered to allot lands in severalty to the lord & other persons interested, & to allot to the lord in trust for the occupiers of the cottages portions of the waste for a turf common, to be managed as the lord & the churchwardens & overseers should order, & not to be depastured. The comrs. by their award made in 1806, allotted to the lord of the manor, in trust for the occupiers for the time being of the cottages, 425 acres of waste for a turf common for the use of the cottagers. The comrs. also allotted to the lord & other persons interested portions of the inclosed lands in severalty in lieu of their rights & interests. A railway co. took for the purposes of their undertaking part of the land allotted as a turf common, & the purchase-money was paid into ct. On a petition by the freeholders of the cottages for the distribution of the fund:—*Held:* (1) the owners of the cottages had no claim on the fund; (2) the lord of the manor was entitled to such part of the fund as represented the value of the soil in the land taken by the co.; (3) the remainder of the fund was to be held as a charitable trust for the benefit of the occupiers of the cottages.—*Re* CHRISTCHURCH INCLOSURE ACT (1888), 38 Ch. D. 520; 57 L. J. Ch. 564; 58 L. T. 827; 4 T. L. R. 392, C. A.; *affd.* without reference to this point, *sub nom.* A.-G. *v.* MEYRICK, [1893] A. C. 1, H. L.; *subsequent proceedings, sub nom. Re* CHRISTCHURCH INCLOSURE ACT, MEYRICK *v.* A.-G., [1894] 3 Ch. 209.

Annotations:—As to (2) **Distd.** Simcoe *v.* Pethick, [1898] 2 Q. B. 555. *As to* (3) **Consd.** I. R. Comrs. *v.* Scott, *Re* Bootham Ward Strays, York, [1892] 2 Q. B. 152. **Refd.** *Re* Norwich Town Close Estate Charity (1888), 40 Ch. D. 298.

Ademption.]—*See* EQUITY.

By voluntary subscription.]—*See* Nos. 1546 *et seq.*, *post.*

Applications of lunatic's property.]—*See* LUNATICS & PERSONS OF UNSOUND MIND.

Endowment after void gift.]—*See* Sect. 2, subsect. 3, B., *post.*

SUB-SECT. 2.—SECRET TRUSTS.

A. Communication in Testator's Lifetime.

659. Devise to two or more persons—As joint tenants—Assent of one—Whether antecedent or subsequent to will—General rule.]—Where a gift is made to A. & C. as joint tenants upon an alleged secret trust, the authorities have established a distinction between those cases in which the will is made on the faith of an antecedent promise by A. that he will carry out testator's wishes, & those cases in which the will is left unrevoked on the faith of a subsequent promise by A. In the former case the trust binds both A. & C., & in the latter case A., & not C., is bound.—*Re* STEAD, WITHAM *v.* ANDREW, [1900] 1 Ch. 237; 69 L. J. Ch. 49; 81 L. T. 751; 48 W. R. 221; 44 Sol. Jo. 146.

660. —— —— —— Others bound.]—RUSSELL *v.* JACKSON (1852), 10 Hare, 204; 68 E. R. 900.

Annotations:—**Expld.** Wallgrave *v.* Tebbs (1855), 2 K. & J. 313. **Expld. & Distd.** Tee *v.* Ferris (1856), 2 K. & J. 357. **Folld.** Moss *v.* Cooper (1861), 1 John. & H. 352. **Refd.** Carter *v.* Green (1857), 3 K. & J. 591; Rowbotham *v.* Dunnett (1878), 8 Ch. D. 430; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594; *Re* Stead, Witham *v.* Andrew, [1900] 1 Ch. 237. **Mentd.** Jones *v.* Badley (1868), 3 Ch. App. 362; Sinnett *v.* Herbert (1872), 7 Ch. App. 232; *Re* Spencer's Will (1887), 57 L. T. 519; *Re* Maddock, Llewelyn *v.* Washington, [1902] 2 Ch. 220; O'Rourke *v.* Darbishire, [1920] A. C. 581.

661. —— —— —— Communicated subsequently to others—Legatees not beneficially entitled.]—MOSS *v.* COOPER (1861), 1 John. & H. 352; 4 L. T. 790; 70 E. R. 782.

Annotations:—**Consd.** *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594. **Refd.** McCormick *v.* Grogan (1866), 15 W. R. 290; *Re* Stead, Witham *v.* Andrew, [1900] 1 Ch. 237. **Mentd.** Topham *v.* Portland (1863), 1 De G. J. & Sm. 517.

662. —— As tenants in common—Assent of one—Others not bound.]—TEE *v.* FERRIS (1856), 2 K. & J. 357; 25 L. J. Ch. 437; 20 J. P. 563; 2 Jur. N. S. 807; 4 W. R. 352; 69 E. R. 819.

Annotations:—**Folld.** Rowbotham *v.* Dunnett (1878), 8 Ch. D. 430. **Consd.** *Re* Maddock, Llewelyn *v.* Washington, [1902] 2 Ch. 220. **Refd.** *Re* Stead, Witham *v.* Andrew, [1900] 1 Ch. 237.

663. —— —— —— ——.]—ROWBOTHAM *v.* DUNNETT (1878), 8 Ch. D. 430; *sub nom.* ROBOTHAM *v.* DUNNETT, 47 L. J. Ch. 449; 38 L. T. 278; 26 W. R. 529.

Annotation:—**Refd.** Freeman *v.* Laing, [1899] 2 Ch. 355.

664. —— —— —— Share of assenting party bound.]—*Re* RUDD (1906), *Times*, Feb. 9.

665. Effect—Vesting of legal estate in devisee—Resulting trust for heir.]—SWEETING *v.* SWEETING (1863), 3 New Rep. 240; 33 L. J. Ch. 211; 9 L. T. 783; 10 Jur. N. S. 31; 12 W. R. 239.

PART III. SECT. 1, SUB-SECT. 2.—A.

659 i. *Devise to two or more persons—As joint tenants—Assent of one—Subsequent to will—Others not bound.*]—SCOTT *v.* BROWNRIGG (1881), 9 L. R. Ir. 246.—IR.

659 ii. —— —— —— *Valid reference for scheme.*]—CHARITABLE DONATIONS & BEQUESTS COMRS. *v.* COTTER (1841), 1 Dr. & War. 501.—IR.

659 iii. *S. P.* CHARITABLE DONATIONS COMRS. *v.* SULLIVAN (1841), 1 Dr. & War. 501; 4 I. Eq. R. 280.—IR.

662 i. —— *As tenants in common—Assent of one—Validity of bequest.*]—A. devised houses, & a legacy of £600 charged on the remainder of his property, which comprised landed property, to three persons absolutely, as tenants in common, coupled with a secret trust, for charitable purposes. One of the legatees at the time the will was made was informed of the trust; the other two had no knowledge of it until after the death of A.:—*Held:* the bequest to the trustee who was aware of the trust was invalid, but that to the other devisees was good.—GEDDIS *v.* SEMPLE, [1903] 1 I. R. 73.—IR.

662 ii. —— ——.]—*Re* KING'S ESTATE (1888), 21 L. R. Ir. 273.—IR.

Sect. 1.—Creation by act of party: Sub-sect. 2, A., B. & C. Sect. 2: Sub-sect. 1, A.]

666. —— Tacit acceptance—Void.]—SPRINGETT *v.* JENINGS (1871), 6 Ch. App. 333; 40 L. J. Ch. 348; 24 L. T. 643; 19 W. R. 575, L. JJ.

Annotations:—**Consd.** *Re* Mason, Ogden *v.* Mason, [1901] 1 Ch. 619. **Refd.** Rowbotham *v.* Dunnett (1878), 8 Ch. D. 430. **Mentd.** Mason *v.* Ogden, [1903] A. C. 1.

See, also, Nos. 670, 682, *post.*

B. No Communication in Testator's Lifetime.

667. Devisees not bound—Unsigned document.]—WALLGRAVE *v.* TEBBS (1855), 2 K. & J. 313; 25 L. J. Ch. 241; 26 L. T. O. S. 147; 20 J. P. 84; 4 W. R. 194; 69 E. R. 800; *sub nom.* WALGRAVE *v.* TEBBS, 2 Jur. N. S. 83.

Annotations:—**Folld.** Tee *v.* Ferris (1856), 2 K. & J. 357. **Apprvd.** Jones *v.* Badley (1868), 3 Ch. App. 362. **Distd.** Juniper *v.* Batchellor (1868), 19 L. T. 200. **Consd.** Rowbotham *v.* Dunnett (1878), 8 Ch. D. 430. **Refd.** Proby *v.* Landor (1860), 28 Beav. 504; *Re* Boyes, Boyes *v.* Carritt (1884), 26 Ch. D. 531; *Re* Maddock, Llewellyn *v.* Washington, [1902] 2 Ch. 220.

668. —— Letters—No knowledge of testator's intention.]—JUNIPER *v.* BATCHELLOR (1868), 19 L. T. 200.

669. —— —— ——.]—LITTLEDALE *v.* BICKERSTETH (1876), 24 W. R. 507.

C. Proof of.

670. What must be proved—Express trust or express or tacit engagement.]—Where on the face of a will there is nothing to show that any trust or purpose was intended by testator other than a gift of the whole beneficial interest to the legatee, pltfs., in order to succeed in setting the bequest aside, must prove by evidence a trust expressed, or such an engagement, by words or by silence, as will authorise the ct. to say that the legatee undertook to do that which the law prevented testator from imposing upon her, an express trust to devote the residue to an illegal charitable purpose.

Where the evidence, parol & documentary, merely proves the wishes & intentions of testator, & that he refrained by instruction & premeditation from declaring any trust, or imposing any obligation, or exacting any promise for their fulfilment from the legatee, & also that the legatee was, from the impulses of her own mind & disposition, bent on fulfilling testator's wishes & intentions if she had the power, it falls short of what is required to establish the existence of any secret or honorary trust, the performance of which could be compelled on the footing, of the breach of a promise or engagement which would have been binding on the conscience.

Where a gift is in terms absolute, but accompanied with an expression of wishes in favour of another object, & a confidence in the honour & justice of the legatee, unless the language is so express as to be in terms imperative, & to exclude all option or discretion, they cannot bind the legatee or create a trust.—LOMAX *v.* RIPLEY (1855), 3 Sm. & G. 48; 3 Eq. Rep. 301; 24 L. J. Ch. 254; 24 L. T. O. S. 323; 1 Jur. N. S. 272; 3 W. R. 269; 65 E. R. 558.

Annotations:—**Consd.** Rowbotham *v.* Dunnett (1878), 8 Ch. D. 430. **Mentd.** *Re* Crawshay, Crawshay *v.* Crawshay (1890), 43 Ch. D. 615.

671. ——— ———.]—PAINE *v.* HALL (1812), 18 Ves. 475; 34 E. R. 397, L. C.

Annotations:—**Consd.** Lomax *v.* Ripley (1855), 3 Sm. & G. 48. **Refd.** Sweeting *v.* Sweeting (1863), 3 New Rep. 240. **Mentd.** Balch *v.* Symes (1823), Turn. & R. 87; Hindson *v.* Weatherill (1854), 2 Eq. Rep. 733.

672. —— ———.]—ROWBOTHAM *v.* DUNNETT (1878), 8 Ch. D. 430; *sub nom.* ROBOTHAM *v.* DUNNETT, 47 L. J. Ch. 449; 38 L. T. 278; 26 W. R. 529.

Annotation:—**Mentd.** Freeman *v.* Laing, [1899] 2 Ch. 355.

673. —— ———.] — Testator established a museum, & laid out a portion of his estate as a pleasure ground, & maintained it for the benefit of the public, whom he admitted under certain restrictions, while reserving to himself his private rights. By his will he devised & bequeathed the museum & pleasure grounds & an annuity of £300 for their maintenance to his son. It was alleged that these gifts were really subject to a secret trust in favour of the public:—*Held:* it was proved that testator intended his son to maintain the museum & grounds & allow the public access as before, & that the son accepted the gifts with the assurance that this should be done; but that testator intended that the public should acquire no rights, & no charitable trust had been created.—*Re* PITT RIVERS, SCOTT *v.* PITT RIVERS, [1902] 1 Ch. 403; 71 L. J. Ch. 225; 86 L. T. 6; 66 J. P. 275; 50 W. R. 342; 18 T. L. R. 272; 46 Sol. Jo. 246, C. A.

Annotation:—**Refd.** *Re* Maddock, Llewelyn *v.* Washington, [1902] 2 Ch. 220.

674. Sufficiency of proof—Conveyances by devisees—Trust declared.]—EDWARDS *v.* PIKE (1759), 1 Eden, 267; 28 E. R. 687.

Annotation:—**Consd.** Lomax *v.* Ripley (1855), 3 Sm. & G. 48.

675. —— Admission of charitable intention—Memorandum in writing not witnessed.]—BISHOP *v.* TALBOT (1772), cited in 6 Ves. 60; 31 E. R. 938.

Annotations:—**Consd.** Muckleston *v.* Brown (1801), 6 Ves. 52; Lomax *v.* Ripley (1855), 3 Sm. & G. 48. **Refd.** Stickland *v.* Aldridge (1804), 9 Ves. 516; Wallgrave *v.* Tebbs (1855), 25 L. J. Ch. 241.

676. —— —— Codicil containing expressions of trust.]—MUCKLESTON *v.* BROWN (1801), 6 Ves. 52; 31 E. R. 934, L. C.

Annotations:—**Distd.** Paine *v.* Hall (1812), 18 Ves. 475. **Consd.** Lomax *v.* Ripley (1855), 3 Sm. & G. 48; Wallgrave *v.* Tebbs (1855), 2 K. & J. 313; Johnstone *v.* Hamilton (1865), 5 Giff. 30. **Folld.** *Re* Boyes, Boyes *v.* Carritt (1884), 26 Ch. D. 531. **Refd.** Stickland *v.* Aldridge (1804), 9 Ves. 516; Podmore *v.* Gunning (1836), 7 Sim. 644; Briggs *v.* Penny (1849), 3 De G. & Sm. 525; Wood *v.* Midgley (1854), 5 De G. M. & G. 41. **Mentd.** Hindson *v.* Weatherill (1854), 5 De G. M. & G. 301; Gascoigne *v.* Gascoigne, [1918] 1 K. B. 223.

677. —— —— Absolute bequest.] — JOHNSTONE *v.* HAMILTON (1865), 5 Giff. 30; 6 New Rep. 352; 12 L. T. 822; 11 Jur. N. S. 777; 13 W. R. 961; 66 E. R. 910.

678. —— Donor retaining beneficial interest—Inference not supported by evidence.]—FISHER *v.* BRIERLEY (1863), 10 H. L. Cas. 159; 1 New Rep. 452; 32 L. J. Ch. 281; 8 L. T. 37; 27 J. P. 280; 9 Jur. N. S. 313; 11 W. R. 404; 11 E. R. 986, H. L.

Annotation:—**Mentd.** *Re* Patrick, Bills *v.* Tatham (1890), 63 L. T. 752.

679. —— Absolute bequest—Intimation as to use in testator's lifetime.]—*Re* WEDGWOOD, ALLEN *v.* WEDGWOOD, No. 208, *ante.*

See, also, Nos. 659–666, *ante.*

680. Onus of proof—On party alleging existence of secret trust.]—JONES *v.* BADLEY (1868), 3 Ch. App. 362; 19 L. T. 106; 16 W. R. 713, L. C.

Annotations: **Consd.** Rowbotham *v.* Dunnett (1878), 8 Ch. D. 430. **Refd.** Juniper *v.* Batchellor (1868), 19 L. T. 200; *Re* Stead, Witham *v.* Andrew, [1900] 1 Ch. 237. *Re* Maddock, Llewelyn *v.* Washington, [1902] 2 Ch. 220. **Mentd.** *Re* Crawshay, Crawshay *v.* Crawshay (1890), 43 Ch. D. 615; Freeman *v.* Laing, [1899] 2 Ch. 355.

668 i. *Devisees not bound—Letters—No knowledge of testator's intention.*]—D. left property to A. & B. "upon trusts & purposes which he had fully explained to them" & named A. & C. exors. The testator never spoke to A. of any trust:—*Held:* there was no acceptance of the trust by A.—SCOTT *v.* BROWNRIGG (1881), 9 L. R. Ir. 246. —IR.

681. Admissibility of evidence—Parol evidence inadmissible.]—ADDLINGTON *v.* CANN (1744), 3 Atk. 141; 26 E. R. 885, L. C.

Annotations :—**Consd.** Lomax *v.* Ripley (1855), 3 Sm. & G. 48; Wallgrave *v.* Tebbs (1855), 2 K. & J. 313. **Refd.** Boson *v.* Statham (1760), 1 Cox, Eq. Cas. 16; Muckleston *v.* Brown (1801), 6 Ves. 52; Stickland *v.* Aldridge (1804), 9 Ves. 516; Podmore *v.* Gunning (1836), Donnelly, 74; Briggs *v.* Penny (1849), 3 De G. & Sm. 525; Tee *v.* Ferris (1856), 25 L. J. Ch. 437; Sweeting *v.* Sweeting (1863), 3 New Rep. 240. **Mentd.** Nichols *v.* Lee (1797), 3 Anst. 940.

682. —— ——.]—Testator, who died in 1879, by his will dated in the same year gave his residuary real & personal property to his exors. on trust to convert & pay the proceeds of the conversion to "A. & B. in equal shares, & I bequeath the said proceeds to A. & B., their exors., administrators, & assigns, absolutely, in the full confidence that they will carry out my wishes in respect thereof." Both A. & B. survived testator, but were dead when the action to administer his estate was begun : —*Held :* (1) parol evidence of a conversation, in which testator told the witness that he had communicated his wish to benefit a charity to one of the legatees, was inadmissible; (2) A. & B. took an absolute interest in the legacy free from any trust for charity; & the legacy was payable to their representatives in moieties.—*Re* DOWNING'S RESIDUARY ESTATE (1888), 60 L. T. 140.

683. Bill of discovery—Allowed—Allegations of engagement to undertake such trust as testator should declare.]—MARTIN *v.* HUTTON (1766), cited in 6 Ves. 61; 31 E. R. 938, L. C.

684. —— —— **Allegation of secret trust—Plea of Statute of Frauds ordered to stand as answer.**]—STICKLAND *v.* ALDRIDGE (1804), 9 Ves. 516; 32 E. R. 703, L. C.

Annotations :—**Consd.** Podmore *v.* Gunning (1836), 7 Sim. 644. **Refd.** Briggs *v.* Penny (1849), 3 De G. & Sm. 525; Lomax *v.* Ripley (1855), 3 Sm. & G. 48; Caton *v.* Caton (1865), 1 Ch. App. 137; *Re* Boys, Boys *v.* Carritt (1884), 26 Ch. D. 531.

685. Evidence discovered after decree establishing will—Bill of review allowed.]—BARNES *v.* OFFER (1825), 5 Russ. 253, n.; 38 E. R. 1019.

SECT. 2.—REQUISITES OF CREATION.

SUB-SECT. 1.—CHARITABLE INTENTION MUST BE EXPRESSED.

A. In General.

686. Charitable intention must be clear—"Upon trust & confidence"—Not a condition.]—MARTIDALE *v.* MARTIN (1592), Cro. Eliz. 288; 78 E. R. 542; *sub nom.* GIBONS *v.* MARLTIWARD, Moore, K. B. 594; *sub nom.* GIBBONS *v.* MALTYARD & MARTIN, Poph. 6.

Annotation :—**Refd.** Williams *v.* Fry (1672), 3 Keb. 19.

687. —— **No trust which court can execute—Failure of gift.**]—(1) A bequest to trustees to expend the income or any portion of the trust funds in grants for or towards the purchase of advowsons or presentations is not a good charitable bequest.

Testator by his will declared that his residuary estate or so much thereof as should be legally applicable to charitable purposes should be transferred by his general trustees to special trustees in trust to apply the income or any portion of the capital in grants for or towards the purchase of advowsons or presentations, or in creating or contributing to the erection, improvement or endowment of churches, chapels or schools, or in paying or contributing to the salaries or income of rectors, vicars or incumbents, masters or teachers, but upon certain conditions. The conditions were framed with a view to the promotion of "true Protestant & Church of England principles as held by those of her divines, clergy, & members who are distinguished as Evangelical," & though applicable to the other purposes were not applicable to the purchase of advowsons or presentations :—*Held :* since, upon the true construction of the will, no trust, charitable or other, which the ct. could execute or control was annexed to the advowsons or presentations for the purchase of which the trustees had power to make grants, & there was no general trust for charity binding the whole fund, the whole gift failed & the residuary estate was undisposed of.

(2) The costs of all parties including the A.-G. were given out of the estate.—HUNTER *v.* A.-G., [1899] A. C. 309; 68 L. J. Ch. 449; 80 L. T. 732; 47 W. R. 673; 15 T. L. R. 384; 43 Sol. Jo. 530, H. L.; *revsg.* S. C. *sub nom. Re* HUNTER, HOOD *v.* A.-G., [1897] 2 Ch. 105, C. A.

Annotations :—*As to* (1) **Consd.** *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400; *Re* Sidney, Hingeston *v.* Sidney, [1908] 1 Ch. 126; *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567. **Refd.** *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643; *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184. *Generally*, **Mentd.** Higgins *v.* Dawson, [1902] A. C. 1; *Re* Hinckes, Dashwood *v.* Hinckes, [1920] 2 Ch. 511.

688. General charitable intention—Court unable to ascertain—Gift void—"Fellows & demies of Magdalen College, Oxford."]—A.-G. *v.* SIBTHORP (1830), 2 Russ. & M. 107; 39 E. R. 335, L. C.

Annotation :—**Refd.** Chamberlayne *v.* Brockett (1872), 28 L. T. 248.

689. —— —— —— **"Trustees of Mount Zion Chapel."**]—ASTON *v.* WOOD (1868), L. R. 6 Eq. 419.

Annotation :—**Mentd.** Willoughby *v.* Storer (1870), 22 L. T. 896.

690. —— —— —— —— **"Institute of Medical Sciences Fund, University of London.**]—Testator bequeathed a legacy of £25,000 to "The Institute of Medical Sciences Fund, University of London." The fund had been started by voluntary contributions in testator's lifetime, with the object of carrying out a proposed scheme for the establishment of an Institute of Medical Sciences, & testator himself had contributed largely to the fund. His exors. paid the legacy to the trustees of the fund, but, subsequently, the scheme proved impracticable & was finally abandoned, & the various contributions were returned to the respective donors. On the question whether the legacy had been definitely devoted to a charitable purpose and ought to be administered *cy-près* :—*Held :* (1) the legacy was a gift to take effect upon the happening of a condition which had failed; (2) there was no general charitable intent to be gathered from the will, & the legacy must be repaid to the exors.—*Re* UNIVERSITY OF LONDON MEDICAL SCIENCES INSTITUTE FUND, FOWLER *v.* A.-G., [1909] 2 Ch. 1; 78 L. J. Ch. 562; 100 L. T. 423; 25 T. L. R. 358; 53 Sol. Jo. 302, C. A.

691. —— **When presumed—Trustee itself a charitable society.**]—Testator, after making

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PART III. SECT. 1, SUB-SECT. 2.—C.

b. *Admissibility of evidence—Letter enclosed with will.*]—D. left property to A. & B. on trusts "which he had fully explained to them" & he named A. & C. exors. Enclosed in the envelope with the will was a letter in D.'s handwriting, of the same date, addressed to A. & B. directing them to apply the money left to them for missionary purposes as they should think fit :—*Held :* the letter was inadmissible to prove the trust.—SCOTT *v.* BROWNRIGG (1881), 9 L. R. Ir. 246.—IR.

PART III. SECT. 2, SUB-SECT. 1.—A.

688 i. *General charitable intention—Court unable to ascertain—Gift void.*]—CHARITABLE DONATIONS COMRS. *v.* DE CLIFFORD (1841), 1 Dr. & War. 215.—IR.

688 ii. —— —— ——.]—CARBERY *v.* COX (1852), 3 I. Ch. R. 231.—IR.

691 i. —— *When presumed—Trustee itself a charitable society.*]—INCORPORATED SOCIETY *v.* RICHARDS (1841),

Sect. 2.—Requisites of creation: Sub-sect. 1, A. & B.; sub-sect. 2, A. (a) & (b).]

pecuniary bequests to two missionary societies, bequeathed the residue of his personal estate to "the treasurer, for the time being, of the Charity Organisation Society upon trust to invest the same & to pay & retain one-tenth part of the annual income of such investment for the purposes of the society as the governing body might think fit, & to divide & pay the residue of such annual income to such other society or societies as should, in the opinion of the governing body of the Charity Organisation Society, be most in need of help, besides fulfilling the standard of good management, efficiency & economy of the Charity Organisation Society":—*Held:* (1) no indication of a general charitable intention on the part of testator could be found in the mere fact that the trustee was itself a charitable society; (2) the other society or societies which testator meant to benefit were not necessarily societies *ejusdem generis* with the Charity Organisation Society; (3) there was nothing in the language of the will to justify the conclusion that testator intended the bequest of the nine-tenths of the income to be one for general charitable purposes; (4) the bequest was not a valid charitable bequest.—*Re* FREEMAN, SHILTON *v.* FREEMAN, [1908] 1 Ch. 720; 77 L. J. Ch. 401; 98 L. T. 429; 24 T. L. R. 300; 52 Sol. Jo. 262, C. A.

B. Effect of Revocation.

692. By implication — Intention declared by will—Was to be declared by codicil—Subsequent codicil not declaring uses.]—WHEELER *v.* SHEER (1730), Mos. 288, 301; 25 E. R. 399, 406, L. C.

Annotations:—**Consd.** White *v.* White (1778), 1 Bro. C. C. 12; Moggridge *v.* Thackwell (1803), 7 Ves. 36; Fitzgerald *v.* Field (1825), 1 Russ. 416. **Apprvd.** Pickford *v.* Brown (1856), 2 K. & J. 426. **Consd.** *Re* Ford, Ford *v.* Ford, [1902] 1 Ch. 218. **Refd.** Mills *v.* Farmer (1815), 19 Ves. 483; Chappell *v.* Haynes (1858), 27 L. J. Ch. 336; *Re* Roby, Howlett *v.* Newington, [1908] 1 Ch. 71. **Mentd.** Cowper *v.* Scott (1731), 3 P. Wms. 119; Chapman *v.* Blisset (1738), West *temp.* Hard. 328.

693. Based on mistake of law—Estate taken by devisee.]—A.-G. *v.* LLOYD (1747), 3 Atk. 551; 1 Ves. Sen. 32; 26 E. R. 1117, L. C.

Annotations:—**Expld.** Doe d. Evans *v.* Evans (1839), 10 Ad. & El. 228. **Dbtd.** Thomas *v.* Howell (1874), L. R. 18 Eq. 198. **Refd.** Evans *v.* Williams (1837), Donnelly, 218.

SUB-SECT. 2.—APPLICATION TO CHARITY MUST BE OBLIGATORY.

A. Indefinite Charitable Gifts.

(a) Indefinite Purposes.

694. Gifts for such books "as may have a tendency to promote interests of virtue & religion & happiness of mankind"—Void.]—BROWNE *v.* YEALL (1791), cited in 7 Ves. 47, 50, n.; 32 E. R. 18, 20, 34, L. C.

Annotations:—**Consd.** Morice *v.* Durham (1805), 10 Ves. 522; Marsh *v.* Means (1857), 21 J. P. 725; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451. **Refd.** A.-G. *v.* Stepney (1804), 10 Ves. 22; A.-G. *v.* Haberdashers' Co. (1834) 1 My. & K. 420; Baker *v.* Sutton (1836), 1 Keen, 224; Thomson *v.* Shakespear (1859), 29 L. J. Ch. 140.

695. Gift for "giving prizes by president of Royal Academy"—"For best examples of fine arts, sculpture & painting or one of them"—Void.]—GWYNN *v.* CARDON (*circa* 1800), cited in 10 Ves. 533; 32 E. R. 951.

696. In "private charity"—Void.]—OMMANNEY *v.* BUTCHER (1823), Turn. & R. 260; 37 E. R. 1098.

Annotations:—**Refd.** Williams *v.* Kershaw (1835), 5 Cl. & Fin. 112; Briggs *v.* Penny (1849), 3 De G. & Sm. 525. **Mentd.** Douglas *v.* Congreve (1836), 1 Keen, 410; Dowson *v.* Gaskoin (1837), 2 Keen, 14; Lowe *v.* Thomas (1854), 23 L. J. Ch. 453; Larner *v.* Larner (1857), 26 L. J. Ch. 668; Patrick *v.* Yeatherd (1864), 3 New Rep. 367.

697. Gift "for same purpose as named before" in codicil — Codicil not produced — Void.] — GLOUCESTER CORPN. *v.* OSBORN (1847), 1 H. L. Cas. 272; 9 E. R. 760, H. L.; *affg.* S. C. *sub nom.* GLOUCESTER CORPN. *v.* WOOD (1843), 3 Hare, 131.

Annotations:—**Consd.** A.-G. *v.* Windsor (1858), 24 Beav. 679; Aston *v.* Wood (1868), L. R. 6 Eq. 419. **Refd.** Briggs *v.* Penny (1849), 3 De G. & Sm. 525; Willoughby *v.* Storer (1870), 22 L. T. 896. **Mentd.** Briggs *v.* Penny (1851), 3 Mac. & G. 546; Lord *v.* Colvin (1861), 1 Drew. & Sm. 475; *Re* Dutton, *Ex p.* Peake (1879), 40 L. T. 430; Falle *v.* Godfray (1888), 14 App. Cas. 90.

698. Gift for prize for essay on emigration to United States—Void.]—BRIGGS *v.* HARTLEY (1850), 19 L. J. Ch. 416; 15 L. T. O. S. 273; 14 Jur. 683.

Annotation:—**Dbtd.** Bowman *v.* Secular Soc., [1917] A. C. 406.

699. Gift for "advancement & propagation of education & learning all over world"—According to discretion of trustees—Valid.]—WHICKER *v.* HUME (1858), 7 H. L. Cas. 124; 28 L. J. Ch. 396; 31 L. T. O. S. 319; 22 J. P. 591; 4 Jur. N. S. 933; 6 W. R. 813; 11 E. R. 50, H. L.

Annotations:—**Consd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; *Re* Berridge, Berridge *v.* Turner (1890), 62 L. T. 365; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451. **Mentd.** Crookenden *v.* Fuller (1859), Sea. & Sm. 3; Lord *v.* Colvin (1859), 4 Drew. 366; Tardrew *v.* Howell, Parry *v.* Howell (1861), 9 W. R. 296; Moorhouse *v.* Lord (1863), 10 H. L. Cas. 272; Drevon *v.* Drevon (1864), 34 L. J. Ch. 129; Jopp *v.* Wood (1865), 4 De G. J. & Sm. 616; Thurburn *v.* Steward (1871), L. R. 3 P. C. 478; Bradford *v.* Young (1884), 26 Ch. D. 656; *Re* Patience, Patience *v.* Main (1885), 29 Ch. D. 976; Concha *v.* Concha (1886), 11 App. Cas. 541; Jex *v.* McKinney (1889), 14 App. Cas. 77; Canterbury Corpn. *v.* Wyburn & Melbourne Hospital, [1895] A. C. 89; Winans *v.* A.-G., [1904] A. C. 287.

700. "Servants of God" — Void.] — BUDGET *v.* HULFORD, [1873] W. N. 175.

701. "Religious & benevolent societies or objects"—"Chiefly the former"—Valid—Subsequent codicil referring to "religious or charitable legacies."]—*Re* LLOYD GREAME *v.* A.-G. (1893), 10 T. L. R. 66.

702. "Missionary objects at home, abroad or in colonies"—Valid—Court entitled to regard missionary work of legatee.]—Testatrix directed her trustees to pay trust moneys to M., to be applied by him for such missionary object or objects at home, abroad, or in the colonies as he should in his absolute discretion select. M. was known by testatrix to have been engaged in assisting Christian missions in foreign countries & abroad:—*Held:* the ct. was entitled to have regard to the nature of the work of M., &, that being so, testatrix had used the word "missionary" in its popular sense, & the gift was not void for uncertainty.—*Re* KENNY, CLODE *v.* ANDREWS (1907), 97 L. T. 130.

Annotations:—**Consd. & Folld.** *Re* Rees, Jones *v.* Evans, [1920] 2 Ch. 59. **Refd.** *Re* Friends' Free School, Clibborn *v.* O'Brien, [1909] 2 Ch. 675.

703. Gift for relief of indigent bachelors & widowers interested in pursuit of science—Valid.]—Testator, by his trust disposition & settlement, directed his trustees to employ the whole residue of his estate in instituting & carrying on a scheme

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4 I. Eq. R. 177; 1 Dr. & War. 258; 1 Con. & Law. 38. 1R.

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

c. "*The whole of my estate must be used for God only.*"]—A. bequeathed her whole estate in trust for the purposes mentioned in her will. The purposes mentioned were in the form of bequests, for named purposes, of specified sums; after these bequests, there was this clause: "The whole of my estate must be used for God only":—*Held:* the intention in favour of charity was found in the provision that the whole of the estate of the testatrix "must be used for God only," & was absolute.—*Re* ORR (1917), 40 O. L. R. 567; 13 O. W. N. 154.—CAN.

for the relief of indigent bachelors & widowers of whatever religious denominations or belief they might be who had shown practical sympathy either as amateurs or professionals in the pursuit of science in any of its branches, whose lives had been characterised by sobriety, morality & industry, & who were not less than fifty-five years of age ; or of aiding any scheme which existed or might be instituted by others for that purpose :—*Held :* the bequest was not void for uncertainty, for the trustees or failing them, the ct. would find no difficulty in giving effect to it.—WEIR *v.* CRUM-BROWN, [1908] A. C. 162 ; 77 L. J. P. C. 41 ; 98 L. T. 325 ; 24 T. L. R. 308 ; 52 Sol. Jo. 261, H. L.

Annotation :—**Consd.** Houston *v.* Burns, [1918] A. C. 337.

"Benevolent" purposes.]—*See* Nos. 705, 708, *post.*

Uncertain description of object.]—*See* Sect. 4, sub-sect. 3, C., *post.*

Gifts in discretion of trustees.]—*See* Sub-sect. 2, A. (*b*), *post.*

(b) Discretionary Gifts.

704. "To continue" testator's "charities or to bestow any others as they shall think fit"—Void.]—COXE *v.* BASSET (1796), 3 Ves. 155 ; 30 E. R. 945.

Annotation :—**Mentd.** Wrigley *v.* Sykes (1856), 21 Beav. 337.

705. "Such objects of benevolence & liberality as trustee shall most approve"—Void.]—MORICE *v.* DURHAM (BP.) (1805), 10 Ves. 522 ; 32 E. R. 947, L. C.

Annotations :—**Consd.** James *v.* Allen (1817), 3 Mer. 17. **Foll.** Vezey *v.* Jamson (1822), 1 Sim. & St. 69. **Consd.** Ommanney *v.* Butcher (1823), Turn. & R. 260. **Foll.** Williams *v.* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84. **Consd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484 ; *Re* Peel's School, Tamworth, *Ex p.* Charity Comrs. (1858), 3 Ch. App. 543 ; Stewart *v.* Greene (1871), 19 W. R. 396. **Foll.** *Re* Hewitt's Estate, Gateshead Corpn. *v.* Hudspeth (1883), 53 L. J. Ch. 132. **Distd.** *Re* Douglas, Obert *v.* Barrow (1887), 35 Ch. D. 472. **Consd.** R. *v.* Income Tax Comrs. (1888), 22 Q. B. D. 296 ; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451. **Foll.** Hunter *v.* A.-G., [1899] A. C. 309. **Consd.** *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567. **Refd.** Doe d. Toone *v.* Copestake (1805), 6 East, 328 ; A.-G. *v.* Haberdashers' Co. (1834), 1 My. & K. 420 ; Baker *v.* Sutton (1836), 1 Keen, 224 ; Ellis *v.* Selby (1836), 1 My. & Cr. 286 ; Knight *v.* Knight (1840), 9 L. J. Ch. 354 ; Nightingale *v.* Goulbourn (1848), 2 Ph. 594 ; Briggs *v.* Penny (1849), 3 De G. & Sm. 525 ; Greene *v.* Marsden (1853), 1 Eq. Rep. 437 ; Marsh *v.* Means (1857), 30 L. T. O. S. 89 ; Thomson *v.* Shakespeare (1859), John. 612 ; Buckle *v.* Bristow (1864), 5 New Rep. 7 ; Dolan *v.* Macdermot (1867), L. R. 5 Eq. 60 ; Beaumont *v.* Oliveira (1868), L. R. 6 Eq. 534 ; Pocock *v.* A.-G. (1876), 25 W. R. 277 ; *Re* Sutton, Stone *v.* A.-G. (1885), 28 Ch. D. 464 ; Lloyd Greame *v.* A.-G. (1893), 10 T. L. R. 66 ; *Re* Darling, Farquhar *v.* Darling, [1896] 1 Ch. 50 ; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400 ; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113 ; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100 ; A.-G. for New Zealand *v.* Brown, [1917] A. C. 393 ; Bowman *v.* Secular Soc., [1917] A. C. 406. **Mentd.** Paice *v.* Canterbury (1807), 14 Ves. 364 ; Gibbs *v.* Rumsey (1813), 2 Ves. & B. 294 ; Whitaker *v.* Tatham (1831), 5 Moo. & P. 628 ; Thorp *v.* Owen (1843), 2 Hare, 607 ; Mapp *v.* Elcock (1849), 2 Ph. 793 ; Lomax *v.* Ripley (1855), 3 Sm. & G. 48 ; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381 ; Langham *v.* Petersen (1903), 19 T. L. R. 157.

706. "To be applied as trustees should from time to time think fit"—Void.]—DOE d. TOONE *v.* COPESTAKE (1805), 6 East, 328 ; 2 Smith, K. B. 495 ; 102 E. R. 1313.

Annotations :—Apld. Stewart *v.* Greene (1870), 19 W. R. 202. **Refd.** Hunter *v.* A.-G., [1899] A. C. 309. **Mentd.** Doe d. Howson *v.* Waterton (1819), 3 B. & Ald. 149.

707. "To be disposed of to such persons & in such manner & form as trustees shall think proper—Void.]—GIBBS *v.* RUMSEY (1813), 2 Ves. & B. 294 ; 35 E. R. 331.

Annotations :—**Consd.** Amphlett *v.* Parke (1831), 2 Russ. & M. 221 ; Ellis *v.* Selby (1836), 1 My. & Cr. 286. **Mentd.** Green *v.* Jackson (1828), 5 Russ. 35 ; Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262 ; Whitaker *v.* Tatham (1831), 7 Bing. 628 ; Briggs *v.* Penny (1849), 3 De G. & Sm. 525 ; Buckle *v.* Bristow (1864), 5 New Rep. 7 ; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381 ; Pocock *v.* A.-G. (1876), 3 Ch. D. 342 ; *Re* Sinclair, Young *v.* Sinclair, [1903] W. N. 113 ; *Re* Howell, *Re* Buckingham, Liggins *v.* Buckingham, [1914] 2 Ch. 173.

708. "Such benevolent purposes as trustees in their integrity & discretion may agree on"—Void.]—JAMES *v.* ALLEN (1817), 3 Mer. 17 ; 36 E. R. 7.

Annotations :—**Foll.** Williams *v.* Kershaw (1835), 5 Cl. & Fin. 111, n. **Consd.** *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451 ; A.-G. for New Zealand *v.* Brown, [1917] A. C. 393. **Refd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286 ; Nash *v.* Morley (1842), 5 Beav. 177 ; Lloyd Greame *v.* A.-G. (1893), 10 T. L. R. 66 ; Dunne *v.* Byrne, [1912] A. C. 407 ; Bowman *v.* Secular Soc., [1917] A. C. 406.

709. Residue to be applied "in such way & manner & in such proportions to the principal, capital, or interest or annual proceeds of sums to be appropriated as to trustees shall seem proper"—Valid.]—HILL *v.* HOOD'S TRUSTEES (1826), cited in 3 Bli. N. S. 434 ; 4 E. R. 1394, H. L.

Annotation :—**Consd.** Crichton *v.* Grierson (1828), 3 Bli. N. S. 424.

710. "To divide amongst poor pious persons, male or female, old or infirm, as they should see fit, not omitting large & sick families of good character"—Valid.]—NASH *v.* MORLEY (1842), 5 Beav. 177 ; 11 L. J. Ch. 336 ; 6 Jur. 520 ; 49 E. R. 545.

Annotation :—**Refd.** Thomas *v.* Howell (1874), L. R. 18 Eq. 198.

711. To distribute among "families, according to their circumstances as, in the opinion of the trustees, they may need assistance whose names are hereinafter mentioned"—Valid.]—LILEY *v.* HEY (1842), 1 Hare, 580 ; 11 L. J. Ch. 415 ; 66 E. R. 1162 ; *sub nom.* LILLEY *v.* HEY, 6 Jur. 756.

Annotation :—**Consd.** Gillam *v.* Taylor (1873), L. R. 16 Eq. 581.

712. To be laid out in forming museum & "for such other purposes as trustees in their discretion shall think fit for purpose of giving effect to my wishes"—Void.]—THOMSON *v.* SHAKESPEAR (1860), 1 De G. F. & J. 399 ; 29 L. J. Ch. 276 ; 2 L. T. 479 ; 24 J. P. 309 ; 6 Jur. N. S. 281 ; 8 W. R. 265 ; 45 E. R. 413, L. C. & L. JJ.

Annotations :—**Foll.** Carne *v.* Long (1860), 2 De G. F. & J. 75. **Consd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309. **Foll.** *Re* Dutton, *Ex p.* Peake (1878), 40 L. T. 430. **Consd.** *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212. **Foll.** Hoare *v.* Hoare (1886), 56 L. T. 147. **Consd.** *Re* St. Stephen, Coleman Street, *Re* St. Mary the Virgin, Aldermanbury (1888), 39 Ch. D. 492 ; *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110. **Refd.** *Re* Rickard, Rickard *v.* Robson (1862), 31 Beav. 244 ; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381 ; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633 ; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187 ; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520 ; Income Tax Special Purposes

PART III. SECT. 2, SUB-SECT. 2.—A. (*b*).

d. *"Such charitable institutions regardless of sect as trustees consider worthy."*]—A trust or direction that the balance of an estate shall be distributed by the exors. among such charitable institutions regardless of sect as they consider worthy is valid. —*In the Will of* NILEN, KIDD *v.* NILEN, [1908] V. L. R. 332.—**AUS.**

e. *"As the ministers of a certain church may see fit"—Valid.*]—DOE d. VANCOTT *v.* READ (1847), 3 U. C. R. 244.—**CAN.**

f. *To Bishop for the use of his diocese—Void.*]—*Re* MCCAULEY (1897), 28 O. R. 610.—**CAN.**

g. *"Among such Protestant charitable institutions" as trustees might deem proper & advisable.*]—In an action for construction of a will :—*Held :* the gift of the residue of a mixed fund to the exors. to be distributed "among such Protestant charitable institutions as my said exors. & trustees may deem proper & advisable, & in such proportions as they . . . may deem proper," was a valid gift.—MANNING *v.* ROBINSON (1898), 29 O. R. 483.—**CAN.**

h. *"In manner best calculated" to advance the principles of a Presbyterian church.*]—A. by his will directed land to be sold & out of the proceeds thereof & some personalty directed $2,000 to be paid to N. for the use of the Reformed Presbyterian Church, such sum to be expended by N. in

Sect. 2.—Requisites of creation: Sub-sect. 2, A. (b) & B.]

Comrs. *v.* Pemsel, [1891] A. C. 531; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252; *Re* Nottage, Jones *v.* Palmer, [1895] 2 Ch. 649; *Re* Jones, Parker *v.* Lethbridge (1898), 79 L. T. 154; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100.

713. "Such objects as trustees should consider most deserving"—Void.]—HARRIS *v.* DU PASQUIER (1872), 26 L. T. 689; 20 W. R. 668.

714. "For any purposes to which vicar & churchwardens think proper to apply it"—Valid.]—Testator directed his pure personalty, money & securities available for charitable purposes to be put on one side & kept available for charitable purposes during the life of his wife so that she might receive the income until her death, & that thenceforth it might go to the four several charitable objects mentioned in equal shares, & he bequeathed one fourth part to the vicar & churchwardens of P. for any purposes they might think proper to apply it:—*Held:* the gift was valid, there being a devotion of the fund to charitable purposes & a scheme was directed to be prepared.—*Re* HURLEY, NICHOLS *v.* PARGITER (1900), 17 T. L. R. 115.

715. "To such charitable institutions & schemes already constituted or which may hereafter be constituted as they may select"—Power to retain investments "for such time or times as they may think fit or indefinitely"—Valid.]—Testator gave to his trustees, as & when the residue of the estate or any part thereof became available, & as they deemed proper, full power to pay over or divide the same to or amongst such local or Scottish charitable institutions & schemes already constituted, or which might thereafter be constituted as they might select, or any one or more of such institutions & schemes, & that at such times, in such manner, or in such proportions, all as they in their absolute discretion might deem proper. The trustees were also to have full powers as to realisation, investment, administration, management, & division, as if they were beneficial owners. They had also power to retain investments for such time or times as they might think fit or indefinitely:—*Held:* the bequest was not void for uncertainty.—DICK *v.* AUDSLEY, [1908] A. C. 347; 77 L. J. P. C. 126, H. L.

716. "As vicar & churchwardens shall think fit"—Valid—As gift to parish for ecclesiastical purposes.]—Testatrix bequeathed £400 to the vicar & churchwardens for the time being of K., to be applied by them in such manner as they should in their sole discretion think fit:—*Held:* the gift was not void for uncertainty but was a good & valid charitable gift to the parish for ecclesiastical purposes.—*Re* GARRARD, GORDON *v.* CRAIGIE, [1907] 1 Ch. 382; 76 L. J. Ch. 240; 96 L. T. 357; 23 T. L. R. 256; 51 Sol. Jo. 209.

Annotations:—**Expld. & Distd.** *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567. **Distd.** *Re* Friends' Free School, Clibborn *v.* O'Brien, [1909] 2 Ch. 675.

717. "In any way" Archbishop "likes for other parochial purposes of his diocese"—Valid.]—*Re* VAN WART, RAMSAY *v.* BOURNE (1911), *Times*, Feb. 17.

See, generally, Part I., Sect. 4, *ante*.

718. "To be used wholly or in part as Archbishop may judge most conducive to good of religion in this diocese"—Void.]—The gift of a residue to the Archbishop of B. & his successors to be used & expended wholly or in part as the Archbishop might judge most conducive to the good of religion in this diocese:—*Held:* not to be a good charitable bequest & to be void for lack of certainty in the words "wholly or in part," the wideness of the discretion in the legatee & the vagueness of the words "most conducive to the good of religion in this diocese."—DUNNE *v.* BYRNE, [1912] A. C. 407; 81 L. J. P. C. 202; 106 L. T. 394; 28 T. L. R. 257; 56 Sol. Jo. 324, P. C.

Annotation:—**Consd.** *Re* Rees, Jones *v.* Evans, [1920] 2 Ch. 59.

Alternative purposes in discretion of trustees.]—*See* Sub-sect. 2, B., *post*.

Gifts in which meaning of "charitable" is restricted.]—*See* Sub-sect. 2, C., *post*.

Gifts relating to poor of towns.]—*See* Sect. 4, sub-sect. 6, *post*.

Ascertainment of objects of trust where power to determine objects delegated.]—*See* Sect. 4, sub-sect. 7, *post*.

Discretionary powers of trustees generally.]—*See* Part VII., Sect. 5, sub-sect. 1, *post*.

B. Alternative Charitable or other Purposes.

719. One purpose good but other purpose bad—Whole gift applied to valid purpose.]—A., before Charitable Uses Act, 1735 (9 Geo. 2, c. 36), gave real & personal estate to a use that would be within the Act & to other uses which would not be affected by it; B., after the Act, gave personal estate to the uses of A.'s will; the estate of A. being sufficient for the first use:—*Held:* the whole of the second gift should go to the valid use.—A.-G. *v.* HARTLEY (1793), 4 Bro. C. C. 412; 29 E. R. 964, L. C.

Annotation:—**Refd.** *Re* Rigley's Trusts (1866), 15 L. T. 499.

720. "Charitable or public purposes"—At pleasure of trustees—Void.]—VEZEY *v.* JAMSON (1822), 1 Sim. & St. 69; 57 E. R. 27.

Annotations:—**Consd.** Buckle *v.* Bristow (1864), 5 New Rep. 7. **Apprvd.** Hunter *v.* A.-G., [1899] A. C. 309. **Consd.** *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Refd.** Williams *v.* Kershaw (1835), 5 Cl. & Fin. 111, n.; Briggs *v.* Penny (1849), 3 De G. & Sm. 525.

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the manner best calculated by him to advance the principles of that church. N. assigned the whole fund to the trustees of the church:—*Held:* a good bequest.—*Re* JOHNSON, CHAMBERS *v.* JOHNSON (1903), 23 C. L. T. 189; 5 O. L. R. 459; 2 O. W. R. 289. —CAN.

j. *"To be applied by 'Bishop' in his discretion for such charitable purposes" as he should think fit—Valid.*]—COPINGER *v.* CREHANE (1877), 11 I. R. Eq. 429.—IR.

k. *Works of charity "such as masses for the repose of my soul & whatever else they may judge most charitable"—Void.*]—BOYLE *v.* BOYLE (1877), I. R. 11 Eq. 433.—IR.

l. *For such charitable purpose as "Archbishop" should direct—Valid.*] —BLOUNT *v.* VIDITZ, [1895] 1 I. R. 42. —IR.

PART III. SECT. 2, SUB-SECT. 2.—B.

m. *"Charitable or benevolent" institutions or organisations of similar character—In particular place—As trustee thinks proper.*]—A. bequeathed money in trust to divide the same "amongst such of charitable or benevolent institutions or organisations of a similar character in V. as the trustee might in uncontrolled discretion think proper":—*Held:* a valid charitable gift, & not void for uncertainty.—MAULE *v.* A.-G. (1894), 20 V. L. R. 314.—AUS.

n. *"Church or convent purposes or for any other purposes"—Trustee in his discretion "may think best."*]—A. devised real estate to her exor., in trust to sell & expend the proceeds in & towards "church or convent purposes at C., or for any other purpose that in his discretion he may think best":—*Held:* (1) the other purposes were not necessarily charitable; (2) there being in the will nothing to guide the ct. in apportioning the gift, the whole gift was void for indefiniteness.—METCALFE *v.* O'KENNEDY (1904), 4 S. R. N. S. W. 175; 1 C. L. R. 421. —AUS.

o. *"Charitable, benevolent or philanthropic institutions"—As trustees should think fit.*]—A. gave funds in trust to apply them, either wholly or as to such part or parts of them as the trustees should think fit, between such "charitable, benevolent or philanthropic institutions" & such persons "to whom a gift would be an assistance & benefit," & such of the "poor, needy & suffering" & such "persons in straitened circumstances" as the trustees should think deserving of assistance:—*Held:* void for uncertainty, inasmuch as the trustees had

721. —— "As my trustee thinks proper"—Void.]—A bequest to be "applied for such charitable or public purpose as my trustee thinks proper" is too vague & uncertain for any ct. in England or Scotland to administer as a charitable gift.—BLAIR *v.* DUNCAN, [1902] A. C. 37; 71 L. J. P. C. 22; 86 L. T. 157; 50 W. R. 369; 18 T. L. R. 194, H. L.

Annotations :—**Folld.** Langham *v.* Peterson (1903), 87 L. T. 744. **Consd.** Grimond *v.* Grimond, [1905] A. C. 603; *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184. **Folld.** *Re* Da Costa, Clarke *v.* Church of England Collegiate School of St. Peter, [1912] 1 Ch. 337. **Distd.** *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Appld.** Houston *v.* Burns, [1918] A. C. 337. **Refd.** *Re* Best, Jarvis *v.* Birmingham Corpn. (1904), 73 L. J. Ch. 808; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400; *Re* Bennett, Gibson *v.* A.-G. (1920), 122 L. T. 578.

722. "Such persons or person & for such purposes"—"As Governor of South Australia shall direct"—Void.]—Testator, who was domiciled in England, devised all his real estate at A. to trustees upon trust for his sister for life, & after her death to pay the income to certain persons for their respective lives, & on the death of the survivor to convey the real estate to the council of the P. school, with a proviso that the council should publish annually an account of payments & receipts in respect of the property so devised, & in case of default for six months in publishing such accounts the disposition in favour of the school should thenceforth cease & go over & enure for the sole benefit of such persons or person & for such public purposes as the Governor of South Australia should in writing direct:—*Held:* (1) the proviso was a common law condition subsequent which caused a forfeiture on default being made in publication of the accounts, & came within the rule against perpetuities, & was bad; (2) the gift over was not a good charitable gift, & was void for uncertainty; (3) the school was entitled to a "clean" conveyance of the land devised, free from the conditions or gift over.—*Re* DA COSTA, CLARKE *v.* CHURCH OF ENGLAND COLLEGIATE SCHOOL OF ST. PETER, [1912] 1 Ch. 337; 81 L. J. Ch. 293; 106 L. T. 458; 28 T. L. R. 189; 56 Sol. Jo. 240.

723. "Relief of domestic distress, assisting indigent but deserving individuals or encouraging undertakings of general utility"—In such mode & proportions as discretion of trustees might suggest—Void.]—KENDALL *v.* GRANGER (1842). 5 Beav. 300; 11 L. J. Ch. 405; 6 Jur. 919; 49 E. R. 593.

Annotations :—**Distd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484. **Apprvd.** *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451. **Consd.** *Re* Sidney, Hingeston *v.* Sidney, [1903] 1 Ch. 488. **Distd.** *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** Hunter *v.* A.-G., [1899] A. C. 309.

724. "Charity or works of public utility"—At option of master & court of assistants of company—Void.]—Testator bequeathed to the C. co. and the A. co. the sum of £5000 each, to be invested in such securities as the master & ct. of assistants of the cos. might select, the revenue to be expended at the option of the master & ct., as to two thirds in "charity or works of public utility," & as to the remaining one third for "the benefit or hospitality of the respective cos.":—*Held:* (1) "or" was used disjunctively & the whole of the two thirds might be applied for purposes which were not charitable, & the gift failed as to two thirds; (2) the gift of one third was a gift of income for the absolute benefit of the cos. & they were absolutely entitled to one third.—LANGHAM *v.* PETERSON (1903), 87 L. T. 744; 67 J. P. 75; 19 T. L. R. 157.

725. "Pious & charitable purposes or otherwise" for benefit of named persons—At the discretion of trustees—Personal trust—Void as to sum not disposed of at death of surviving trustee.]—DOWN *v.* WORRALL (1833), 1 My. & K. 561; 39 E. R. 793.

Annotations :—**Consd.** Cowper *v.* Mantell (1856), 22 Beav. 231. **Distd.** Salusbury *v.* Denton (1857), 3 K. & J. 529. **Refd.** Titley *v.* Wolstenholme (1844), 7 Beav. 425; Hunter *v.* A.-G. (1899), 80 L. T. 732.

726. "Charitable or other purposes"—"As my trustee shall think fit"—Void.]—ELLIS *v.* SELBY (1836), 1 My. & Cr. 286; 5 L. J. Ch. 214; 40 E. R. 384, L. C.

Annotations :—**Consd.** Buckle *v.* Bristow (1864), 5 New Rep. 7; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381. **Folld.** *Re* Jarman's Estate, Leavers *v.* Clayton (1878), 8 Ch. D. 584; *Re* Hewitt's Estate, Gateshead Corpn. *v.* Hudspeth (1883), 53 L. J. Ch. 132. **Refd.** Briggs *v.* Penny (1849), 3 De G. & Sm. 525; Lloyd Greame *v.* A.-G. (1893), 10 T. L. R. 66; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; *Re* Best, Jarvis *v.* Birmingham Corpn., [1904] 2 Ch. 354; A.-G. for New Zealand *v.* Brown, [1917] A. C. 393. **Mentd.** Dean *v.* Gibson (1867), L. R. 3 Eq. 713; King *v.* George (1876), 4 Ch. D. 435; *Re* Howell, *Re* Buckingham, Liggins *v.* Buckingham, [1914] 2 Ch. 173.

727. "Charitable or benevolent purposes"—"Trustees may agree upon"—Void.]—*Re* JARMAN'S ESTATE, LEAVERS *v.* CLAYTON (1878), 8 Ch. D. 584; 47 L. J. Ch. 675; 39 L. T. 89; 42 J. P. 662; 26 W. R. 907.

Annotations :—**Folld.** *Re* Riland's Estate, Phillips *v.* Robinson, [1881] W. N. 173. **Refd.** *Re* Hewitt's Estate, Gateshead Corpn. *v.* Hudspeth (1883), 53 L. J. Ch. 132; A.-G. for New Zealand *v.* Brown, [1917] A. C. 393; Bowman *v.* Secular Soc., [1917] A. C. 406.

728. —— "Trustees may in their discretion think proper"—Void.]—*Re* RILAND'S ESTATE, PHILLIPS *v.* ROBINSON, [1881] W. N. 173.

729. "Acts of hospitality or charity"—As mayor might think best—Void.]—*Re* HEWITT'S ESTATE, GATESHEAD CORPN. *v.* HUDSPETH (1883), 53 L. J. Ch. 132; 49 L. T. 587.

Annotation :—**Distd.** Langham *v.* Peterson (1903), 87 L. T. 744.

730. "Sick & poor or other utilitarian purposes"—As trustee might choose—Void.]—*Re* WOODGATE (1886), 2 T. L. R. 674.

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power to apply the funds wholly or in part at their discretion to any of the purposes mentioned, some of which were not charitable.—A.-G. FOR NEW SOUTH WALES *v.* ADAMS (1908), 7 C. L. R. 100.—**AUS.**

p. "*Charitable, religious, educational or sanitary institutions*"—"*As trustees see fit & deem advisable.*"]—A. bequeathed residuary estate in trust to use & employ the same & the income therefrom "for the benefit, advantage, assistance, or the founding of such charitable, religious, educational or sanitary institutions," as the trustees might from time to time see fit & deem advisable:—*Held:* (1) the words "charitable," "religious," "educational" & "sanitary" were to be read disjunctively; (2) the bequest was not void for uncertainty.—*Re* MCCLELLAN'S WILL, ROBINSON *v.* MCCLELLAN (1919), 46 N. B. R. 161.—**CAN.**

q. *Any charitable or religious purpose he might please whether public or private, permanent or temporary subscription—Valid.*]—*Re* SINCLAIR'S TRUST (1884), 13 L. R. Ir. 150.—**IR.**

r. "*Charitable or religious purposes*"—*As trustees think fit.*]—By his will a testator devised & bequeathed the property upon trust to apply the proceeds thereof for the use of the Protestant Orphan Society of C., or for or towards the relief & benefit of such poor & necessitous Protestant widows & widowers resident in C., or to both of such objects or purposes, or to such other merely & purely "charitable or religious" purpose or purposes for the benefit of or advantage of members of the Church of I., or other Protestant denomination within the said county of C., in such shares & proportions, & in such manner as my said trustees "shall in their uncontrollable discretion think fit":—*Held:* (1) the testator in the words "charitable or religious" had not shown an intention to enable the trustee to apply the gift to purposes religious but not charitable; (2) the gift was a valid charitable gift.—*Re* SALTER, REA *v.* CROZIER, [1911] 1 I. R. 289; 45 I. L. T. 174.—**IR.**

s. —— ——.]—A. devised the residue of her property to N. upon trust, to pay to B., for a period of twenty-one years from the date of testatrix's death, an annuity, to be applied by B., for such religious or charitable purposes "as he should

Sect. 2.—Requisites of creation: Sub-sect. 2, B. & C.]

731. "Some one or more purposes, charitable, philanthropic or —— "—To be named by testator's daughter — Void.] — Testator bequeathed a sum of money to be appropriated "for some one or more purposes, charitable, philanthropic, or " —*Held:* the gift was not bad merely by reason of the blank; the money must be treated as applicable for charitable or philanthropic purposes only; but a bequest for charitable or philanthropic purposes was not a good charitable bequest.—*Re* MACDUFF, MACDUFF *v.* MACDUFF, [1896] 2 Ch. 451; 65 L. J. Ch. 700; 74 L. T. 706; 45 W. R. 154; 12 T. L. R. 452; 40 Sol. Jo. 651, C. A.

Annotations:—**Consd.** Hunter *v.* A.-G., [1899] A. C. 309; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Distd.** *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100. **Refd.** *Re* Good, Harington *v.* Watts (1905), 74 L. J. Ch. 512; *Re* Sidney, Hingeston *v.* Sidney, [1908] 1 Ch. 488; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113.

732. Named institution "or to any other religious institution or purposes"—As trustees should think proper — Valid.] — WILKINSON *v.* LINDGREN (1870), 5 Ch. App. 570; 39 L. J. Ch. 722; 23 L. T. 375; 18 W. R. 961, L. C.

Annotation:—**Consd.** *Re* White, White *v.* White, [1893] 2 Ch. 41.

733. Named institution "or some one or more kindred institutions"—Valid.]—Testator gave to trustees a fund to be called the "D. Charitable Trust," & directed the trustees to pay one tenth of the income thereof to the P. Society "or some one or more kindred institutions" having certain specified objects & to divide the remainder of the income between such of the charitable institutions in L. or the neighbourhood as they might select, & in such proportions as they might deem fit:—*Held:* (1) the gift of the one tenth was alternative & not substitutional; (2) it was a good charitable gift to one or more institutions of which the society named was a type; (3) the trustees had no discretion as to what institutions were to benefit under the gift of the one tenth & a scheme was directed to be settled.—*Re* DELMAR CHARITABLE TRUST, [1897] 2 Ch. 163; 66 L. J. Ch. 555; 76 L. T. 594; 45 W. R. 630; 13 T. L. R. 422; 41 Sol. Jo. 543.

734. "Charitable or religious institutions & societies"—As trustees might select—Void.]—Testator directed his trustees to divide a portion of the residue of his estate to & among such "charitable or religious institutions & societies" as they might select:—*Held:* the bequest was void for uncertainty.—GRIMOND *v.* GRIMOND, [1905] A. C. 124; 74 L. J. P. C. 35; 92 L. T. 477; 21 T. L. R. 323, H. L.

Annotations:—**Consd.** *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Distd.** *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184. **Foll.** *Re* Da Costa, Clarke *v.* Church of England Collegiate School of St. Peter, [1912] 1 Ch. 337. **Consd.** Houston *v.* Burns, [1918] A. C. 337.

735. "Charitable, religious or other societies," etc., in connection with the Roman Catholic faith in England"—As the Archbishop of W. thinks fit—Void.]—Testator gave his residuary personal & real estate to trustees & the proceeds thereof in trust for the Archbishop of W. for the time being, to be distributed & given by him between "such charitable religious or other societies institutions persons or objects in connection with the Roman Catholic faith in England as he shall in his absolute discretion think fit":—*Held:* (1) the mere fact that the archbishop was the trustee to distribute that the fund was not sufficient to show that all the purposes of testator were charitable in the view of the law; (2) by the express terms of the will, & notwithstanding the words "in connection with the Roman Catholic faith," it was competent for the trustee to apply the fund to purposes which were neither charitable nor religious, & that such purposes were not sufficiently described by testator for the ct. to attach any trust upon them, & the gift of residue was not a good charitable gift, but was void for uncertainty.—*Re* DAVIDSON, MINTY *v.* BOURNE, [1909] 1 Ch. 567; 78 L. J. Ch. 437; 99 L. T. 222; 24 T. L. R. 760; 52 Sol. Jo. 622, C. A.

Annotations:—*As to* (2) **Distd.** *Re* Rees, Jones *v.* Evans, [1920] 2 Ch. 59. *Generally.* **Refd.** Dunne *v.* Byrne, [1912] A. C. 407.

736. "Charitable or emigration uses"—As trustees shall think fit—Void.]—*Re* SIDNEY, HINGESTON *v.* SIDNEY, No. 215, *ante*.

737. "Purposes civil or religious"—As subscribers or a society should appoint—Void.]—Under the trusts of a deed relating to a school at L. the school premises & certain funds were settled upon educational trusts under the control of the Society of Friends, with an ultimate trust that, in case the subscribers to the school, or the Society of Friends assembling at L., determined that the school should be discontinued, the trustees should assure the trust estates & funds to such persons & "for such purposes, civil or religious," as the subscribers, or Friends assembling at L., should appoint. The deed also provided that the trustees should be members of the Society of Friends. At a duly constituted meeting of the Society of Friends & subscribers of the school a resolution was passed that the school should be discontinued, & the trust property be held for the general purposes of the Society of Friends assembling at L. There was evidence that the Society of Friends was a religious body, formed for

think fit":—*Held:* the bequest of the annuity to B. was a valid charitable gift.—RICKERBY *v.* NICHOLSON, [1912] 1 I. R. 343.—**IR.**

t. "*Charitable institutions or deserving agencies*"—*As trustees may select.*]—A. directed his trustees to divide the residue of his estate among "such charitable institutions or deserving agencies in A. & S. as they may select":—*Held:* the bequest was void from uncertainty, in respect that the description "deserving agencies" fell to be read separately from "charitable institutions."—SYMMERS' TRUSTEES *v.* SYMMERS, [1918] S. C. 337.—**SCOT.**

a. *Such charitable institutions or gifts—As trustees judge proper—Valid.*]—KELLAND *v.* DOUGLAS (1863), 2 Macph. (Ct. of Sess.) 150.—**SCOT.**

b. *Charitable, benevolent or religious—At the discretion of trustees.*]—A directed that the residue of her estate should be applied by her trustees "at their discretion from time to time towards such charitable, benevolent, or religious objects or purposes within the city of A. as they themselves shall institute or select":—*Held:* void from uncertainty.—SHAW'S TRUSTEES *v.* ESSON'S TRUSTEES (1905), 8 F. (Ct. of Sess.) 52.—**SCOT.**

c. *Benevolent or charitable—As trustees think proper.*]—A. directed her trustees to apportion & pay over the proceeds of the residue of her estate "amongst such societies or institutions of a benevolent or charitable nature in such proportions as they shall in their own discretion think proper":—*Held:* not void from uncertainty.—HAY'S TRUSTEES *v.* BAILLIE, [1905] S. C. 1224.—**SCOT.**

d. "*Such charities or benevolent or beneficent institutions*"—*As trustees think proper.*] A. directed her trustees to divide the residue of her estate "among such charities or benevolent or beneficent institutions" as they in their sole discretion should think proper:—*Held:* not void from uncertainty.—PATERSON'S TRUSTEES *v.* PATERSON, [1909] S. C. 485.—**SCOT.**

e. "*Charitable or philanthropic institutions*"—*As trustees may select.*]—A. directed that the residue of his estate should be paid "to such charitable or philanthropic institutions, one or more, in G. or the West of S. as my trustees may select as in their opinion the most deserving":—*Held:* not void from uncertainty.—MACKINNON'S TRUSTEES *v.* MACKINNON, [1909] S. C. 1041.—**SCOT.**

f. "*Religious, charitable or educational.*"]—By a codicil to his will A. directed his heirs to dispose of the residue of his estate "for such purposes of a religious, charitable or educational character or partly among my own relatives as may be specified

the furtherance of religious life, & any civil purpose was subordinated to the religious element :—*Held :* (1) the trust on the discontinuance of the school failed as a charitable trust & was void for uncertainty ; (2) the trust premises must be held upon trust for educational purposes, for which a scheme must be settled by the district registrar.—*Re* FRIENDS' FREE SCHOOL, CLIBBORN *v.* O'BRIEN, [1909] 2 Ch. 675 ; 79 L. J. Ch. 5 ; 101 L. T. 204 ; 25 T. L. R. 782 ; 53 Sol. Jo. 733.

738. "To encourage artistic pursuits or assist needy students in art"—As executors with assistance of other persons think desirable—Void.]—Testator by his will gave the residue of his estate in the following terms : "I desire that my exors., with the assistance of Mr. H., Mr. —, the art master, & any persons they may call in to assist them, shall expend the residue in any manner they may think desirable to encourage artistic pursuits or assist needy students in art, &, finally, if any differences of opinion arise, then the decision of my exors. shall be final & binding" :—*Held :* it was not a good charitable gift.—*Re* OGDEN, TAYLOR *v.* SHARP (1909), 25 T. L. R. 382, C. A.

739. "Public, benevolent or charitable purposes"—Limited to particular locality—As trustees think proper—Void.]—A bequest for public purposes to be selected by a third party, though limited to a particular locality, is void for uncertainty.

Testatrix by her trust disposition & settlement directed her trustees to apply the residue of her estate "for such public, benevolent or charitable purposes" in connection with a particular parish as they should think proper :—*Held :* the words describing the purposes were to be read disjunctively, & for this purpose the punctuation of the clause might be regarded, & the bequest was void for uncertainty.—HOUSTON *v.* BURNS, [1918] A. C. 337 ; 87 L. J. P. C. 99 ; 118 L. T. 462 ; 34 T. L. R. 219, H. L.

Annotations :—**Expld.** *Re* Bennett, Gibson *v.* A.-G., [1920] 1 Ch. 305. **Mentd.** *Re* Hughes, Hughes *v.* Footner, [1921] 2 Ch. 208.

740. "Religious, charitable & philanthropic objects"—As named persons should appoint—Void.]—Testator directed that the trustees of his will should out of specified moneys pay 10 per cent. to "such religious, charitable & philanthropic objects" as three named persons should jointly appoint. These three persons all survived testator, but one of them died without any appointment having been made :—*Held :* (1) the death of one of the appointors without any appointment having been made would not prevent a selection of charitable objects being made ; (2) the word "and" must be read as "or," & as one or more of the selected objects might be merely philanthropic not necessarily charitable, no general charitable intention was shown, & the gift in favour of charity failed.—*Re* EADES, EADES *v.* EADES, [1920] 2 Ch. 353 ; 89 L. J. Ch. 604 ; 123 L. T. 777.

Annotation :—*Generally*, **Distd.** *Re* Willis, Shaw *v.* Willis (1920), 37 T. L. R. 43.

C. Gifts in which Meaning of "Charitable" is restricted.

741. "Charitable & pious uses"—Valid.]—A.-G. *v.* HERRICK (1772), Amb. 712 ; 27 E. R. 461, L. C.

Annotations :—**Refd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36 ; A.-G. *v.* Bristol (1820), 2 Jac. & W. 294 ; Townsend *v.* Carus (1844), 13 L. J. Ch. 169.

742. "Charitable & benevolent"—As trustee should direct & think proper or determine—Valid.]—JEMMIT *v.* VERRIL (1826), Amb. 585, n. ; 27 E. R. 380.

Annotations :—**Dbtd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286. **Consd.** *Re* Best, Jarvis *v.* Birmingham Corpn., [1904] 2 Ch. 354. **Mentd.** A.-G. *v.* Caius College (1837), 2 Keen, 150.

743. —— —— ——.]—MILLER *v.* ROWAN (1837), 5 Cl. & Fin. 99 ; 7 E. R. 341, H. L.

744. —— —— ——.]—A bequest of residue upon trust for "such charitable & benevolent institutions" as the trustees shall in their discretion determine is not void for uncertainty, but is a good charitable gift.—*Re* BEST, JARVIS *v.* BIRMINGHAM CORPN., [1904] 2 Ch. 354 ; 73 L. J. Ch. 808 ; 53 W. R. 21 ; 48 Sol. Jo. 620.

Annotations :—**Distd.** *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353. **Apprvd.** Caldwell *v.* Caldwell (1921), 37 T. L. R. 953.

745. —— —— ——.]—CALDWELL *v.* CALDWELL (1921), 37 T. L. R. 953 ; 65 Sol. Jo. 765, H. L.

746. "In charity either to private individuals or public institutions"—At discretion of legatees—Valid.]—HORDE *v.* SUFFOLK (EARL) (1833), 2 My. & K. 59 ; 39 E. R. 866.

Annotations :—**Consd.** Williams *v.* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84. **Refd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286 ; *Re* Lea, Lea *v.* Cooke (1887), 34 Ch. D. 528.

747. "Benevolent, charitable & religious purposes"—As trustees shall think beneficial—Void.]—WILLIAMS *v.* WILLIAMS, WILLIAMS *v.* KERSHAW (1835), 5 Cl. & Fin. 111, n. ; 1 Keen, 274, n. ; 5 L. J. Ch. 84 ; 7 E. R. 346.

Annotations :—**Consd.** Baker *v.* Sutton (1836), 1 Keen, 224. **Folld.** Ellis *v.* Selby (1836), 1 My. & Cr. 286. **Distd.** Mitford *v.* Reynolds (1842), 1 Ph. 185. **Consd.** Whicker *v.* Hume (1852), 1 De G. M. & G. 506. **Folld.** *Re* Jarman's Estate, Leavers *v.* Clayton (1878), 8 Ch. D. 584. **Consd.** A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933. **Folld.** *Re* Hewitt's Estate, Gateshead Corpn. *v.* Hudspeth (1883), 53 L. J. Ch. 132. **Distd.** *Re* Sutton, Stone *v.* A.-G. (1885), 28 Ch. D. 464 ; Lloyd Greame *v.* A.-G. (1893), 10 T. L. R.

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in any writing under the hand of my . . . wife" :—*Held :* the clause purporting to dispose of residue was void from uncertainty.—ARMOUR *v.* GLASGOW ROYAL INFIRMARY, [1909] S. C. 916.—SCOT.

g. "*Charitable institutions, persons, or objects*"—*As trustees think desirable.*]—A. left the residue of her estate on trust to distribute the same amongst such "charitable institutions, persons, or objects as they may think desirable, the time of distribution & the amount to be given, to be entirely in the discretion of my said trustees" :—*Held :* grammatical construction required the three words "institutions, persons, or objects" to be gratified by the adverb & adjective "such charitable" ; the interposition of the word "persons" did not render the clause void on the ground of uncertainty.—CAMERON'S TRUSTEES *v.* MACKENZIE, [1915] S. C. 313.—SCOT.

h. *Charitable purposes — As trustee might think proper.*]—A. directed his trustees to pay over residue of his estates to or for behoof of such charitable purposes as he might think proper to name in any writing which he might leave ; but failing such writings, then to such charitable institutions or societies existing for the benefit of women & children requiring aid or assistance. A. died without leaving any such writing :—*Held :* the bequest of residue was not void for uncertainty.—WORDIE'S TRUSTEES *v.* WORDIE, [1916] S. C. (H. L.) 126.—SCOT.

k. *Charitable purpose or educational scheme—As trustees deem fit.*]—A. directed his trustees to apply certain funds "for such other charitable purpose or educational scheme for the poor" as they might deem fit and proper :—*Held :* the direction was not void from uncertainty.—CHALMERS' TRUSTEES *v.* TURIFF SCHOOL BOARD, [1917] S. C. 676.—SCOT.

l. "*To distribute among such local charitable or benevolent institutions*"—*Trustees' absolute discretion of choice.*]—A. bequeathed his residuary personalty on trust "to distribute amongst local charitable or benevolent institutions, & directed his trustees to use their absolute discretion in their choice of local charitable or benevolent institutions & as to the sums to be paid to any of such institutions" :—*Held :* the gift was not void for uncertainty.—CLARKE *v.* A.-G. & PRITCHARD (1914), 33 N. Z. L. R. 963.—N.Z.

PART III. SECT. 2, SUB-SECT. 2.—C.

742 i. *Charitable & benevolent—As trustees should deem proper—Valid.*]—HILL *v.* BURNS (1826), 2 Wils. & S. 80.—SCOT.

747 i. *Benevolent & charitable—As trustees think proper—Valid.*]—MILLER *v.* ROWAN & MILLER (BLACK'S TRUSTEES) (1837), 2 Sh. & Macl. 866.—SCOT.

Sect. 2.—Requisites of creation: Sub-sect. 2, C.; sub-sect. 3, A. & B. (a) & (b).]

66. Apprvd. A.-G. for New Zealand *v.* Brown, [1917] A. C. 393. Consd. *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353. Refd. Nightingale *v.* Goulbourn (1847), 16 L. J. Ch. 270; Blair *v.* Duncan, [1902] A. C. 37. Mentd. A.-G. *v.* Southgate (1842), 12 L. J. Ch. 147; Fitch *v.* Weber (1848), 6 Hare, 145; A.-G. *v.* Lawes (1849), 8 Hare, 32; Robinson *v.* Geldard (1852), 3 Mac. & G. 735; Calvert *v.* Armitage (1863), 1 Hem. & M. 446; Cocks *v.* Manners (1871), 40 L. J. Ch. 640; Ashworth *v.* Munn (1886), 34 Ch. D. 391.

748. "Charitable, benevolent, religious & educational"—As trustees should select—"And" construed as "or"—Subsequent investment clause regarded—Void.]—Testator, domiciled in New Zealand, provided by his will, that a fund should be held in trust for such "charitable, benevolent, religious & educational institutions, societies, associations & objects" as his trustees should select. In an investment clause the will referred to "any institution, commercial, municipal, religious, charitable, educational or otherwise":—*Held:* (1) the gift must be construed as though the word "and" were "or," & having regard to the investment clause, it could not be read as though the word "charitable" governed each of the three following words; (2) the gift accordingly failed for uncertainty, a gift to "benevolent objects," whether made in England or New Zealand, not being a good charitable gift.—A.-G. FOR NEW ZEALAND *v.* BROWN, [1917] A. C. 393; 86 L. J. P. C. 132; 116 L. T. 624; 33 T. L. R. 291, P. C.

749. "Charitable purposes & bequests to friends & relations"—"As may be pointed out by wife"—Valid.]—CRICHTON *v.* GRIERSON (1828), 3 Bli. N. S. 424; 4 E. R. 1390, H. L.

Annotations:—Consd. Blair *v.* Duncan, [1902] A. C. 37. Refd. Miller *v.* Rowan (1837), 5 Cl. & Fin. 99; Houston *v.* Burns, [1918] A. C. 337. Mentd. Ewan *v.* Morgan (1858), 32 L. T. O. S. 19.

750. "Religious & charitable institutions & purposes"—As trustees shall deem fit & proper—Valid.]—BAKER *v.* SUTTON (1836), 1 Keen, 224; 5 L. J. Ch. 264; 48 E. R. 292.

Annotations:—Folld. Townsend *v.* Carus (1844), 3 Hare, 257. Consd. *Re* White, White *v.* White, [1893] 2 Ch. 41. Refd. Lloyd Greame *v.* A.-G. (1893), 10 T. L. R. 66; *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565; Dunne *v.* Byrne, [1912] A. C. 407.

751. "Charities & other public purposes"—"As lawfully may be in parish of T."—Valid.]—DOLAN *v.* MACDERMOT (1868), 3 Ch. App. 676; 17 W. R. 3, L. C.

Annotations:—Consd. A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933. Distd. *Re* Hewitt's Estate, Gateshead Corpn. *v.* Hudspeth (1883), 53 L. J. Ch. 132. Folld. *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. Consd. Houston *v.* Burns, [1918] A. C. 337. Consd. & Folld. *Re* Bennett, Gibson *v.* A.-G., [1920] 1 Ch. 305. Refd. Wrexham Corpn. *v.* Tamplin (1873), 28 L. T. 761; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212. Mentd. Cunnack *v.* Edwards (1896), 65 L. J. Ch. 801.

752. "Charitable needful & necessary uses"—As to corporation seemed meet—Charitable not equivalent to benevolent—Valid.]—A.-G. *v.* DARTMOUTH CORPN. (1883), 48 L. T. 933.

753. "Charitable & deserving objects"—Valid.]—*Re* SUTTON, STONE *v.* A.-G. (1885), 28 Ch. D. 464; 54 L. J. Ch. 613; 33 W. R. 519.

Annotations:—Consd. Lloyd Greame *v.* A.-G. (1893), 10 T. L. R. 66. Distd. *Re* Darling, Farquhar *v.* Darling, [1896] 1 Ch. 50. Folld. *Re* Best, Jarvis *v.* Birmingham Corpn., [1904] 2 Ch. 354. Refd. *Re* Douglas, Obert *v.* Barrow (1887), 35 Ch. D. 472; Hunter *v.* A.-G., [1899] A. C. 309.

754. "Charities, societies & institutions"—As named person should nominate—Valid.]—*Re* DOUGLAS, OBERT *v.* BARROW (1887), 35 Ch. D. 472; 56 L. J. Ch. 913; 56 L. T. 786; 35 W. R. 740; 3 T. L. R. 589, C. A.

Annotations:—Distd. Hunter *v.* A.-G., [1899] A. C. 309. Consd. *Re* Freeman, Shilton *v.* Freeman (1908), 98 L. T. 429. Refd. *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501; *Re* Piercy, Whitwham *v.* Piercy (1898), 67 L. J. Ch. 297; *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44.

755. "Charitable institutions & schemes"—"Already constituted or hereafter to be constituted"—As trustees deem proper—Valid.]—DICK *v.* AUDSLEY, No. 715, *ante*.

SUB-SECT. 3.—AMOUNT OF GIFT MUST BE ASCERTAINABLE.

A. In General.

756. General rule—If amount unascertainable—Gift fails.]—PEEK *v.* PEEK (1869), 17 W. R. 1059.

757. Direction that fund should accumulate till it should amount to . . . sterling—To be applied to maintenance of . . . boys—Void.]—EWEN *v.* BANNERMAN (1830), 2 Dow. & Cl. 74; 6 E. R. 657, H. L.

758. Gift of sum "not exceeding" named sum—Construed as valid gift of named sum.]—COPE *v.* WILMOT (1772), Amb. 704; cited in 1 Coll. 396, n.; 27 E. R. 457.

Annotations:—Consd. Young *v.* Young (1837), 1 Jur. 840; *Re* Sanderson's Trust (1857), 3 K. & J. 497. Apprvd. Furley *v.* Hyder (1872), 41 L. J. Ch. 583. Refd. *Re* Wintle, Tucker *v.* Wintle, [1896] 2 Ch. 711. Mentd. Borton *v.* Dunbar (1860), 2 De G. F. & J. 338.

759. ——— ———.]—THOMPSON *v.* THOMPSON (1844), 1 Coll. 381; 13 L. J. Ch. 455; 3 L. T. O. S. 452; 8 Jur. 839; 63 E. R. 464.

Annotations:—Mentd. Myers *v.* Perigal (1849), 16 Sim. 533; Marsh *v.* Means (1857), 3 Jur. N. S. 790; *Re* Sanderson's Trust (1857), 3 K. & J. 497; Thomson *v.* Shakespeare (1859), John. 612; Sinnett *v.* Herbert (1872), 7 Ch. App. 232; Bowman *v.* Secular Soc., [1917] A. C. 406.

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750 i. *Religious, charitable & useful institutions—In particular place—As trustees think proper.]*—A. directed his trustees to distribute a fund "between such one or more, to the exclusion of any other or others, of the various religious, charitable, & useful institutions in V., & in such shares & proportions as the trustees shall think proper":—*Held:* valid.—WILSON *v.* A.-G. (1882), 8 V. L. R. 215.—AUS.

750 ii. *Religious & charitable—In particular place—As trustees think proper.]*—A. directed his trustees to "pay & divide" £250 "among such religious & charitable institutions in G. & neighbourhood as they might select & in such proportions as they might think proper":—*Held:* valid.—BOLTON (M'PHEE'S TRUSTEE) *v.* M'PHEE, [1912] S. C. 75.—SCOT.

m. Educational, charitable & religious purposes—As trustee shall select.]—A. directed his trustee to divide his residuary estate "amongst such educational, charitable & religious purposes within A. as he should select to be the recipients thereof":—*Held:* the bequest was void from uncertainty.—M'CONOCHIE'S TRUSTEES *v.* M'CONOCHIE, [1909] S. C. 1046.—SCOT.

n. "Charitable & philanthropic purposes"—As trustees may direct.]—A. gave his residuary estate "to the W. L. Monthly Meeting of Friends, to be applied in charitable & philanthropic purposes" as Monthly Meeting might direct:—*Held:* the gift was not void for uncertainty.—*Re* HUYCK (1905), 25 C. L. T. 358; 6 O. W. R. 112; 10 O. L. R. 480.—CAN.

PART III. SECT. 2, SUB-SECT. 3.—A.

756 i. *General rule—If amount unascertainable gift fails.]*—A. provided for a bequest of money to debts, to be paid yearly or at such times as his exor. should think advisable, but omitted to fill in the amount:—*Held:* the gift was void.—BREWSTER *v.* FOREIGN MISSION BOARD OF BAPTIST CONVENTION OF MARITIME PROVINCES (1900), 21 C. L. T. 131; 2 N. B. Eq. Rep. 172.—CAN.

o. Direction to apply so much of annual proceeds of residuary estates as trustees deem expedient—Objects certain—Valid.]—A. provided "as regards the residue of my estate . . . I appoint my trustees . . . to apply the interest or annual proceeds thereof or so much of said interest or annual proceeds thereof as they may deem expedient towards such charitable purposes in the city of A. as my trustees shall think fit":—*Held:* the existence of an uncertainty as to the amount of the annual proceeds or interest which the trustees might in fact apply to the charitable purposes did not render the bequest void from uncertainty, there being no uncertainty as regarded the purposes or objects of the testatrix's bounty.—MACDUFF *v.* SPENCE'S TRUSTEES, [1909] S. C. 178.—SCOT.

760. Gift of sum of £50 "more or less"—Subsequent explanatory directions in codicil—Valid.]—THOMPSON *v.* THOMPSON (1844), 1 Coll. 381; 13 L. J. Ch. 455; 3 L. T. O. S. 452; 8 Jur. 839; 63 E. R. 464.

Annotations :—**Mentd.** Myers *v.* Perigal (1849), 16 Sim. 533; Marsh *v.* Means (1857), 3 Jur. N. S. 790; *Re* Sanderson's Trust (1857), 3 K. & J. 497; Thomson *v.* Shakespeare (1859), John. 612; Sinnett *v.* Herbert (1872), 7 Ch. App. 232; Bowman *v.* Secular Soc., [1917] A. C. 406.

761. Bequest to minister of B. of "the interest of . . ."—Bequest to A. of annuity of £15 & after his death to the minister of B. "the said sum of . . . in addition to the two sums before mentioned"—First gift void—Second gift valid.] — HARTSHORNE *v.* NICHOLSON (1858), 26 Beav. 58; 27 L. J. Ch. 810; 22 J. P. 671; 4 Jur. N. S. 864; 53 E. R. 818.

762. "Wish to establish a hospital for one hundred boys"—Valid gift of necessary sum to carry out testator's object.]—EWAN *v.* MORGAN (1858), 32 L. T. O. S. 19; 22 J. P. 607; 6 W. R. 556; *sub nom.* DUNDEE MAGISTRATES *v.* MORRIS, 3 Macq. 134, H. L.

Annotations :—**Consd.** Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521; *Re* Birkett (1878), 9 Ch. D. 576; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Refd.** Blair *v.* Duncan, [1902] A. C. 37. **Mentd.** Income Tax Comrs. for special purposes *v.* Pemsel, [1891] A. C. 531.

B. Gift of Fund after Invalid Gift.

(*a*) *First Gift within Mortmain Acts and Uncertain.*

Secondary gift tainted with illegality of first gift.]—*See* Sub-sect. 3, B (*b*), Sect. 3, sub-sect. 2, A., *post*.

763. Gift to build or purchase chapel—Surplus for support of minister & such charitable uses as trustees should think proper—Whole gift void.]—CHAPMAN *v.* BROWN (1801), 6 Ves. 404; 31 E. R. 1115.

Annotations :—**Folld.** A.-G. *v.* Hinxman (1820), 2 Jac. & W. 270; Cherry *v.* Mott (1836), 1 My. & Cr. 123. **Distd.** Mitford *v.* Reynolds (1842), 1 Ph. 185. **Consd.** Mitford *v.* Reynolds (1848), 16 Sim. 105; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Carter *v.* Green (1857), 3 K. & J. 591; Cramp *v.* Playfoot (1858), 4 K. & J. 479; Dundee Magistrates *v.* Morris (1858), 3 Macq. 134. **Folld.** Fowler *v.* Fowler (1864), 33 Beav. 616. **Consd.** Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521; Hunter *v.* Bullock (1872), L. R. 14 Eq. 45. **Distd.** Dawson *v.* Small (1874), L. R. 18 Eq. 114. **N.F.** *Re* Williams (1877), 5 Ch. D. 735. **Consd.** *Re* Birkett (1878), 9 Ch. D. 576. **Expld. & Folld.** *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Refd.** Giblett *v.* Hobson (1834), 5 Sim. 651; Champney *v.* Davy (1879), 11 Ch. D. 949. **Mentd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74; Gillam *v.* Taylor (1873), L. R. 16 Eq. 581.

764. Gift to erect almshouses—Residue to support inmates—Whole gift void.]—LIMBREY *v.* GURR (1819), 6 Madd. 151; 56 E. R. 1049.

Annotations :—**Folld.** Fowler *v.* Fowler (1864), 33 Beav. 616. **Distd.** Dawson *v.* Small (1874), L. R. 18 Eq. 114. **Refd.** Fisher *v.* Brierly (1860), 1 De G. F. & J. 643.

765. —— Residue to deserving poor—Whole gift void.]—Testator, by deed-poll, duly enrolled in Ch., conveyed to trustees a piece of land & cottages for the purpose of a hospital for ten aged or infirm poor persons, preference being given to particular parishes. By his will, made in 1882, he charged his copyhold & freehold estates with his debts & funeral expenses & legacies, & gave the residue of his personal property to the trustees of the deed-poll upon trust to build a hospital on the site of the premises conveyed by the deed-poll, & to employ the income of the remainder in insurance & repairs, & paying £18 or more to each of the ten poor inmates, & the ultimate balance, if any, to aged & deserving poor of either sex as out-of-door pensioners. Testator died within twelve months from the execution of the deed-poll:—*Held*: (1) the deed-poll became void under Charitable Uses Act, 1735 (9 Geo. 2, c. 36); (2) the ultimate gift of the balance of the dividends failed for uncertainty; (3) the paramount intention of testator was to found a hospital, & benefit ten aged or infirm poor people as inmates, & the bequest was one which could not be carried out independently of the hospital. The gift to the hospital wholly failed, & could not be carried out *cy-près*; (4) the question whether the primary gift could be applied according to the doctrine of *cy-près* or not could not be decided in the absence of the A.-G.—*Re* TAYLOR, MARTIN *v.* FREEMAN (1888), 58 L. T. 538; 4 T. L. R. 302.

Annotation :—*As to* (1) **Consd.** Churcher *v.* Martin (1889), 42 Ch. D. 312.

766. Bequest to school connected with devise of house—Residue to the poor—Whole gift void.]—A.-G. *v.* HINXMAN (1820), 2 Jac. & W. 270; 37 E. R. 630.

Annotations :—**Folld.** Cherry *v.* Mott (1836), 1 My. & Cr. 123; Rudall *v.* Warren (1857), 3 Jur. N. S. 822; Fowler *v.* Fowler (1864), 33 Beav. 616. **Refd.** Mitford *v.* Reynolds (1842), 1 Ph. 185; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Ewan *v.* Morris (1858), 6 W. R. 556; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Mentd.** Edwards *v.* Hall (1853), 11 Hare, 1.

767. Gift to erect schoolroom—Residue for repairs—Whole gift void.]—CRAMP *v.* PLAYFOOT (1858), 4 K. & J. 479; 70 E. R. 200.

Annotations :—**Folld.** Fowler *v.* Fowler (1864), 33 Beav. 616. **N.F.** *Re* Williams (1877), 5 Ch. D. 735.

768. Gift to construct well—Surplus to charity—Whole gift void.]—KIRKMANN *v.* LEWIS (1869), 38 L. J. Ch. 570; 21 L. T. 191; 17 W. R. 907.

769. Gift to "keep in repair" tomb as should be "necessary or required"—Amount of such gift is capable of being ascertained.]—FISK *v.* A.-G. (1867), L. R. 4 Eq. 521; 17 L. T. 27; 32 J. P. 52; 15 W. R. 1200.

Annotations :—**Consd.** Hunter *v.* Bullock (1872), 26 L. T. 349. **Folld.** Dawson *v.* Small (1874), L. R. 18 Eq. 114. **Apld.** *Re* Williams (1877), 5 Ch. D. 735. **Consd.** *Re* Birkett (1878), 9 Ch. D. 576; Champney *v.* Davy (1879), 11 Ch. D. 949. **Folld.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Distd.** *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Folld.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715. **Refd.** *Re* Maguire (1870), L. R. 9 Eq. 632; *Re* Ovey, Broadbent *v.* Barrow (1885), 29 Ch. D. 560; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236. **Mentd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

Gifts to repair tombs generally, *see* Sub-sect. 3, B. (*b*), *post*.

Apportionment of gifts for several objects some of which are illegal.]—*See* Sect. 3, sub-sect. 2, A., *post*.

(*b*) *First Gift to erect or repair Private Tomb.*

770. Gift of residue or surplus for charitable purposes—Valid—Cost of first gift ascertainable.]—MITFORD *v.* REYNOLDS (1842), 1 Ph. 185; 12 L. J. Ch. 40; 7 Jur. 3; 41 E. R. 602, L. C.; *subsequent proceedings* (1846), 1 Ph. 706, L. C.; (1848), 16 Sim. 105.

Annotations :—**Consd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484; Trimmer *v.* Danby (1856), 25 L. J. Ch. 424; Dundee Magistrates *v.* Morris (1858), 3 Macq. 134; Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521. **Refd.** *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Mentd.** Gaskell *v.* Holmes (1844), 3 Hare, 438; Say *v.* Creed (1844), 3 Hare, 455; Nightingale *v.* Goulburn (1848), 2 Ph. 594; Fowler *v.* Fowler (1864), 33 Beav. 616.

771. —— —— Whole gift divided equally between different objects—First gift falls into residuary estate.] — HOARE *v.* OSBORNE (1866), L. R. 1 Eq. 585; 35 L. J. Ch. 345; 14 L. T. 9; 30 J. P. 309; 12 Jur. N. S. 243; 14 W. R. 383.

Annotations :—**Consd.** Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96. **Refd.** Champney *v.* Davy (1879), 11 Ch. D. 949; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Mentd.** *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252.

Compare No. 779, *post*.

Sect. 2.—Requisites of creation: Sub-sect. 3, *B.* (*b*). *Sect.* 3: *Sub-sects.* 1 *& 2, A., B. & C.*]

772. —— Valid gift of whole fund—Distinct bequest of corpus of fund for valid charitable purposes.]—FISK *v.* A.-G. (1867), L. R. 4 Eq. 521; 17 L. T. 27; 32 J. P. 52; 15 W. R. 1200.

Annotations:—**Consd.** *Re* Maguire (1870), L. R. 9 Eq. 632. **Foll.** Hunter *v.* Bullock (1872), 26 L. T. 349. **Consd.** Dawson *v.* Small (1874), L. R. 18 Eq. 114. **Consd. & Foll.** *Re* Williams (1877), 5 Ch. D. 735. **Consd.** *Re* Birkett (1878), 9 Ch. D. 576; Champney *v.* Davy (1879), 11 Ch. D. 949; *Re* Ovey, Broadbent *v.* Barrow (1885), 29 Ch. D. 560. **Foll.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **N.F** *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Foll.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715. **Consd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Retd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

773. —— —— Trust as to repair of tomb only honorary.]—HUNTER *v.* BULLOCK (1872), L. R. 14 Eq. 45; 41 L. J. Ch. 637; 26 L. T. 349; 20 W. R. 460.

Annotations:—**Retd.** *Re* Williams (1877), 5 Ch. D. 735; *Re* Birkett (1878), 9 Ch. D. 576; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538.

774. —— —— ——.]—DAWSON *v.* SMALL (1874), L. R. 18 Eq. 114; 43 L. J. Ch. 406; 30 L. T. 252; 38 J. P. 646; 22 W. R. 514; *subsequent proceedings*, 9 Ch. App. 651, L. JJ.

Annotations:—**Consd.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715. **Retd.** *Re* Williams (1877), 5 Ch. D. 735; *Re* Birkett (1878), 9 Ch. D. 576; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538.

775. —— ——.]—*Re* WILLIAMS (1877), 5 Ch. D. 735; 47 L. J. Ch. 92; 36 L. T. 939; 25 W. R. 689.

Annotations:—**Foll.** *Re* Birkett's Trusts (1878), 47 L. J. Ch. 846. **Retd.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538.

776. —— ——.]—*Re* BIRKETT (1878), 9 Ch. D. 576; 47 L. J. Ch. 846; 39 L. T. 418; 43 J. P. 111; 27 W. R. 164.

Annotations:—**N.F.** *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Foll.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715. **Retd.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187. **Mentd.** *Re* Gibbons' Will (1887), 36 Ch. D. 486; *Re* Parker's Will Trusts (1888), 58 L. J. Ch. 23.

777. —— ——.]—Testator by his will, dated in 1864, gave the sum of £1000 out of his personal estate to trustees, & directed that it should be invested in the names of the vicar & churchwardens of a certain church, upon trust in the first place out of the income to maintain yearly & keep in good repair & condition a tomb belonging to testator in the churchyard, & in the next place to divide & distribute the remainder among the poor recipients of certain almshouses:—*Held:* the gift to maintain the tomb being invalid, the whole income of the fund went to the vicar & churchwardens on behalf of the almshouses.—*Re* ROGERSON, BIRD *v.* LEE, [1901] 1 Ch. 715; 70 L. J. Ch. 444; 84 L. T. 200.

Annotation:—**Foll.** *Re* Barnett, Waring *v.* Painter Stainers' Co. (1908), 24 T. L. R. 788.

778. —— ——.]—*Re* CARTWRIGHT, HORNER *v.* HALLEY (1911), *Times* Feb. 4.

779. Gift of surplus for charitable & non-charitable objects—Valid gift of surplus for charitable object—Less ascertained amount required for non-charitable object—First gift falls into residuary estate.]—*Re* VAUGHAN, VAUGHAN *v.* THOMAS (1886), 33 Ch. D. 187; 55 L. T. 547; 51 J. P. 70; 35 W. R. 104; 2 T. L. R. 725.

Annotations:—**Foll.** *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715. **Consd.** *Re* Manser, A.-G. *v.* Lucas, [1905] 1 Ch. 68. **Retd.** *Re* Pardoe, McLaughlin *v.* A.-G., [1906] 2 Ch. 184.

Compare No. 771, *ante.*

Invalidity of gifts to erect & repair private tombs.]—*See* Part I., Sect. 6, sub-sect. 1, *ante.*

SECT. 3.—ASCERTAINMENT OF SUBJECT-MATTER OF TRUST.

SUB-SECT. 1.—IN GENERAL.

780. Ascertainment of intention.]—The rules prevailing for the construction of gifts to charitable uses are to be considered only as furnishing *indicia* of the donor's intention.—A.-G. *v.* BRISTOL CORPN. (1820), 2 Jac. & W. 294; 37 E. R. 640, L. C.; *revsg.* (1818), 3 Madd. 319.

Annotations:—**Consd.** A.-G. *v.* Ward (1829), 7 L. J. O. S. Ch. 114; A.-G. *v.* Skinners' Co. (1833), 5 Sim. 596; A.-G. *v.* Smithies (1833), Coop. *temp.* Brough. 5; Jack *v.* Burnett (1846), 12 Cl. & Fin. 812; A.-G. *v.* Merchant Venturers' Co. Bristol (1848), 17 L. J. Ch. 137; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310. **Retd.** A.-G. *v.* Catherine Hall, Cambridge (1820), Jac. 381; A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407; Mercers, Mystery of *v.* A.-G. (1828), 2 Bli. N. S. 165; A.-G. *v.* St. John's College, Cambridge (1834), Coop. *temp.* Brough. 394; A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11; A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395; A.-G. *v.* Boston Corpn. (1847), 1 De G. & Sm. 519; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1; A.-G. *v.* Sidney Sussex College (1869), 4 Ch. App. 722; Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512; A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Ludlow Corpn. *v.* Greenhouse (1827), 1 Bli. N. S. 17; A.-G. *v.* Brazen Nose College (1834), 8 Bli. N. S. 377; A.-G. *v.* Ironmongers' Co. (1840), 2 Beav. 313; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223; Hebbert *v.* Purchas (1871), L. R. 3 P. C. 605; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

781. Extrinsic evidence—Whether property held subject to trust—Old rent books & cash book—Admitted as evidence.]—BLUNDELL *v.* GLADSTONE (1852), 3 Mac. & G. 692; 19 L. T. O. S. 354; 42 E. R. 426, L. C.

782. —— Whether lands held wholly for charity—Or subject to rentcharge of fixed amount—Evidence admitted.]—ABERDEEN UNIVERSITY *v.* IRVINE (1868), L. R. 1 Sc. & Div. 289, H. L.

Annotation:—**Retd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

783. Grant of land in Ireland for specified objects—Bonus on sale received under Irish Land Act, 1903 (c. 37), ss. 47, 48.]—By deed of settlement, dated in Jan. 1868, T., who died domiciled in England in Nov. 1868, granted lands situate in Ireland to trustees upon trust to pay the rents to himself for life, & after his death to apply the rents & profits upon charitable trusts in sums of twenty pounds for designated persons. In 1912 the trustees agreed to sell the lands & received the 12 per cent. "bonus" under the above sects. The purchase-money had been paid into the Bank of England:—*Held:* the sum received as bonus must be invested by the trustees of the settlement with the purchase-money upon the same trusts & held by them for the purposes of the charity.—*Re* THORNGATE'S SETTLEMENT, CHURCHER *v.* A.-G. (1915), 84 L. J. Ch. 561; 113 L. T. 483.

784. Legacy to "found" bed in hospital—Whether treated as capital or as part of annual income of hospital.]—Testator bequeathed a sum of money free of duty to a hospital "to found" a bed there to be called by a certain name. A bed in the

780 1. *Ascertainment of intention—Whether gifts during life in substitution or reduction of legacy—Admissibility of evidence.*]—L. bequeathed £2,500 to trustees to apply the same in their uncontrolled discretion towards the erection of a Presbyterian church, including all necessary fittings & accessories & manse, at D. L. subsequently contributed sums amounting to £2,000 to a fund for defraying the expense of building a church & organ. At the time of L.'s death the fund had been so expended, but the church had not been completed, & no manse had been built:—*Held:* statements of L. made subsequently to the gifts during life were admissible to show that L. did not intend the gifts to

hospital was selected & given the name specified by testator. The sum was paid over to the hospital who applied part of it in discharge of their indebtedness to their bankers, & placed the balance to the general credit of the hospital with the intention of using it for the general purposes of the hospital:—*Held:* the sum could not be treated as revenue, but must be invested & the income applied, so far as it would go, in maintaining the bed.—A.-G. *v.* BELGRAVE HOSPITAL, [1910] 1 Ch. 73; 79 L. J. Ch. 75; 101 L. T. 628; 26 T. L. R. 40; 54 Sol. Jo. 31.

SUB-SECT. 2.—APPORTIONMENT.

A. Of Gifts for Several Objects some of which are Illegal.

785. General rules—When enquiry directed by court—To ascertain into what proportions gift should be divided for good & bad objects.]—*Re* RIGLEY'S TRUSTS (1866), 36 L. J. Ch. 147; 15 L. T. 499; 15 W. R. 190.

Annotations:—**Consd.** Champney *v.* Davy (1879), 11 Ch. D. 949. **Follid.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187.

786. —— Proportions applicable to several objects unable to be ascertained—Fund equally divided—Proportion of fund attributable to bad objects falls into residue.]—HOARE *v.* OSBORNE (1866), L. R. 1 Eq. 585; 35 L. J. Ch. 345; 14 L. T. 9; 30 J. P. 309; 12 Jur. N. S. 243; 14 W. R. 383.

Annotations:—**Consd.** *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147; Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96; Champney *v.* Davy (1879), 11 Ch. D. 949. **Distd.** *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252. **Refd.** *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187.

787. Gift to erect monument & build organ gallery—Second object invalid—Trustees wrong in applying whole fund to first object—Apportionment ordered.]—ADNAM *v.* COLE (1843), 6 Beav. 353; 49 E. R. 862.

Annotation:—**Consd.** Trimmer *v.* Danby (1856), 25 L. J. Ch. 424.

788. Gift to open new schools, to subscribe to schools already opened, & to purchase land to be let out to poor at low rent—Is gift for two & not three objects—Second object invalid—Apportionment into moieties between first object, & next of kin.]—CRAFTON *v.* FRITH (1851), 4 De G. & Sm. 237; 20 L. J. Ch. 198; 17 L. T. O. S. 137; 15 Jur. 737; 64 E. R. 813.

See, also, Part I., Sect. 4, sub-sect. 11, *ante.*

B. Of Funds divisible among Objects at Discretion of Trustees.

789. Gift to poor of city—Poor of liberties & precincts entitled to share.]—A.-G. *v.* ROCHESTER CORPN. (1676), Cas. *temp.* Finch, 193; 23 E. R. 106, L. C.

Annotation:—**Refd.** A.-G. *v.* Rochester Corpn. (1833), 6 Sim. 273.

790. —— Gift applied to one parish only—Apportionment ordered between four parishes—In proportion to population.]—A.-G. *v.* ROCHESTER CORPN. (1833), 6 Sim. 273; 58 E. R. 596.

791. Gift to poor of particular parish—& other parishes as trustees should think fit—Equal division ordered.]—A.-G. *v.* BULLER (1822), Jac. 407; 37 E. R. 904, L. C.

Annotation:—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395.

792. Gift to poor kindred—Income of fund considerably increased—Scheme of application among classes of poor kindred.]—*Re* SMITH'S CHARITIES (1849), 12 L. T. O. S. 492.

793. Gift for reparation of church & bridge—& to other things needful within parish at discretion of trustees—Discretion held applicable only to latter purpose—Equal division ordered.]—*Re* HALL'S CHARITY (1851), 14 Beav. 115; 18 L. T. O. S. 59; 15 Jur. 940; 51 E. R. 230.

Annotation:—**Mentd.** *Re* Hall's Charity, Severn Comrs. *v.* Hall's Charity Trustees & Worcestershire County Council (1911), 10 L. G. R. 11.

794. Failure of trustees to exercise discretion—Fund divided equally by court.]—DOYLEY *v.* DOYLEY, A.-G. *v.* DOYLEY (1735), 7 Ves. 58, n.; 2 Eq. Cas. Abr. 194; 32 E. R. 35.

Annotations:—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36; Morice *v.* Durham (1805), 10 Ves. 522; James *v.* Allen (1817), 3 Mer. 17. **Apld.** Salusbury *v.* Denton (1857), 3 K. & J. 529. **Consd.** Hunter *v.* A.-G., [1899] A. C. 309 **Refd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286; Wilson *v.* Duguid (1883), 24 Ch. D. 244; *Re* Douglas, Obert *v.* Barrow (1887), 35 Ch. D. 472. **Mentd.** Cole *v.* Wade (1807), 16 Ves. 27; Fordyce *v.* Bridges (1848), 2 Coop. *temp.* Cott. 324.

795. —— ——.]—SALUSBURY *v.* DENTON (1857), 3 K. & J. 529; 26 L. J. Ch. 851; 30 L. T. O. S. 63; 21 J. P. 726; 3 Jur. N. S. 740; 5 W. R. 865; 69 E. R. 1219.

Annotations:—**Consd.** Hunter *v.* A.-G., [1899] A. C. 309. **Mentd.** Lambe *v.* Eames (1870), L. R. 10 Eq. 267; Wilson *v.* Duguid (1883), 24 Ch. D. 244; *Re* Brierley, Brierley *v.* Brierley (1894), 43 W. R. 36.

—— Application of cy-près doctrine.]—*See* Part IV., Sect. 2, *post.*

C. On Formation of New Parishes.

796. Gift to parish subsequently divided—Under Church Building Acts—Specific gifts to particular divisions afterwards divided—Gifts apportioned.]—*Re* WEST HAM CHARITIES (1848), 2 De G. & Sm. 218; 3 New Mag. Cas. 38; 17 L. J. Ch. 441; 11 L. T. O. S. 512; 12 J. P. 180; 12 Jur. 783; 64 E. R. 97.

Annotation:—**Consd.** *Ex p.* Brompton (1852), 5 De G. & Sm. 626.

797. —— —— Matters to be considered by master on apportioning.]—A scheme having been directed in connection with an estate purchased out of parish funds, special directions were asked to be given to the master as to taking the provisions of the Church Building Acts into consideration in settling the scheme, the parish being divided into eight separate districts, & the money being to be distributed by the rector & churchwardens:—*Held:* (1) the application should be refused.

It was also asked that directions should be given as to the mode of distribution in each district of the portion allotted to it:—*Held:* (2) the master had power to consider this without any direction.—A.-G. *v.* DALTON (1851), 13 Beav. 141; 20 L. J. Ch. 569; 16 L. T. O. S. 530; 15 Jur. 412; 51 E. R. 55; *subsequent proceedings, sub nom. Re* HAYLE'S ESTATE (1862), 31 Beav. 139.

798. —— —— Apportionment between district parishes & remaining part of whole parish—Discretion of court.]—*Ex p.* BROMPTON (INCUMBENT) (1852), 5 De G. & Sm. 626; 22 L. J. Ch. 281; 20 L. T. O. S. 5; 64 E. R. 1272.

Annotation:—**Refd.** *Re* Campden Charities (1883), 24 Ch. D. 213.

799. —— —— —— ——.]—*Re* LAMBETH CHARITIES (1853), 22 L. J. Ch. 959, L. JJ.

800. —— —— Court has discretion to discharge or alter order.]—*Re* CAMPDEN CHARITIES (No. 2) (1883), 24 Ch. D. 213; 52 L. J. Ch. 780; 48 L. T. 521; 31 W. R. 741.

801. Gift to parish church—Parish subsequently divided—Not apportionable.]—A.-G. *v.* LOVE (1857), 23 Beav. 499; 26 L. J. Ch. 539; 29

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be in substitution or reduction of the legacy.—*Re* LEGGATT, GRIFFITH *v.* CALDER, [1908] V. L. R. 385.—AUS.

PART III. SECT. 3, SUB-SECT. 2.—A. *p. General rule.*]—If in a charitable bequest to different objects any one of such objects is illegal the whole bequest fails.—WILSON *v.* A.-G. (1882), 8 V. L. R. 215.—AUS.

Sect. 3.—Ascertainment of subject-matter of trust: Sub-sect. 1, C. & D.; sub-sects. 3 & 4. Sect. 4: Sub-sects. 1 & 2, A. & B.]

L. T. O. S. 36; 21 J. P. 390; 3 Jur. N. S. 948; 53 E. R. 196.

Annotations—**Apprvd. & Folld.** *Re* Church Estate Charity, Wandsworth (1871), 6 Ch. App. 296. **Consd.** *Re* Palatine Estate Charity (1888), 39 Ch. D. 54.

802. —— —— ——.]—*Re* CHURCH ESTATE CHARITY, WANDSWORTH (1871), 6 Ch. App. 296; 24 L. T. 243; 35 J. P. 484; 19 W. R. 456; *sub nom. Re* WANDSWORTH CHURCH ESTATE CHARITY, 40 L. J. Ch. 159, L.JJ.

803. —— —— Trustees not bound to make any apportionment—Discretion to apply surplus to new church.]—*Re* NORTH WINGFIELD CHARITY (1860), 3 L. T. 237.

804. —— & chapel of ease—Chapel of ease formed into separate district—Not thereby deprived of sharing in gift.]—A trust fund was applicable for the repair of a parish church & a chapel of ease. On the chapel of ease being formed into a separate ecclesiastical district:—*Held:* the fund having been applicable for the repair of the two named churches, the chapel of ease deprived of a portion of the fund by reason of being given an independent ecclesiastical district.—*Re* CLOUDESLEY'S CHARITY (1900), 17 T. L. R. 123.

Annotation:—**Refd.** *Re* Hyde Park Place Charity, [1911] 1 Ch. 678.

D. Other Cases.

805. Gift to testator's wife & six poor members of chapel, share & share alike—Wife entitled to one-seventh—Six-sevenths to charitable purposes.]—GREGORY *v.* A.-G. (1840), 2 Beav. 366; 48 E. R. 1223.

806. Purchase of land with money partly belonging to charity—Charity entitled to part of land—In proportion to purchase-price contributed.]—NEWCASTLE-UPON-TYNE CORPN. *v.* A.-G. (1845), 12 Cl. & Fin. 402; 8 E. R. 1464, H. L.; *affg.* S. C. *sub nom.* A.-G. *v.* NEWCASTLE CORPN. (1842), 5 Beav. 307.

Annotations:—**Mentd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; *Re* Patten & Edmonton Union Grdns. (1883), 52 L. J. Ch. 787.

807. Funds of one charity mixed with those of another—Increase of value of aggregate funds—Both charities entitled to participate pro rata.]—EDINBURGH CORPN. *v.* LORD ADVOCATE (1879), 4 App. Cas. 823, H. L.

Annotation:—**Apld.** Stoddart *v.* Savile (1893), 38 Sol. Jo. 79.

808. Loans to inhabitants—Benefit of young men in ward.]—A.-G. *v.* MATHIE (1844), 8 J. P. 244.

809. Gift for support of master & five poor persons—Death of master—Representatives entitled to share of dividends earned but not declared at date of death.]—A.-G. *v.* SMYTHIES (1853), 16 Beav. 385; 20 L. T. O. S. 301; 51 E. R. 827.

810. Funds subscribed to complete church—In answer to appeals to public for funds for several purposes—No appointment in favour of new church proposed to be erected.]—A.-G. *v.* PASCALL (1861), 4 L. T. 394; 7 Jur. N. S. 818.

811. Relations "who might happen to be in want or fall into decay"—Annuities continued in families of deceased annuitants—Adult able to earn own living excluded.]—BROWNE *v.* WHALLEY, [1866] W. N. 386.

SUB-SECT. 3.—MARSHALLING.

NOTE.—*Since* 1891 *Act, the law relating to marshalling of assets in favour of a charity appears to be obsolete; the decisions relating to this subject are therefore set out in the form in which they appear below.*

812. Assets not marshalled.]—TATE *v.* AUSTIN (1714), 1 P. Wms. 264; MOGG *v.* HODGES (1750), 1 Cox, Eq. Cas. 9; FOY *v.* FOY (1785), 1 Cox, Eq. Cas. 163; A.-G. *v.* TYNDALL (1764), 2 Eden, 207; WALLER *v.* CHILDS (1765), Amb. 524; FOSTER *v.* BLADGEN (1771), Amb. 704; HILLYARD *v.* TAYLOR (1773), Amb. 713; RIDGES *v.* MORRISON (1785), 1 Cox, Eq. Cas. 180; MAKEHAM *v.* HOOPER (1792), 4 Bro. C. C. 153; PATTEN *v.* SMITH (1830), 8 L. J. O. S. Ch. 132; WILLIAMS *v.* WILLIAMS, WILLIAMS *v.* KERSHAW (1835), 5 L. J. Ch. 84; HOBSON *v.* BLACKBURN (1836), 1 Keen, 273; JOHNSON *v.* WOODS (1840), 2 Beav. 409; A.-G. *v.* SOUTHGATE (1841), 12 Sim. 77; PHILANTHROPIC SOCIETY *v.* KEMP (1842), 4 Beav. 581; SCOTT *v.* FORRISTALL (1861), 5 L. T. 709; CALVERT *v.* ARMITAGE (1863), 1 Hem. & M. 446; BROOK *v.* BADLEY (1868), 3 Ch. App. 672; *Re* SOMERS-COCKS, WEGG-PROSSER *v.* WEGG-PROSSER, [1895] 2 Ch. 449.

813. —— Unless so directed by testator.]—A.-G. *v.* MOUNTMORRIS (LORD) (1765), Dick. 379; WILSON *v.* THOMAS (1833), 3 My. & K. 579; STURGE *v.* DIMSDALE (1843), 6 Beav. 462; HOPKINSON *v.* ELLIS (1846), 10 Beav. 169; ROBINSON *v.* GELDARD (1852), 3 Mac. & G. 735; PRICHARD *v.* NORRIS (1856), 4 W. R. 733; TEMPEST *v.* TEMPEST (1857), 7 De G. M. & G. 470; JAUNCEY *v.* A.-G. (1861), 3 Giff. 308; NICKISSON *v.* COCKILL (1863), 3 De G. J. & Sm. 622; GASKIN *v.* ROGERS (1866), L. R. 2 Eq. 284; BEAUMONT *v.* OLIVEIRA (1869), 4 Ch. App. 309; LLEWELLYN *v.* ROSE (1869), 17 W. R. 984; WIGG *v.* NICHOLL (1872), L. R. 14 Eq. 92; WILLS *v.* BOURNE (1873), L. R. 16 Eq. 487; MILES *v.* HARRISON (1874), 9 Ch. App. 316; SHEPHEARD *v.* BEETHAM (1877), 6 Ch. D. 597; *Re* FITZGERALD, ADOLPH *v.* DOLMAN (1877), 26 W. R. 53; HALSE *v.* RUMFORD (1878), 47 L. J. Ch. 559; LEWIS *v.* BOETEFEUR (1878), 38 L. T. 93; ROBERTS *v.* JONES, [1880] W. N. 96; *Re* COLEMAN, COLLINS *v.* COLEMAN, [1884] W. N. 104; *Re* PITT, LACY *v.* STONE (1885), 53 L. T. 113; KILFORD *v.* BLANEY (1885), 31 Ch. D. 56; *Re* ARNOLD, RAVENSCROFT *v.* WORKMAN (1888), 37 Ch. D. 637; *Re* DELEVINGNE, LAYTON *v.* ROYAL EARLSWOOD INSTITUTION FOR MENTAL DEFECTIVES, [1916] W. N. 235.

814. Assets marshalled.]—MASTERS *v.* MASTERS (1718), 1 P. Wms. 421; DALTON *v.* JAMES (1745), cited in Dick. 476; NEGUS *v.* COULTER (1759), Dick. 326; A.-G. *v.* WINCHELSEA (EARL) (1791), 3 Bro. C. C. 373; BRIGGS *v.* CHAMBERLAIN (1853), 11 Hare, 69; *Re* HILL'S TRUSTS (1880), 16 Ch. D. 173; MACDONALD *v.* MACDONALD (1872), L. R. 14 Eq. 60.

SUB-SECT. 4.—ABATEMENT.

NOTE.—*Since* 1891 *Act, the law relating to abatement of legacies according to the proportion which the impure personalty bears to the general personal estate appears to be obsolete; the decisions relating to this subject are therefore set out in the form in which they appear below.*

PART III. SECT. 3, SUB-SECT. 3.

813 i. *Assets not marshalled—Unless so directed by testator.*]—ANDERSON *v.* KILBORN (1875), 22 Gr. 385.—CAN.

813 ii. ——.]—BECHER *v.* HOARE (1885), 8 O. R. 328.—CAN.

813 iii. ——.]—*Re* STAEHLER, STAEBLER *v.* ZIMMERMAN (1894), 21 A. R. 266.—CAN.

q. *Devise of annuities for charities out of particular estate—Subject to life interests—Sale by creditors—Charities allowed to marshal against unsold estates.*]—BIGGAR *v.* EASTWOOD (1880), 19 L. R. Ir. 49.—IR.

815. Legacies abated.]—DRAYCOTT *v.* WOOD (1856), 28 L. T. O. S. 196; JOHNSTONE *v.* HARROWBY (EARL) (1859), 1 De G. F. & J. 183; FOX *v.* LOWNDS (1875), L. R. 19 Eq. 453; *Re* BRADLEY, OLDERSHAW *v.* GOVERNESSES BENEVOLENT INSTITUTION (1887), 3 T. L. R. 668; *Re* BOARDS, KNIGHT *v.* KNIGHT, [1895] 1 Ch. 499.

See, generally, EXECUTORS & ADMINISTRATORS.

SECT 4.—ASCERTAINMENT OF OBJECTS OF TRUST.

SUB-SECT. 1.—IN GENERAL.

816. Ordinary rules of construction adopted—Secondary interpretation not adopted—To escape Mortmain Acts.]—In the administration of charitable bequests it is the duty of the ct. to ascertain from the words of the will, by the ordinary rules of construction, the true meaning & intention of testator, both as to the bequest itself & the mode of carrying it into effect, without in the first instance adverting to the existence of Charitable Uses Act, 1735 (9 Geo. 2, c. 36).

When the intention of testator has been ascertained, inquiry is to be made whether the whole or any part of that intention is contrary to the provisions of the statute. But no secondary interpretation ought to be adopted, nor ought the ct. to resort to any different mode of administration from that indicated by testator, even though it may be reasonable in itself, for the purpose of escaping from the operation of the statute.—TATHAM *v.* DRUMMOND (1864), 4 De G. J. & Sm. 484; 5 New Rep. 24; 34 L. J. Ch. 1; 11 L. T. 324; 10 Jur. N. S. 1087; 13 W. R. 61; 46 E. R. 1006, L. C.

Annotations:—**Consd.** Cresswell *v.* Cresswell (1868), L. R. 6 Eq. 69. **Refd.** *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272; Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113.

817. Benignant construction adopted—Two constructions possible—One avoiding, one effectuating testator's purpose.]—When a charitable bequest is capable of two constructions, one which would make it void, & the other which would render it effectual, the latter must be adopted.—BRUCE *v.* DEER PRESBYTERY (1867), L. R. 1 Sc. & Div. 96, H. L.

818. Inquiry not ordered—Fund for benefit of testator's poor relations—Expense of ascertaining all possible objects disproportionate to fund available—Annuities continued in families of deceased annuitants.]—BROWNE *v.* WHALLEY, [1866] W. N. 386.

819. "Reparation"—Held to mean restoration.]—A.-G. *v.* WAX CHANDLERS' CO. (MASTER, WARDENS, ETC.), No. 1042, *post*.

820. Discretionary gift—To charitable institutions—"But I desire" two named hospitals "shall benefit most largely"—Discretion fettered.]—ARMITAGE *v.* GORDON (1899), 15 T. L. R. 453, C. A.

—— **Validity of.**]—*See* Sect. 2, sub-sect. 2, A. (*b*), *ante*.

SUB-SECT. 2.—EXTRINSIC EVIDENCE.

A. Usage.

See Sect. 7, *post*.

B. Parol Evidence.

821. Not admitted—Gift to charity "according to Mr. —— his will."]—BAYLIS *v.* A.-G. (1741), 2 Atk. 239; 26 E. R. 548, L. C.

Annotations:—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Refd.** *In the goods of* De Rosaz (1877), 2 P. D. 66; *In the Estate of* Hubbuck, [1905] P. 129. **Mentd.** Gloucester Corpn. *v.* Wood (1843), 3 Hare, 131.

822. —— To vary terms of gift—By striking out words "in London"—No society answering to description in testator's will.]—*Re* CLERGY SOCIETY (1856), 2 K. & J. 615; 4 W. R. 664; 69 E. R. 928.

Annotations:—**Distd.** *Re* Bradfield, Bradfield *v.* Hancock (1892), 36 Sol. Jo. 646. **Refd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Mentd.** *Re* Maguire (1870), L. R. 9 Eq. 632; *Re* Kilvert's Trusts (1871), L. R. 12 Eq. 183; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19.

823. —— Description not applying indifferently to more than one charity.]—Testator gave certain charitable legacies, including a legacy of £1000 to "The National Assocn. for the Prevention of Consumption," & directed that if any doubt shall arise in any case to the identity of the institution intended to benefit the question should be decided by his trustees whose decision should be final & binding on all parties. There was no society of that name merely, but there was a society whose full name was "The National Assocn. for the Prevention of Consumption & other Forms of Tuberculosis." There was also an independent branch of this assocn. whose full name was "The Leicester & Leicestershire Branch of the National Assocn. for the Prevention of Consumption & other Forms of Tuberculosis" to which testator had been a subscriber & in whose favour extrinsic evidence of intention was sought to be given. Both the trustees & the Leicester & Leicestershire Branch were desirous that the question of identity should be finally decided by the trustees. The National Assocn. insisted on having the decision of the ct.:—*Held*: the direction in the will so far as it purported to oust the jurisdiction of the ct. was void & inoperative (1) on the ground of repugnancy & (2) as being contrary to public policy; (3) extrinsic evidence of intention was inadmissible; (4) the National Assocn. was entitled to the legacy.—*Re* RAVEN, SPENCER *v.* NATIONAL ASSOCN. FOR THE PREVENTION OF CONSUMPTION & OTHER FORMS OF TUBERCULOSIS, [1915] 1 Ch. 673; 84 L. J. Ch. 489; 113 L. T. 131.

824. Admitted—Description applying indifferently to more than one charity—"Carey Street Infirmary"—Carey Street Dispensary or K. Hospital in Carey Street.]—KING'S COLLEGE HOSPITAL *v.* WHEILDON (1854), 18 Beav. 30; 23 L. J. Ch. 537; 2 W. R. 202; 52 E. R. 12.

825. —— —— "Clergy of diocese of Worcester"—Society for archdeaconry of Worcester, formerly for whole diocese, or society for archdeaconry of Coventry—Testator subscriber to former.]—*Re* KILVERT'S TRUSTS (1871), 7 Ch. App. 170; 41 L. J. Ch. 351; 26 L. T. 221; 20 W. R. 225, L.JJ.

Annotations:—**Consd.** *Re* Briscoe's Trusts (1872), 26 L. T. 149. **Apld.** *Re* Fearn's Will (1879), 27 W. R. 392. **Refd.** *Re* Beale, Beale *v.* Royal Hospital for Incurables (1890), 6 T. L. R. 308. **Mentd.** *Re* Alchin's Trusts, *Ex p.* Furley, *Ex p.* Romney (1872), L. R. 14 Eq. 230.

826. —— —— "Victoria Hospital"—Hospital at Victoria Park or Victoria Hospital for Sick Children — Testator subscriber to former.] — *Re* BRISCOE'S TRUSTS (1872), 26 L. T. 149; 20

PART III. SECT. 3, SUB-SECT. 4.

r. *Legacy payable out of pure & impure personalty—Must abate.*]—Where charitable & other legacies are payable out of a mixed fund, the proceeds of realty, impure personalty, & personalty, the charitable legacies do not fail *in toto*, but must abate in the proportion which the sum of the realty & impure personalty charged with charitable gifts bears to the pure personalty.—*Re* STAEBLER, STAEBLER *v.* ZIMMERMAN (1894), 21 A. R. 266.—**CAN.**

s. —— ——.] — LAW *v.* ACTON (1902), 22 C. L. T. 419; 14 Man. L. R. 246.—**CAN.**

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 2, B., C. & D.; sub-sect. 3, A., B. & C.]

W. R. 355; *subsequent proceedings*, 20 W. R. 504, L. J.

827. —— —— "Society for Propagation of Gospel among Jews"—London Society for Promoting Christianity among Jews or British Society for Propagation of Gospel among Jews—Testator subscriber to former.]—*Re* FEARN'S WILL (1879), 27 W. R. 392.

828. —— —— "London Hospital for Incurables"—Royal Hospital for Incurables or British Home for Incurables—Interest of testator in latter.] —*Re* BEALE, BEALE *v.* ROYAL HOSPITAL FOR INCURABLES (1890), 6 T. L. R. 308, C. A.

To show whether or not gift for religious purposes is denominational.]—*See* Sect. 4, sub-sect. 5, A., *post.*

C. Acts and Intentions of Donor.

829. Admitted—Manner of distributing fund of which donor was first trustee.]—A.-G. *v.* BRAZEN NOSE COLLEGE (1834), 8 Bli. N. S. 377; 2 Cl. & Fin. 295; 5 E. R. 983, H. L.

Annotations:—**Consd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383. **Refd.** A.-G. *v.* Drapers' Co. (1840), 2 Beav. 508. **Mentd.** Nicholls *v.* Leeson (1747), 3 Atk. 573; A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1.

830. —— Contemporaneous acts.] — A.-G. *v.* TRINITY COLLEGE, CAMBRIDGE (1856), 24 Beav. 383; 53 E. R. 405.

831. —— Domicil & interests.]—A Scotsman who had lived all his life in Scotland, by a will made in Scottish form, bequeathed a legacy "to the National Society for the Prevention of Cruelty to Children." The legacy was claimed by the society of that name, & also by the Scottish National Society for the Prevention of Cruelty to Children. All the interests of testator were Scottish, the legacy was placed in the midst of a series of legacies to Scottish Charities, & the Scottish society had recently been brought to the notice of testator. The National Society for the Prevention of Cruelty to Children had its head office in London & did not actively operate in Scotland, & there was no evidence that it was known to testator:—*Held:* the latter society was entitled to the legacy.—NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN *v.* SCOTTISH NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN, [1915] A. C. 207; 84 L. J. P. C. 29; 111 L. T. 869; 30 T. L. R. 657; 58 Sol. Jo. 720, H. L.

—— Religious views of donor—To show how far gift for religious purposes is or is not denominational.]—*See* Sub-sect. 5, A., *post.*

832. —— Bequest to A. "for the charitable purposes agreed upon between us"—Affidavit of A. as to what were the purposes.]—By her will, dated in 1899, testatrix, who died in 1901, bequeathed the sum of £4000 to A. "for the charitable purposes agreed upon between us." A summons was taken out by the trustees to ascertain the effect of the bequest, & in support thereof A. filed an affidavit in which he stated what were the charitable purposes so agreed upon, & that they were to come to an end with his own lifetime:—*Held:* (1) the evidence of A. was admissible only for the purpose of proving matters not defined by the will—*i.e.*, to ascertain what were in fact the charitable purposes agreed upon between testatrix & A.—but not to show other matters that were plainly dealt with by the will; (2) the effect of the evidence was to contradict the gift by the will of a fund of £4000, & to reduce it to a gift of the income of that fund during the lifetime of A., but that evidence could not be admitted; (3) there was a general charitable intention; (4) there ought to be an order for a scheme not limited to the income of the fund, but extending to the whole fund.—*Re* HUXTABLE, HUXTABLE *v.* CRAWFURD, [1902] 2 Ch. 793; 71 L. J. Ch. 876; 87 L. T. 415; 51 W. R. 282, C. A.

Annotation:—*As to* (1) **Refd.** *Re* Hetley, Hetley *v.* Hetley, [1902] 2 Ch. 866.

833. —— Entries in book kept by testatrix.]—Testatrix by will made in 1897, among other legacies to charitable institutions, bequeathed to the British Home for Incurables, Streatham, S.W., mentioning accurately the name of its secretary & address of its office, £250. By codicil made in 1902, after reciting twice incorrectly that she had given by will £500 to the British Home for Incurables, Streatham, S.W. . . . &, amongst others, to St. M.'s Orphanage, Bayswater, £100, she revoked all the legacies, "& instead thereof" bequeathed £500 each to the Royal Home for Incurables, Streatham, S.W., & to St. M.'s Orphanage. The legacy of £500 was claimed by the Royal Hospital for Incurables & by pltf. institution, founded in 1861 by the name of the British Home for Incurables, & in 1899 incorporated by Royal Charter by its present name:—*Held:* having regard to entries in a book kept by testatrix containing particulars of her charitable contributions, she distinguished the two institutions as the "Royal" & the "British," &, therefore, on the true construction of the codicil, the Royal Hospital for Incurables was entitled to the legacy. —BRITISH HOME & HOSPITAL FOR INCURABLES *v.* ROYAL HOSPITAL FOR INCURABLES (1904), 90 L. T. 601, C. A.

—— Subscriptions paid by testator.]—*See* Nos. 825, 826, 827, *ante.*

—— —— Similar misdescription of charity.]—*See* No. 890, *post.*

—— Interest taken by testator in particular institution.]—*See* No. 828, *ante.*

834. Not admitted—Memorandum.] — Testator gave a legacy of £10,000 to the University of Wales for the purpose of founding scholarships & prizes therein upon the terms contained in any memorandum amongst his papers written or signed by him, & he gave a bequest of £10,000 to the University College of North Wales upon the same terms. A memorandum was found amongst his papers, but the ct. refused to admit the memorandum to probate:—*Held:* the legacies were payable unaccompanied by any restriction.—*Re* WILLIAMS, TAYLOR *v.* UNIVERSITY OF WALES (1908), 24 T. L. R. 716.

D. Other Cases.

835. Admitted—Entry in ancient book kept by trustees—Purporting to be declaration of uses by founder but without signature or date—To prove declaration of uses by founder.]—A.-G. *v.* BOULTBEE (1794), 2 Ves. 380; 30 E. R. 683; *affd.* (1796), 3 Ves. 220, L. C.

Annotations:—**Refd.** A.-G. *v.* Whitchurch (1796), 3 Ves. 141. **Mentd.** Chapman *v.* Brown (1801), 6 Ves. 404; Cherry *v.* Mott (1836), 1 My. & Cr. 123; Biscoe *v.* Jackson (1887), 35 Ch. D. 460.

836. —— Extracts from wills—Bowle's catechism—To give particular meaning to words used

by donor.]—SHORE *v.* WILSON (1842), 9 Cl. & Fin. 355; 5 Scott, N. R. 958; 8 E. R. 450, H. L.; *subsequent proceedings sub nom.* A.-G. *v.* SHORE (1843), 11 Sim. 592.

Annotations:—**Consd.** Drummond *v.* A.-G. (1849), 2 H. L. Cas. 837. **Distd.** A.-G. *v.* Clapham (1855), 4 De G. M. & G. 591; A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161. **Consd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554; *Re* Rayner, Rayner *v.* Rayner, [1904] 1 Ch. 176. **Refd.** A.-G. *v.* Wilson (1848), 16 Sim. 210; A.-G. *v.* Calvert (1857), 23 Beav. 248; A.-G. *v.* Bunce (1868), L. R. 6 Eq. 563; Neale *v.* Neale (1898), 79 L. T. 629; Camden *v.* I. R. Comrs., [1914] 1 K. B. 641; G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414. **Mentd.** A.-G. *v.* Lawes (1849), 14 Jur. 77; A.-G. *v.* Murdoch (1849), 7 Hare, 445; Natal *v.* Gladstone (1866), L. R. 3 Eq. 1; Menzies *v.* Lightfoot (1871), L. R. 11 Eq. 459; *Re* Perry Almshouses, *Re* Ross' Charity, [1899] 1 Ch. 21; *Re* Johnson, Greenwood *v.* Greenwood & Robinson (1903), 89 L. T. 520; *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643; Bowman *v.* Secular Soc., [1917] A. C. 406.

837. —— Proceedings in another suit—To prove legacy taken by institution under similar description.]—GENERAL LYING-IN HOSPITAL *v.* KNIGHT (1851), 21 L. J. Ch. 537.

838. —— Copies of original charter—Original charter no longer existing.]—A.-G. *v.* YORK (ARCHBP.) (1853), 17 Beav. 495; 2 W. R. 7; 51 E. R. 1126.

SUB-SECT. 3.—FAILURE OR UNCERTAINTY OF OBJECTS AT COMMENCEMENT OF TRUST.

A. No Particular Objects specified.

839. To charitable & pious uses generally—Valid.]—A.-G. *v.* HERRICK (1772), Amb. 712; 27 E. R. 461, L. C.

Annotations:—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Refd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294; Townsend *v.* Carus (1844), 13 L. J. Ch. 169.

840. Gift for public objects in parish including relief of poor—Applicable to building schoolhouse and education of poor children of parish.]—WILKINSON *v.* MALIN (1832), 2 Cr. & J. 636; 2 Tyr. 544; 1 L. J. Ex. 234; 149 E. R. 268.

Annotations:—**Refd.** *Re* Campden Charities (1881), 18 Ch. D. 310. **Mentd.** Smith *v.* Keating (1848), 6 C. B. 136; Perry *v.* Shipway (1859), 1 Giff. 1; *Re* Whiteley, London *v.* Whiteley, [1910] 1 Ch. 600.

Compare, Sect. 4, sub-sect. 6, B., *post.*

841. Gift for clothing and putting to school poor boys—To keep them from idle & vagrant courses—Primary object education of very poor persons.]—*Re* LATYMER'S CHARITY (1869), L. R. 7 Eq. 353; 20 L. T. 425; 33 J. P. 357; 17 W. R. 525.

B. Names of Charities omitted or left blank.

See Nos. 1419 *et seq.*, *post.*

C. Uncertain Description of Objects.

842. Reference to locality—"St Giles without Cripplegate, London"—Part of parish in Middlesex excluded.]—ROOKS *v.* POTTER (1668), Duke, 52.

843. —— Roman Catholic priests "in & near London"—Valid.]—A.-G. *v.* GLADSTONE (1842), 13 Sim. 7; 11 L. J. Ch. 361; 6 J. P. 375; 6 Jur. 498; 60 E. R. 3.

Annotation:—**Mentd.** Cocks *v.* Manners (1871), 40 L. J. Ch. 640.

844. —— Legacies to charities "established or carried on in London"—Including bequest to the "Clergy Society"—No such society in "London"—Valid bequest for clergy in London.]—*Re* CLERGY SOCIETY (1856), 2 K. & J. 615; 4 W. R. 664; 69 E. R. 928.

Annotations:—**Folld.** *Re* Maguire (1870), L. R. 9 Eq. 632. **Distd.** *Re* Bradfield, Bradfield *v.* Hancock (1892), 36 Sol. Jo. 646; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Consd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Refd.** *Re* Kilvert's Trusts (1871), L. R. 12 Eq. 183.

845. —— "The hospitals of London"—"London" construed in popular sense.]—WALLACE *v.* A.-G. (1864), 33 Beav. 384; 3 New Rep. 555; 33 L. J. Ch. 314; 10 L. T. 51; 28 J. P. 341; 10 Jur. N. S. 249; 12 W. R. 506; 55 E. R. 416; *subsequent proceedings* (1865), 35 Beav. 21.

Annotations:—**Refd.** Carington *v.* Wycombe Ry. (1868), 3 Ch. App. 377. **Mentd.** Coventry *v.* L. B. & S. C. Ry. (1867), L. R. 5 Eq. 104.

846. —— Gift to poor box of each "Metropolitan Police Court"—Limited to metropolitan police courts for all purposes.]—*Re* LEWIS-HILL, DAVIES *v.* CLUER (1908), 125 L. T. Jo. 149.

FOR INCURABLES (1884), 13 L. R. Ir. 361.—IR.

PART III. SECT. 4, SUB-SECT. 3.—A.

b. *For "Christian work" — Valid.*]—A bequest of one-eighth share of a residuary estate "to be paid & applied either for or towards Christian work, chiefly in Q., or for the assistance of the poor & needy there or elsewhere": —*Held:* valid.—BROWN *v.* WHITTY, *Re* BROWN (1901), 11 Q. L. J. 133.—AUS.

c. *"Charitable purposes" generally—Valid.*]—ANDERSON *v.* DOUGALL (1867), 13 Gr. 164.—CAN.

d. *Any needful or worthy institution or individual—Void.*]—*Re* YOUNG (1907), 9 O. W. R. 566.—CAN.

e. *"Some charitable object" — Trustees' absolute discretion—Void.*]—*Re* CRONIN (1910), 15 O. W. R. 819. —CAN.

f. *"For benevolent purposes any way they may see fit" — Void.*]—A bequest of the residue of an estate to be used "for benevolent purposes any way they may see fit"—*Held:* void for uncertainty.—LAWRENCE *v.* LAWRENCE (1913), 13 E. L. R. 519.—CAN.

g. *Gift of fund to enable deserving people to buy homes—Void.*]—*Re* ORR (1917), 13 O. W. N. 154.—CAN.

h. *Gift to trustees "trusting to their pious recollection of the spiritual wants of me & mine"—Void for uncertainty.*]—M'CARTHY *v.* A.-G. (1863), 16 Ir. Jur. 3.—IR.

k. *"Public or private charities" — As trustees think fit — Void.*]—Bequest to V. of a residue, to be by him disposed of in such public or private charities as he should think fit:—*Held:* a void gift, incapable of being carried out.—BURROWES' GOODS (1865), 17 Ir. Jur. 277.—IR.

l. *"Religious purposes"—Religious purposes which are charitable.*]—A. bequeathed to his trustees money, upon trust, to invest it, & apply the income for such religious purposes as his trustees & the Bishop of C. for the time being should, in their uncontrolled discretion, think fit:—*Held:* (1) the words "religious purposes" meant religious purposes which were charitable; (2) the bequest was not void for uncertainty.—ARNOTT *v.* ARNOTT, [1906] 1 I. R. 127.—IR.

m. *"Such charitable purposes" — As may be pointed out by my will with approbation of majority of my trustees—Valid.*]—CRICHTON *v.* GRIERSON (1828), 3 Wils. & S. 329.—SCOT.

n. *"Lay out on charities" — Valid.*]—DUNDAS *v.* DUNDAS (1837), 15 Sh. (Ct. of Sess.) 427; 12 Fac. Coll. 372.—SCOT.

o. *Charitable institutions generally—Valid.*]—A. directed his trustees to divide & apportion the residue of his estate in such proportions as they might consider proper "amongst such charitable institutions connected with L. as they might consider expedient": —*Held:* the bequest was not void from uncertainty.—CLELAND'S TRUSTEES *v.* CLELAND, [1907] S. C. 591.—SCOT.

p. *"Foreign missions"—"In India, China, Africa, & South America or any other in the foreign field suitable."*]—A. bequeathed foreign missions in I., C., A., & S. A., "or any other in the foreign field suitable," & appointed an exor.:—*Held:* not void from uncertainty, the bequest being to a definite class, coupled with the appointment of a person having power to select the objects falling within the class on whom the benefit of the bequest was to be conferred.—ALLAN'S EXECUTORS *v.* ALLAN, [1908] S. C. 807. —SCOT.

q. *"An institution for incurables in the Dominion"—Valid.*]—A. directed by his will that a freehold property should be sold & the proceeds given to "an institution for incurables in the Dominion":—*Held:* a charitable gift not void for uncertainty.—PUBLIC TRUSTEE *v.* DENTON (1917), N. Z. L. R. 263.—N.Z.

PART III. SECT. 4, SUB-SECT. 3.—C.

r. *Reference to locality—"Foundling children."*]—*Re* GILBERT (1913), 24 O. W. R. 71; 4 O. W. N. 771.—CAN.

s. —— *For use of Episcopal Chapel School in B. street—No school attached to chapel—Parish schools entitled.*]—DALY *v.* A.-G. (1860), 11 I. Ch. R. 41.—IR.

t. *Institutions to uplift humanity.*]—A. bequeathed money to be "held as a fund towards helping to supply such institutions as may in the near future be demonstrated to show that

Sect. 4.—Ascertainment of objects of trust: Subsect. 3, C. & D.]

847. —— "The City Mission cause in London."]—*Held:* a legacy to "The City Mission cause in London" bore its ordinary meaning & was a legacy for the cause of Christian missions in London, & was valid as a charitable gift, &, there being no objection by the A.-G. the legacy should be paid to the London City Mission.—*Re* HALL, HALL *v.* HALL (1915), 31 T. L. R. 396.

848. —— Overseers of "parish of A."—Parish consisting of several townships each with separate overseers—Gift to all the overseers of all the townships.]—*Re* TOWRIE'S CHARITY (1843), 2 L. T. O. S. 93, L. C.

849. —— "The poor of Kensington"—Benefit of parish generally & not for any particular part of it.]—*Ex p.* BROMPTON (INCUMBENT) (1852), 5 De G. & Sm. 626; 22 L. J. Ch. 281; 20 L. T. O. S. 5; 64 E. R. 1272.

Annotation:—**Mentd.** *Re* Campden Charities (1883), 24 Ch. D. 213.

850. —— "The Guernsey Hospital"—Two hospitals there—Gift valid.]—SIMON *v.* BARBER (1828), 5 Russ. 112; 38 E. R. 970; *subsequent proceedings* (1829), Taml. 14.

Annotations:—**Consd.** *Re* Kilvert's Trusts (1871), L. R. 12 Eq. 183. **Folld.** *Re* Alchin's Trusts, *Ex p.* Furley, *Ex p.* Romney (1872), L. R. 14 Eq. 230.

See, also, Nos. 874, 878, *post.*

851. —— The several hospitals "of or in the vicinity of Canterbury"—Gift void.]—FLINT *v.* WARREN (1847), 15 Sim. 626; 16 L. J. Ch. 441; 9 L. T. O. S. 351; 11 Jur. 665; 60 E. R. 763.

852. —— Gift to clergyman to preach to "prisoners at Lincoln"—Two gaols there—Valid gift to chaplains of both gaols.]—*Re* HUSSEY'S CHARITIES, CHEYNE *v.* APREECE, SYMONS *v.* DELAVAL (1861), 30 L. J. Ch. 491; 25 J. P. 580; 7 Jur. N. S. 325; 9 W. R. 365.

853. —— "The school at Clare"—Two schools there—Legacy divided equally.]—GIBSON *v.* COLEMAN (1868), 18 L. T. 236; 16 W. R. 892.

854. —— "The national school there"—Principal national school in district entitled to gift.]—*Re* BRADLEY, OLDERSHAW *v.* GOVERNESSES BENEVOLENT INSTITUTION (1887), 3 T. L. R. 668.

Compare cases in Sub-sect. 3, D., *post.*

855. Gift "to the poor"—Granted to poor relations of testator.]—WARE *v.* A.-G. (1824), 3 Hare, 194, n.; 67 E. R. 353.

856. —— Or "poorest" of particular class—Construed as gift to the actually poor.]—A.-G. *v.* NORTHUMBERLAND (DUKE) (1877), 7 Ch. D. 745; 47 L. J. Ch. 569; 26 W. R. 586; *varied* without affecting this point (1878), 38 L. T. 245, C. A.

Annotations:—**Refd.** *Re* Gosling, Gosling *v.* Smith (1900), 48 W. R. 300; *Re* Estlin, Prichard *v.* Thomas (1903), 72 L. J. Ch. 687.

857. Gift to "mother's poor relations"—Construed as gift to the actually poor.]—BRUNSDEN *v.* WOOLREDGE (1765), Amb. 507; Dick. 380; 27 E. R. 327.

Annotation:—**Refd.** Thomas *v.* Howell (1874), L. R. 18 Eq. 198.

Validity of gifts to poor.]—*See* Part I., Sect. 2, *ante.*

858. "All & every the hospitals"—Hospitals where testator lived entitled.]—MASTERS *v.* MASTERS (1718), 1 P. Wms. 421; 24 E. R. 454.

Annotations:—**Refd.** Smith *v.* Jersey (1821), 3 Bli. 290. **Mentd.** Brudenell *v.* Boughton (1741), 2 Atk. 268; St. Albans *v.* Beauclerk (1743), 2 Atk. 636; Hatton *v.* Hooley (1773), Lofft, 122; Habergham *v.* Vincent (1793), 4 Bro. C. C. 353; Norman *v.* Morrell (1799), 4 Ves. 769; Bonner *v.* Bonner (1807), 13 Ves. 379; Mirehouse *v.* Scaife (1837), 2 My. & Cr. 695; Ferraris *v.* Hertford (1843), 3 Curt. 468; Williams *v.* Hughes (1857), 24 Beav. 474.

859. "The charity school"—Free school & charity school in town—Charity school, commonly so called, entitled.] — A.-G. *v.* HUDSON (1720), 1 P. Wms. 674; 24 E. R. 564, L. C.

860. "Poor dissenting ministers living in any county"—Three district societies of dissenters—Gift divided.]—WALLER *v.* CHILDS (1765), Amb. 524; 27 E. R. 338.

Annotation:—**Refd.** West *v.* Shuttleworth (1835), 2 My. & K. 684.

861. "Fellows & demies of Magdalen College, Oxford"—Void.]—A.-G. *v.* SIBTHORP (1830), 2 Russ. & M. 107; 39 E. R. 335, L. C.

Annotation:—**Refd.** Chamberlayne *v.* Brockett (1872), 28 L. T. 248.

862. "Hospice"—In French will—Construed according to meaning in France.]—WALLACE *v.* A.-G. (1865), 35 Beav. 21; 55 E. R. 801.

863. "The institution, whatever its correct title may be, which receives 'incurables' & incurables only"—Several institutions—British Home for Incurables, Streatham, entitled.]—*Re* GLUBB, BARNFIELD *v.* ROGERS (1897), 14 T. L. R. 66; *subsequent proceedings, sub nom. Re* GLUBB, BAMFIELD *v.* ROGERS, [1900] 1 Ch. 354.

864. Receipt of "moderator" of Waldensian Church Missions in Italy to be sufficient discharge—No official precisely answering such description—Inquiry directed.]—*Re* DYMOND, DYMOND *v.* A.-G. (1906), *Times* April 2.

Gifts relating to towns.]—*See* Sub-sect. 6, *post.*

D. Misdescription of Charities.

865. Wrong name—Valid gift—Hospital misnamed.]—ANON. (1572), Ben. & D. 78, pl. 8; 123 E. R. 287.

866. —— —— "Mayor & Chamberlain" of London instead of "Mayor & Commonalty."]—LONDON (MAYOR) CASE (1639), Duke, 83.

867. —— —— As appointment in equity.]—A.-G. *v.* PLATT (1675), Cas. *temp.* Finch, 221; 23 E. R. 122.

868. —— —— Gift to poor of parish A. "in county X."—Parish A. in county Y.]—OWENS *v.* BEAN (1678), Cas. *temp.* Finch, 395; 23 E. R. 216.

God's people are willing to help others to see the light that is so real, near, & universal for all who will receive. These institutions may take the place of what at present are called hospitals, poor houses, gaols, and penitentiaries, or any place that is maintained for the uplifting of humanity":—*Held:* the terms were so vague & impracticable, & the objects to be benefited & the time for the benefit to accrue so uncertain that no reasonable or intelligible construction could be given to it.—CAMERON *v.* CHURCH OF CHRIST SCIENTIST (1919), 57 S. C. R. 298; 43 D. L. R. 668.—**CAN.**

a. *"Christian brothers"—Void.*]—HOGAN *v.* BYRNE (1862), 14 Ir. Jur. 223.—**IR.**

b. *Maintenance of school — School where testator lived entitled.*]—MURDOCH *v.* GLASGOW MAGISTRATES & MINISTERS (1827), 6 Sh. (Ct. of Sess.) 186; 24 Fac. Coll. 186.—**SCOT.**

PART III. SECT. 4, SUB-SECT. 3.—D.

c. *Wrong name — Valid gift — Orphanage misnamed.*]—O'CALLAGHAN *v.* SWAN (1887), 13 V. L. R. 676.—**AUS.**

d. —— —— *"Bishop & rector" instead of "Bishop or rector."*]—DOE d. BAKER *v.* CLARK (1850), 7 U. C. R. 44.—**CAN.**

e. —— —— *"Methodist Children's Orphans' Home"—"Kingston Orphans' Home & Widows' Friend Society" entitled.*] — *Re* CLAPPER (1910), 17 O. W. R. 57; 2 O. W. N. 111.—**CAN.**

f. —— —— *"Wesleyan Methodist Superannuated Ministers Fund"—"Connexional Society of the Wesleyan Methodist Church"—"Worn-out Preachers Fund" entitled.*]—EDWARDS *v.* SMITH (1877), 25 Gr. 159.—**CAN.**

g. —— —— *"Home Mission of Gospel of Christ"—"Church of Ireland Home Mission."*]—Testator made a bequest to the Protestant Home Mission in Ireland & to the Home Mission of the Gospel of Christ in Ireland. There were no societies exactly answering to the description in the testator's will:—*Held:* (1) by

869. —— —— C.P.A. society "in Ireland"—C.P.A. society in England—Society in Ireland with similar objects entitled.]—*Re* MAGUIRE (1870), L. R. 9 Eq. 632; 39 L. J. Ch. 710; 18 W. R. 623.
Annotations:—**Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

870. —— —— "British" Royal Infirmary instead of "Bristol" Royal Infirmary—Mistake in preparing will—Probate amended.]—*In the Goods of* BUSHELL (1887), 13 P. D. 7; 57 L. J. P. 16; 58 L. T. 58; 51 J. P. 806; 36 W. R. 528.
Annotations:—**Expld. & Distd.** *In the goods of* Huddleston (1890), 63 L. T. 255. **Consd.** *In the goods of* Walkeley 1893), 69 L. T. 419. **Dbtd.** *In the goods of* Schott, [1901] P. 199. **Refd.** *In the goods of* Boehm, [1891] P. 247.

871. —— —— Trustees misnamed but identity shown by other words in will.]—*Re* LAVERS (1908), *Times*, Nov. 7.

872. —— —— "National Association for the Prevention of Consumption"—National Association for the Prevention of Consumption & other Forms of Tuberculosis.]—*Re* RAVEN, SPENCER *v.* NATIONAL ASSOCN. FOR THE PREVENTION OF CONSUMPTION & OTHER FORMS OF TUBERCULOSIS, No. 823, *ante*.

873. —— ——.]—Testatrix, by her will, dated Mar. 17, 1900 & confirmed by several codicils, the last of which was dated Apr. 7, 1905, bequeathed £2500 to the National Protestant Union & £200 to the Governesses' Benevolent Institution of Newcastle-upon-Tyne. Testatrix was a member of the National Protestant Church Union, which was in July 1906 amalgamated with another society to form the National Church League. Testatrix was informed of the amalgamation, & gave a subscription to the National Church League:—*Held:* (1) the National Church League was entitled to the legacy of £2500.

There was no society called the Governesses' Benevolent Institution at Newcastle-upon-Tyne, but there was a society having an office there called the Northern Counties Society for Granting Annuities to Governesses & other Ladies, to which testatrix had on two occasions given donations:—*Held:* (2) the society was entitled to the legacy of £200.

Both the league & the society were unincorporated charities & were sued under their respective names:—*Held:* (3) where an unincorporated charity is sued, the proper practice is to sue A., being the treasurer or secretary or other responsible officer, on behalf of the charity; (4) strictly speaking, the unincorporated charity should not be sued in its own name, but, if it be so sued, appearance should be entered by the treasurer, secretary or other proper officer on its behalf.—*Re* PRITT, MORTON *v.* NATIONAL CHURCH LEAGUE (1915), 85 L. J. Ch. 166; 113 L. T. 136; 31 T. L. R. 299.

874. Misdescription applying indifferently to more than one charity—Reference to locality—"County Hospital"—General hospital intended—Legacy divided.]—Gift by will to the Kent County Hospital. There being no hospital having precisely that name:—*Held:* (1) a general hospital must be presumed to have been intended, & the Kent County Ophthalmic Hospital could not take the legacy; (2) it must be divided between the Kent & Canterbury Hospital & the West Kent General Hospital, which together supplied the place of a general county hospital.—*Re* ALCHIN'S TRUSTS, *Ex p.* FURLEY, *Ex p.* ROMNEY (EARL) (1872), L. R. 14 Eq. 230; 26 L. T. 824; 20 W. R. 763.

See, also, No. 850, *ante*, No. 878, *post*.

875. —— —— Town—Gloucester Lunatic Asylum—Asylum near Gloucester or County Lunatic Asylum—Former entitled.]—*Re* DAVIES' TRUSTS (1872), 2 W. R. 154.

876. —— —— ——.]—Bequest to . . . the "Greenwich Royal Hospital" There being no institution of this precise name:—*Held:* the bequest should go to the Royal Hospital, Greenwich, that institution having been adequately indicated by the testator.—*Re* MUSSARD, ELMES *v.* MICHELLI (1891), 7 T. L. R. 742.

877. —— —— District—Jew's poor, Mile End—Two available institutions—Legacy divided.]—BENNETT *v.* HAYTER (1839), 2 Beav. 81; 48 E. R. 1110.
Annotation:—**Refd.** *Re* Kilvert's Trusts (1871), L. R. 12 Eq. 183.

878. —— —— —— "Westminster Hospital, Charing Cross"—Westminster Hospital, Westminster Ophthalmic Hospital, Charing Cross, or Charing Cross Hospital—Last entitled.]—BRADSHAW *v.* THOMPSON (1843), 2 Y. & C. Ch. Cas. 295; 1 L. T. O. S. 143; 7 Jur. 386; 63 E. R. 130.
Annotation:—**Apld.** *Re* Alchin's Trusts, *Ex p.* Furley, *Ex p.* Romney (1872), L. R. 14 Eq. 230.
See, also, No. 850, *ante*.

879. —— —— —— Hospital correctly named but incorrectly described as building almshouses—Differently-named society building almshouses elsewhere not entitled.]—SMITH *v.* RUGER (1859), 33 L. T. O. S. 282; 23 J. P. 581; 5 Jur. N. S. 905.

880. —— —— —— "King's-cross Hospital"—Great Northern Hospital, King's Cross, entitled.]—A bequest by a London testator to the "King's-cross Hospital" was claimed by the Great Northern Central Hospital, King's College Hospital, the Smallpox Hospital, Charing Cross Hospital, & King's-cross Hospital, Dundee:—*Held:* the Great Northern Hospital, King's Cross, was intended.—*Re* LYCETT, RILEY *v.* KING'S COLLEGE HOSPITAL (1897), 13 T. L. R. 373.

881. —— —— Street—"London Orphan Society in City Road"—Orphan Working Schools in City Road, not London Orphan Asylum at Clapton.]—WILSON *v.* SQUIRE (1842), 1 Y. &

"Protestant" testator meant "Church of Ireland"; (2) the Church of Ireland Home Mission was entitled to the bequest to the Protestant Home Mission.—*Re* GEARY'S TRUSTS (1890), 25 L. R. Ir. 171.—**IR.**

h. —— —— *For use of Episcopal Chapel School in B. street—No school attached to chapel—Parish schools entitled.*]—DALY *v.* A.-G. (1860), 11 I. Ch. R. 41.—**IR.**

k. —— —— *"American Society for Prevention of Cruelty to Children"—"New York Society for Prevention of Cruelty to Children" entitled.*]—A. bequeathed shares to the secretary or treasurer for the time being of the American Society for Prevention of Cruelty to Children, to be applied for the benefit of the objects of the said society. There was no such society, but among numerous other societies for the prevention of cruelty to children in America there was a society called the New York Society for the Prevention of Cruelty to Children:—*Held:* a mere misnomer of the New York Society which was entitled to the bequest.—*Re* KING, KING *v.* LONG (1918), 53 I. L. T. 60.—**IR.**

l. —— —— *National Society for Prevention of Cruelty to Children—Scottish National Society for Prevention of Cruelty to Children—Former entitled.*]—A. left, among other legacies to charities, all of which were Scottish, a legacy to "The National Society for the Prevention of Cruelty to Children." In a competition between the National Society for the Prevention of Cruelty to Children of London & the Scottish National Society for the Prevention of Cruelty to Children (of Edinburgh):—*Held:* the legacy fell to be paid to the English society in the absence of clear proof that the testator intended that it should go to the Scottish society.—NASMYTH'S TRUSTEES *v.* N. S. P. C. C., [1913] S. C. 412.—**SCOT.**

m. *Misdescription applying indifferently to more than one charity—Reference to locality—"Widows' & Orphans' Home at Toronto"—Legacy divided.*]—*Re* GRAHAM (1904), 4 O. W. R. 90.—**CAN.**

n. —— —— *Legacy divided.*]—*Re* YOUNG (1907), 9 O. W. R. 566.—**CAN.**

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 3, D., E., F. & G.]

C. Ch. Cas. 654; 62 E. R. 1058; *subsequent proceedings*, 13 Sim. 212.
Annotation:—**Apld.** *Re* Kilvert's Trusts (1871), L. R. 12 Eq. 183.

882. —— —— —— Carey Street Infirmary—Carey Street Dispensary, not King's College Hospital in Carey Street.]—KING'S COLLEGE HOSPITAL *v.* WHEILDON (1854), 18 Beav. 30; 23 L. J. Ch. 537; 2 W. R. 202; 52 E. R. 12.

883. —— —— Specific address & name of secretary.]—Testator left £500 "to the Anti-Vivisection Society of 23, Northumberland Avenue, London, of which Mr. Coleridge is now secretary." The legacy was claimed by the Society for the Abolition of Vivisection, whose offices were at 23, Northumberland Avenue, & also by the "National Anti-Vivisection Society," whose offices were at 92, Victoria Street. No Mr. Coleridge had been secretary of the former society, while from 1897 until after the date of the will the Hon. Stephen Coleridge was honorary secretary of the latter society, & was now honorary treasurer:—*Held:* the National Anti-Vivisection Society was entitled to the legacy.—*Re* MORGAN, MARRIOTT *v.* SOCIETY FOR ABOLITION OF VIVISECTION (1909), 25 T. L. R. 303.

884. —— —— —— Society formerly at named address but now in another town or society in named town—Legacy divided.]—*Re* JACKSON, BELL *v.* ADLAM (1910), *Times*, June 11.

Compare cases in Sub-sect. 3, C., *ante*, & *see, also*, Nos. 825, 826, 827, *ante*.

885. —— Gift to fund—For Superannuated Preachers and Widows of Wesleyan Ministers—Itinerant Methodist Preachers' Annuitant Society entitled.]—BUNTING *v.* MARRIOTT (1854), 19 Beav. 163; 52 E. R. 311.
Annotation:—**Mentd.** Chandler *v.* Howell (1876), 4 Ch. D. 651.

886. —— —— "Poor Clergy Sustentation Fund."]—A bequest to the "Poor Clergy Sustentation Fund," there being no fund of this precise name, was divided equally between the Church of England Incumbents' Sustentation Fund & the Poor Clergy Relief Corpn., each of which claimed the whole legacy.—*Re* BARNARD, MAJENDIE *v.* NORTHUMBERLAND (DUKE) (1890), 7 T. L. R. 73.

887. —— —— "Artists' General Benevolent Fund"—Artists' General Benevolent Institution, not fund commonly called Artists' Benevolent Fund.] — *Re* DOANE, SYMONDS *v.* ARTISTS' BENEVOLENT FUND (1892), 9 T. L. R. 2, C. A.

888. —— Gift to religious society—"London Church Building Society"—London Diocesan Church Building Society & Metropolitan Churches Fund, not Incorporated Society for Promoting Enlargement, Building & Repairing of Churches in England & Wales.]—BUXTON *v.* BLAKISTON (1886), 2 T. L. R. 293.

889. —— —— "Curates' Aid Society."]—Testator gave a legacy to the "Curates' Aid Society":—*Held:* the "Curates' Augmentation Fund" & not the "Church Pastoral Aid Society" was intended.—*Re* BARKER, DEACON *v.* BARKER (1894), 11 T. L. R. 82.

890. —— —— "Lord's Day Observance Association"—Working Men's Lord's Day Rest Association, not Lord's Day Observant Society—Similar misdescription previously used & confirmed by testatrix.]—*Re* HOWARD, CROFTON *v.* LORD'S DAY OBSERVANCE SOCIETY (1899), 43 Sol. Jo. 380.

891. —— —— "Church of England Protestant Association"—Legacy divided between Church Association, National Protestant Church Union & Protestant Reformation Society.]—*Re* LEADER, COAST *v.* MILLER (1905), 49 Sol. Jo. 551.

892. —— Court not bound to decide in favour of any particular charity.]—Testatrix made a charitable bequest to an uncertain object, & the ct. directed an inquiry as to what charity testatrix meant. The master certified that a certain charity was the one meant, & another charity took out a summons to vary the certificate by substituting itself as the one meant:—*Held:* the ct. was not bound to decide in favour of either of the two charities, but could discharge the certificate & order the fund to be applied *cy-près*.—*Re* HILL, DAVIES *v.* NAPPER (1909), 53 Sol. Jo. 228.

Cy-près doctrine, generally, *see* Part IV., Sect. 2, *post*.

893. Trivial error immaterial—"Rector" for "Vicar."]—HOPKINSON *v.* ELLIS (1842), 5 Beav. 34; 49 E. R. 489.

894. —— "Diocese of Worcester" for "archdeaconry of Worcester."]—*Re* KILVERT'S TRUSTS (1871), 7 Ch. App. 170; 41 L. J. Ch. 351; 26 L. T. 221; 20 W. R. 225, L. JJ.
Annotations:—**Folld.** *Re* Alchin's Trusts, *Ex p.* Furley, *Ex p.* Romney (1872), L. R. 14 Eq. 230. **Consd.** *Re* Briscoe's Trusts (1872), 26 L. T. 149; **Reid.** *Re* Fearn's Will (1879), 27 W. R. 392; *Re* Beale, Beale *v.* Royal Hospital for Incurables (1890), 6 T. L. R. 308.

E. Gifts to Institutions which have changed their Names or Management or have amalgamated.

895. Name changed—Institution entitled—"Westminster Asylum for pregnant women"—General Lying-in Hospital formerly Westminster Lying-in Hospital.]—GENERAL LYING-IN HOSPITAL *v.* KNIGHT (1851), 21 L. J. Ch. 537.

896. —— —— "Rochester Diocesan Society"—Southwark Diocesan & South London Fund.]—*Re* SOUTER, BROOK *v.* TALBOT (1907), *Times*, Jan. 24.

897. Change of management—& address.]—Testatrix bequeathed a legacy of £1000 "to St. Mary's Home for Women & Children of 15, W. Street." By a codicil she reduced to £500 the amount of all charitable legacies given by her will exceeding £500, & in other respects she confirmed her will:—*Held:* (1) the bequest was a perfectly good & valid charitable bequest for a definite charitable object, namely the work carried on at or in connection with St. Mary's Home, & the legacy had not lapsed, notwithstanding the facts that between the date of the will & the codicil

o. —— *Gift to religious society—"Bible & Tract Society"—Legacy divided between "Upper Canada Religious Book & Tract Society" & "Upper Canada Bible Society."*]—*Re* PAINE (1910), 17 O. W. R. 1065; 2 O. W. N. 494.—**CAN.**

p. —— *Gift to home or hospital for aged Protestant persons near specified town—House of Refuge—Women's Christian Association professing the promotion of the Protestant faith entitled.*]—*Re* MCCONAGHY (1920), 18 O. W. N. 223.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.—E.

897 i. *Change of management—"Wesleyan Methodist Foreign Missions"—"Methodist Church"—Latter entitled.*]—*Re* EDWARDS (1911), 18 O. W. R. 678; 2 O. W. N. 765.—**CAN.**

897 ii. ——.]—A bequest was made to a Ragged Industrial School which had been established in 1857 by an association "to rescue" destitute children "& to fit them for the duties of life by imparting to them a good, common, & Christian education." The members of the society had power to alter the constitution. Originally, & till after the testator's death, the society conducted a school of its own. Owing to the provision of free education it closed & sold its school, & thereafter devoted its funds under an amended constitution to providing destitute children with clothing & books to enable them to attend the board school. Vesting of the legacy was postponed until an event which occurred after these changes had been introduced:—*Held:* the institution had not lost its identity, although it had altered its methods of attaining

the carrying on of the rescue & preventive work at St. Mary's Home had been transferred from one association to another, though without any break in the continuity of the home or of the work carried on there, & that between the date of the codicil & testatrix's death St. Mary's Home was removed from 15, W. Square, not 15, W. Street, as described in the will, to 14, T. Square; (2) neither of the associations above mentioned was entitled to the legacy, but it must be applied under a scheme for the benefit of St. Mary's Home, unless the A.-G. consented to the legacy being paid to one of deft. associations on an undertaking to apply it to St. Mary's Home.—*Re* WEDGWOOD, SWEET *v.* COTTON, [1914] 2 Ch. 245; 83 L. J. Ch. 731; 111 L. T. 436; 30 T. L. R. 527; 58 Sol. Jo. 595.

898. Amalgamation—Gift to each institution.]—Testatrix, who died in 1885, by a codicil to her will dated in 1882, bequeathed to the "Anti-Vivisection Society" a legacy of £200 & to the "International Anti-Vivisection Society" a legacy of £200. These two societies amalgamated in 1883, their objects being identical:—*Held:* (1) for the purpose of the will, both societies must be deemed to be still in existence, & took both legacies, & the united society was entitled to £400.

A legacy of £1000 was bequeathed by testatrix to a clergyman for the benefit of the "Society for Suppressing Cruelty by United Prayer," & for accomplishing its purposes & objects. The so-called society had been originated by testatrix herself in 1876, & had, at various times, had some thousands of members. The society had no rules, but the members were required to buy a card at the cost of twopence, & to use a prayer which was printed on the card. Testatrix caused the cards to be printed at her own cost, & received the money for the cards, but published no accounts:—*Held:* (2) on the face of the will, the gift was to a particular society, & if at the date of the death of testatrix the society had ceased to exist, the ordinary doctrine of lapse would apply, unless the gift could be shown to be to a society which was a charity; (3) the evidence showed that testatrix was in truth the society itself, & at her death the society came to an end; (4) the legacy was rather for the improvement of the persons praying privately for the objects stated under the name of the society than for the suppression of cruelty to animals by ordinary means, which was not a purpose of general utility, & the legacy lapsed & fell into the residue.—*Re* JOY, PURDAY *v.* JOHNSON (1888), 60 L. T. 175; 5 T. L. R. 117.

Annotations:—*As to* (1) **Consd.** *Re* Pritt, Morton *v.* National Church League (1915), 85 L. J. Ch. 166. **Refd.** *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501. *As to* (4) **Refd.** *Re* Rymer, Rymer *v.* Stanfield (1894), 42 W. R. 581.

899. —— "United Presbyterian Church, Hexham"—Amalgamation with Presbyterian Church of England—Particular church entitled as remaining in substance unaltered.]—*Re* ADAMS, HARLE *v.* ADAMS (1888), 4 T. L. R. 757.

900. —— Of local institution with central institution—Gift to be used for benefit of local branch.]—(1) Testator gave a share in the residue of his estate to "The Society for Cruelty to Animals in the parish of C." There used to be a "C. Society for the Prevention of Cruelty to Animals," which afterwards amalgamated with the Royal Society for the Prevention of Cruelty to Animals:—*Held:* the Royal Society for the Prevention of Cruelty to Animals was entitled.

(2) Testator also gave another share in the residue to a place of worship carried on by & under the entire control of one man:—*Held:* this was a good charitable object.—*Re* MARCHANT, WEAVER *v.* ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (1910), 54 Sol. Jo. 425.

901. —— Carrying on same work.]—*Re* PRITT, MORTON *v.* NATIONAL CHURCH LEAGUE, No. 873, *ante*.

F. Gifts to Institutions with several Branches.

902. Gift to local branch—Whether parent institution entitled—Construction of bye-laws.]—A Royal Charter governing an institution empowered the governors to make bye-laws for the management of its affairs, & they made a bye-law providing that in the event of a legacy being received by a branch it must at once be transferred, with the necessary particulars, to the institution. Various testators left legacies to or for the purposes of the B. branch, which was not a separate charitable body:—*Held:* in the case of legacies that were within the bye-law the institution was entitled, on their receipt by the branch, to have them paid over & the central committee was entitled to control the expenditure of the money, subject to its being restricted to the area of the branch, but where a legacy had been left to the local committee, to be applied in their discretion in connection with the branch, or had been left to be applied by the local committee for the relief of sailors, the legacy not being within the bye-law should not be sent to the institution but should be administered by the local committee.—ROYAL NATIONAL LIFE-BOAT INSTITUTION *v.* TURVER (1915), 31 T. L. R. 340.

903. Gift to closed branch of hospital—Intention to benefit institution generally—Hospital entitled.]—*Re* BRADFIELD (1892), 8 T. L. R. 696; 36 Sol. Jo. 646.

G. Gifts to Institutions which have never existed.

904. Lunatic asylum—Granted to legatee under will.]—SANFORD *v.* GIBBONS (1829), 3 Hare, 195, n.; 67 E. R. 353.

905. "North American Institution"—Granted to charity benefited by will.]—THORLEY *v.* BYRNE (1830), 3 Hare, 195, n.; 67 E. R. 353.

906. Society for "increase & encouragement of good servants"—General charitable intention—Gift does not fail.]—LOSCOMBE *v.* WINTRINGHAM (1850), 13 Beav. 87; 51 E. R. 34.

Annotations:—**Distd.** Clark *v.* Taylor (1853), 1 Drew. 642. **Foll.** *Re* Maguire (1870), L. R. 9 Eq. 632. **Distd.** *Re* Kilvert's Trusts (1871), L. R. 12 Eq. 183. **Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19; *Re* Davis,

its objects.—PLAYFAIR *v.* KELSO RAGGED INDUSTRIAL SCHOOL (1905), 7 F. (Ct. of Sess.) 751.—SCOT.

898 i. *Amalgamation—Parishes united—Gift to parson discharging duties of K. parish.*]—A sum of £1,000 was bequeathed in trust as a perpetual endowment for the clergyman who should discharge the duties of K. parish & who should reside in the glebe house at D. The parish of K. was amalgamated with the parish of N. & the incumbent ceased to reside at D.:—*Held:* the incumbent of N. was entitled to the income of the said endowment so long as he discharged the duties of the incumbent at K.—*Re* BLOOMFIELD'S BEQUEST (1920), 54 I. L. T. 213.—IR.

PART III. SECT. 4, SUB-SECT. 3.—G.

q. *"Protestant Home Mission in Ireland"—"Home Mission of the Gospel of Christ in Ireland"—Administered cy-près.*]—Testator who was (as the ct. inferred) a member of the Church of Ireland, made several bequests to charitable institutions, & amongst others to the Home Mission of the Gospel of Christ in Ireland. There was no society exactly answering to the description in the testator's will:—*Held:* the bequest failed as regards its object; but being a charitable gift, the ct. under the *cy-près* doctrine, ordered it to be paid to the Church of Ireland Home Mission, as the society which would most nearly carry out the testator's original intention, upon trust for the purposes of a Home Mission of the Gospel of Christ in Ireland.—*Re* GEARY'S TRUSTS (1890), 25 L. R. Ir. 171.—IR.

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 3, G. & H. (a).]

Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Refd.** Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236. **Mentd.** A.-G. *v.* Loscombe (1860), 5 H. & N. 564; Biscoe *v.* Jackson (1887), 35 Ch. D. 460.

907. Church Building Fund for Native Churches in India—Divided amongst other charities benefited by will.]—*Re* HYDE'S TRUSTS (1873), 22 W. R. 69.

908. "Home for the Homeless"—Administered cy-près.]—Testatrix by her will gave pecuniary legacies to charities established for a variety of purposes, *e.g.* to aid consumptive persons, blind persons, orphans, deaf & dumb persons, epileptics & paralytics. One of the legacies was of a sum of £500 to the "Home for the Homeless." After providing that in the event of any question arising as to the designation of any of the charitable institutions, or of any doubt arising as to which one of two or more of them it was intended to benefit, the decision should rest absolutely with her exor. & after giving other legacies, testatrix provided that her residuary money should be divided ratably among the various charitable institutions which were beneficiaries under her will. At the date of the will there was not, & there never had been previously, in London any charitable institution known as the "Home for the Homeless." After making provision for debts & legacies there was a fund distributable as residue among the charitable institutions which were beneficiaries under the will:—*Held:* (1) the ct. was justified in drawing the inference of a general charitable intention with reference to the gift of £500 & the gift did not lapse, but must be administered *cy-près;* (2) the word "institutions" was large enough to include any authority or person that would have to administer the fund, & the authority or person was also entitled to the share of residue which would have been taken by the "Home for the Homeless" if it had existed.—*Re* DAVIS, HANNEN *v.* HILLYER, [1902] 1 Ch. 876; 71 L. J. Ch. 459; 86 L. T. 292; 50 W. R. 378; 46 Sol. Jo. 317.

Annotations:—As to (1) **Distd.** *Re* Wilson, Twentyman *v.* Simpson (1913), 82 L. J. Ch. 161. **Refd.** *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 83.

909. "Mission Coast Homes for Destitute Children"—Administered cy-près.]—*Re* THOMPSON, GREEN *v.* MISSION COAST HOME (1908), *Times*, Nov. 16.

910. "Protestant Church Bible Society"—Administered cy-près.]—Testator bequeathed part of his estate to, among other institutions, the objects of all of which were obviously charitable, the "Protestant Church Bible Society." No society of that name had ever existed:—*Held:* the ct. had to look not merely at the name of the particular institution, but at the whole context to see whether a charitable gift was intended, &, as the "Protestant Church Bible Society" was included in a list with other institutions the objects of all of which were obviously charitable, it must be inferred that testator meant a society whose objects were charitable, as the cheap distribution of Bibles would be, & as the legacy failed, there must be an application of the bequest *cy-près.*—*Re* PARKES, COTTRELL *v.* PARKES (1909), 25 T. L. R. 523.

Uncertain description of charities.]—*See* Sub-sect. 3, C., *ante.*

Misdescription of charities.]—*See* Sub-sect. 3, D., *ante.*

Application of cy-près doctrine.]—*See* Part IV., Sect. 2, *post.*

H. Gifts to Institutions or for particular Charitable Purposes which cease to exist.

(a) Gifts to Institutions.

911. Whether institution has wholly ceased to exist—Named institution defunct at death of testator—Institution in existence with similar name & objects—Entitled—As being sufficiently described.]—COLDWELL *v.* HOLME (1854), 2 Sm. & G. 31; 2 Eq. Rep. 390; 23 L. J. Ch. 594; 18 Jur. 396; 2 W. R. 150; 65 E. R. 288.

Annotations:—**Folld.** *Re* Magrath, Histed *v.* Queen's University of Belfast, [1913] 2 Ch. 331. **Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

912. —— —— —— —— ——.]—By her will made in 1910 testatrix gave a legacy of £3,000 to Q. College, to found a scholarship bearing her name. Her husband had been educated at the college. The college had been dissolved in 1909 under Irish Universities Act, 1908 (c. 38), whereby its property had been transferred to the Q. University founded in pursuance of the Act. There was no evidence whether testatrix knew of the dissolution of Q. College:—*Held:* it could not be assumed that she was ignorant of what had taken place, & the Q. University, being an existing society of similar name & identical purpose, & sufficiently described, was entitled to the legacy.—*Re* MAGRATH, HISTED *v.* QUEEN'S UNIVERSITY OF BELFAST, [1913] 2 Ch. 331; 82 L. J. Ch. 532; 108 L. T. 1015; 29 T. L. R. 622.

913. —— —— **Other institutions with somewhat similar names but distinct objects in existence—Not entitled.]**—BROWNJOHN *v.* GALE, [1869] W. N. 133.

Annotation:—**Mentd.** *Re* Webster, Pearson *v.* Webster, [1912] 1 Ch. 106.

914. —— —— **Title incorporated with that of similar institution in order to secure legacies—Not entitled.]**—*Re* BRIGHTWEN, SHELLY *v.* SHELLY (1907), *Times*, Feb. 7.

915. —— **Testator himself the institution—Institution ceasing at death—Lapse.]**—*Re* JOY, PURDAY *v.* JOHNSON, No. 898, *ante.*

916. —— —— **Intention that some institution should continue to be carried on—No lapse.]**—Testatrix bequeathed her estate to "The O. Home for Nurses," & added directions for carrying on the home for the next few months. Testatrix was a qualified midwife, who for moderate fees attended maternity cases among the working-classes & poor people of C. She employed at weekly salaries several other trained midwives, who resided with her, & the fees paid by the former & earned by the latter were received by testatrix. By means of the fees so paid & her own small income she just managed to carry on her establishment which she called "The O. Home for Nurses":—*Held:* although there was no person or institution which could properly be called "The O. Home for Nurses," testatrix clearly intended something to be carried on for the benefit of the patients requiring nursing, & there was a good & valid charitable gift, & a scheme should be directed.—*Re* WEBSTER, PEARSON *v.* WEBSTER, [1912] 1 Ch. 106; 81 L. J. Ch. 79; 105 L. T. 815; 56 Sol. Jo. 90.

917. —— **Named branch of hospital closed—Other branches still carried on—Hospital entitled.]**—*Re* BRADFIELD (1892), 8 T. L. R. 696; 36 Sol. Jo. 646.

918. —— **Public elementary school closed as such—Used as Sunday school.]**—Testatrix bequeathed £400 to A. School. This school was granted by deed in 1869 to the vicar of H., his successors, & assigns upon trust for the education of children of the poorer classes. It was carried on by the vicar as trustee & was recognised as a

public elementary school until 1900, when it was closed as such a school by the education authority, but it continued to be used for Sunday school classes under the control of the vicar, who also let it on weekdays to the managers of a neighbouring school as an infants' school:—*Held:* although the weekday letting was not a carrying on of the school by the vicar as contemplated by the deed, yet the school was still existing by reason of the continuance of the Sunday school classes under the vicar's control, & the legacy had not lapsed.—*Re* WARING, HAYWARD *v.* A.-G., [1907] 1 Ch. 166; 76 L. J. Ch. 49; 95 L. T. 859; 51 Sol. Jo. 101.

Annotation:—**Consd. A.-G. v. Shadwell, [1910] 1 Ch. 92.**

919. —— Volunteer, Yeomanry & Militia units transferred to Territorial Force & Army Reserve.]—Testator by his will, dated in 1893, devised & bequeathed the residue of his estate to trustees upon trust for sale, & out of the proceeds to pay legacies of £50 each "to the officers commanding the Volunteer Rifles at B., the Volunteer Artillery at B., & the Volunteer Rifles at W. for the use of their respective corps," & a legacy of £1,000, "to the officer commanding the N. Militia for the mess of that regiment or for the poor of the regiment." By a first codicil testator directed his trustee to divide the residue into eight parts & to accumulate three of such parts for seven years from his decease, & then to divide the accumulated fund "ratably among the persons & institutions to whom & to which I have given pecuniary legacies & the foregoing five eighth shares of residue by this codicil to my will, or such of them as shall be alive & existing in proportion to their respective shares of residue. In the event, however, of any such legatee dying or any such institution ceasing to exist prior to the expiration of such seven years, the share to which he or it would have been entitled shall go to my next of kin." By an eighth codicil testator bequeathed "to the officer commanding the 1st Battalion L. Volunteers the sum of £1,000, & to the officers commanding the D. Yeomanry Cavalry & the S. Volunteers respectively the sum of £500 each," & he declared that the respective sums should be held by the commanding officers "for any purpose or purposes for the benefit of their respective corps, it being my intention that the funds shall be deemed private funds & be held & expended entirely independently of Government control." Testator died in Jan., 1902, & in Jan., 1909, the seven years limited by his will for accumulation expired & the fund became distributable. In the interval Territorial & Reserve Forces Act, 1907 (c. 9), was passed, which, by s. 29 & an Order in Council of Mar. 19, 1908, made thereunder, transferred the Volunteer & Yeomanry units to the Territorial Force, & by s. 34 & an Order in Council of April 9, 1908, transferred the Militia units to the Army Reserve:—*Held:* (1) the effect of the Act & the Orders in Council was not to destroy the Volunteer, Yeomanry, & Militia units, but to reorganise them, & those units had not ceased to exist; (2) the legacies bequeathed to the Volunteer & Yeomanry units were payable to the several county associations established under the Act on behalf of the units of the Territorial Force which now represented those units; (3) the legacy "to the officer commanding the N. Militia for the mess of that regiment or for the poor of the regiment" was a good charitable gift, & was payable to the officer commanding the unit of the Army Reserve which now represented the N. Militia.—*Re* DONALD, MOORE *v.* SOMERSET, [1909] 2 Ch. 410; 78 L. J. Ch. 761; 101 L. T. 377; 53 Sol. Jo. 673.

920. —— District nurses fund divided.]—Testator, by his will, directed his trustees to invest the sum of £500 & pay the net annual income thereof "to the treasurer or treasurers for the time being of the A. & B. District Nurse Fund, to be applied by him or them for & in aid of the charitable work for which the fund has been raised," & he declared that "should the charitable work for which the fund has been instituted from any cause cease to be carried on for the space of two years" the sum & income should fall into his residuary estate. Testator had been a subscriber for many years to a fund bearing the name mentioned, but some months before the date of his will the village of B. ceased to be connected with the fund, & started one of its own, while the village of A. carried on its own work in its own name:—*Held:* (1) the will showed a general charitable intention, & not merely an intention to give a fund to a particular charitable institution; (2) the fund had not ceased to exist but had been divided into two, & the proper way of carrying out testator's charitable intention would be to give four fifths to A. & the remaining one fifth to B., these being the proportions of population in the two villages respectively.—*Re* WILSON, WARDLE *v.* LEMON (1909), 25 T. L. R. 465.

921. —— Endowed charities consolidated & their objects changed by Charity Commissioners.]—F., who died in 1911, gave by her will a legacy of £200 "to Mrs. Bailey's Charity, R." There was at R. a charity known as Hannah Bayly's Charity founded in 1756 by a Mrs. Bayly for the benefit of poor widows resident in & parishioners of St. M., R. In 1905 the Charity Comrs. sealed a scheme in the matter of the charity of Hannah Bayly's Charity, & thirteen other charities in R. whereby the endowments of all those charities were consolidated, trustees were appointed & trusts declared for the benefit of the poor of R. There was no mention of widows in the scheme. On a summons against the trustees of the consolidated charities & a residuary legatee to determine whether the legacy had lapsed, the judge decided that Hannah Bayly's Charity had ceased to exist & the legacy had lapsed. The A.-G. was not a party to the summons, but he appealed by special leave granted by the C. A.:—*Held:* (1) the A.-G. had a right to be a party to the proceedings & to appeal although the trustees of the consolidated charities had been present & had argued the question in the ct. below; (2) Hannah Bayly's Charity was an endowed charity, & could not be destroyed & was not extinct, although its objects had been changed in accordance with law, & the consolidated charities were entitled to the legacy.

Semble: (3) a specific provision for widows ought not to have been omitted from the scheme, & an application should be made to amend the scheme by inserting such a provision.—*Re* FARAKER, FARAKER *v.* DURELL, [1912] 2 Ch. 488; 81 L. J. Ch. 635; 107 L. T. 36; 56 Sol. Jo. 668, C. A.

—— Change of name or amalgamation.]—*See* Sub-sect. 3, E., *ante*.

922. Institution ceasing to exist before testator's death—Lapse—Gift for specific & not for general charitable purposes—Orphan asylum.]—CLARK *v.* TAYLOR (1853), 1 Drew. 642; 1 Eq. Rep. 435;

PART III. SECT. 4, SUB-SECT. 3.—H. (a).

922 i. *Institution ceasing to exist before testator's death—Lapse.*]—Where a testator makes a gift to a particular charitable institution which fails by reason of the institution having at the date of his death ceased to exist, the legacy will lapse.—*In the Will of* HAINES (DECEASED), PINCOTT *v.* FARRINGTON (1892), 18 V. L. R. 553.—AUS.

922 ii. ——————.]—*Re* JONES, [1907] S. A. L. R. 190.—AUS.

922 iii. —— ——.]—MAKEOWN *v.* ARDAGH (1876), I. R. 10 Eq. 445.—IR.

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 3, H. (a) & (b), I. & J.]

21 L. T. O. S. 287; 1 W. R. 476; 61 E. R. 596.

Annotations:—**Consd.** Coldwell *v.* Holme (1854), 2 Sm. & G. 31; Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521; *Re* Ovey, Broadbent *v.* Barrow (1885), 29 Ch. D. 560; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236. **Apprvd. & Folld.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Refd.** Marsh *v.* Means (1857), 30 L. T. O. S. 89; *Re* Maguire (1870), L. R. 9 Eq. 632; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876; *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427.

923. —— —— —— **"East London Free School Society," "Anti-slavery Society," "African Society."**]—LANGFORD *v.* GOWLAND (1862), 3 Giff. 617; 7 L. T. 125; 26 J. P. 709; 9 Jur. N. S. 12; 10 W. R. 482; 66 E. R. 554.

924. —— —— —— **"Ladies Benevolent Society at L."**]—FISK *v.* A.-G. (1867), L. R. 4 Eq. 521; 17 L. T. 27; 32 J. P. 52; 15 W. R. 1200.

Annotations:—**Folld.** Hunter *v.* Bullock (1872), 26 L. T. 349. **Apld.** Dawson *v.* Small (1874), L. R. 18 Eq. 114. **Consd.** *Re* Williams (1877), 5 Ch. D. 735; *Re* Birkett (1878), 9 Ch. D. 576; Champney *v.* Davy (1879), 11 Ch. D. 949; *Re* Ovey, Broadbent *v.* Barrow (1885), 29 Ch. D. 560. **N.F.** *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538. **Consd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373. **Folld.** *Re* Rymer, Rymer *v.* Stanfield (1894), 63 L. J. Ch. 623; *Re* Rogerson, Bird *v.* Lee, [1901] 1 Ch. 715. **Consd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Refd.** *Re* Maguire (1870), L. R. 9 Eq. 632; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

925. —— —— —— **Ophthalmic hospital.**]—*Re* OVEY, BROADBENT *v.* BARROW (1885), 29 Ch. D. 560; 54 L. J. Ch. 752; 52 L. T. 849; 33 W. R. 821; 1 T. L. R. 401; *subsequent proceedings*, 31 Ch. D. 113.

Annotations:—**Consd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Refd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

926. —— —— —— **Seminary for education of priests in named diocese.**]—Testator bequeathed a legacy of £5,000 "to the rector for the time being of T. Seminary for the education of priests in the diocese of W. for the purposes of such seminary." At the date of the will the seminary was carried on at H.; but shortly before testator's death the seminary ceased to exist, & the students who were being educated there were removed to another seminary near B.:—*Held:* the bequest was for the benefit of the particular institution, &, that institution having ceased to exist in testator's lifetime, the legacy could not be applied *cy-près*, but lapsed & fell into the residue.—*Re* RYMER, RYMER *v.* STANFIELD, [1895] 1 Ch. 19; 64 L. J. Ch. 86; 71 L. T. 590; 43 W. R. 87; 39 Sol. Jo. 26; 12 R. 22, C. A.

Annotations:—**Refd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Mentd.** *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451; *Re* Cardwell, A.-G. *v.* Day, [1912] 1 Ch. 779.

927. —— **No lapse—Gift to officers of school for instructing youth in specified subjects—Not gift to benefit particular school but for general charitable purposes.**]—MARSH *v.* A.-G. (1860), 2 John. & H. 61; 30 L. J. Ch. 233; 3 L. T. 615; 25 J. P. 180; 7 Jur. N. S. 184; 9 W. R. 179; 70 E. R. 971.

Annotations:—**Consd.** Brook *v.* Badley (1868), 3 Ch. App. 672. **Dbtd.** Ashworth *v.* Munn (1880), 15 Ch. D. 363. **Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Refd.** Aspinall *v.* Bourne (1861), 29 Beav. 462.

Institution ceasing to exist after testator's death.]—*See* Part IV., Sect. 2, sub-sect. 2 C. (*b*), *post*.

(b) Gifts for particular Charitable Purposes.

928. Gift to pay off mortgage on chapel—Mortgage paid off in testator's lifetime—Gift not applicable to any other charitable purpose.]—CORBYN *v.* FRENCH (1799), 4 Ves. 418; 31 E. R. 213.

Annotations:—**Folld.** *Re* Lynall's Trusts (1879), 12 Ch. D. 211. **Refd.** Cary *v.* Abbot (1802), 7 Ves. 490; West *v.* Shuttleworth (1835), 2 My. & K. 684; Cherry *v.* Mott (1836), 1 My. & Cr. 123; Russell *v.* Kellett (1855), 3 Sm. & G. 264; Chandler *v.* Howell (1876), 4 Ch. D. 651; Jervis *v.* Lawrence (1882), 22 Ch. D. 202; *Re* Jones, Jones *v.* Williams (1886), 2 T. L. R. 544. **Mentd.** *Re* Bates (1816), 3 Price, 341; Bone *v.* Cook (1824), M'Cle 168; Waite *v.* Templer (1829), 2 Sim. 524; Gittings *v.* M'Dermott (1834), 2 My. & K. 69; Shuttleworth *v.* Greaves (1838), 4 My. & Cr. 35; Taylor *v.* Beverley (1844), 1 Coll. 108; *Re* Crawford's Trusts (1854), 2 Drew. 230; *Re* Porter's Trust (1857), 4 K. & J. 188; Cocks *v.* Manners (1871), 40 L. J. Ch. 640; Sinnett *v.* Herbert (1872), 7 Ch. App. 232; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

929. Gift to pay off debt of chapel—Part of debt incurred by sect allotted to chapel for amount to be raised by voluntary subscriptions—No legal liability on trustees—Failure of legacy.]—DAVIES *v.* HOPKINS (1840), 2 Beav. 276; 48 E. R. 1186.

930. Gift towards reduction of debt on chapel—Debt incurred in building chapel paid off—Debt since incurred by chapel trustees on their own individual responsibility—Gift payable to such trustees.]—BUNTING *v.* MARRIOTT (1854), 19 Beav. 163; 52 E. R. 311.

Annotation:—**Mentd.** Chandler *v.* Howell (1876), 4 Ch. D. 651.

931. Gift to pay off debt on church & schools—Mortgage on church paid off—Gift valid.]—J. bequeathed to Father W. of St. A., for his own use £100, & to Father W. or to the priest in charge for the time being of the church, to pay off the debt on the church, & boys' schools of St. A., £500 payable in one sum or five annual instalments. At the date of testator's will there was a mtge. debt of £200 on the church, but at the date of his death there was a debt of £63 on the schools only:—*Held:* the bequest of £500 was for a general charitable purpose of maintaining the church & schools & valid in respect of the amount not required for the particular purpose of paying off the debt.—*Re* CONNOLLY, WALTON *v.* CONNOLLY (1914), 110 L. T. 688, C. A.

932. Gift to found school in particular house built by founder—House built on estate of which founder only tenant for life—Failure of gift.]—A.-G. *v.* LONSDALE (EARL) (1827), 1 Sim. 105; 5 L. J. O. S. Ch. 99; 57 E. R. 518.

Annotations:—**Consd.** Nightingale *v.* Goulburn (1847), 5 Hare, 484. **Refd.** Stewart *v.* Greene (1871), 19 W. R. 396. **Mentd.** Nightingale *v.* Goulbourn (1848), 2 Ph. 594; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933; Income Tax Comrs. for Special Purposes *v.* Pemsel, [1891] A. C. 531.

933. Gift to continue periodical conducted by association for protection of animals—Periodical having ceased—No general charitable purpose—Lapse.]—MARSH *v.* MEANS (1857), 30 L. T. O. S. 89; 21 J. P. 725; 3 Jur. N. S. 790; 5 W. R. 815.

Annotations:—**Mentd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236; *Re* Foveaux, Cross *v.* London Anti-Vivisection Soc., [1895] 2 Ch. 501; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113.

I. Where one Gift depends on another Gift.

934. Secondary gift held void—Devise of houses for poor—& gift of personal fund for inmates.]—A.-G. *v.* GOULDING (1788), 2 Bro. C. C. 428; 29 E. R. 239.

Annotations:—**Consd.** A.-G. *v.* Winchelsea (1791), 3 Bro. C. C. 373. **Folld.** A.-G. *v.* Whitchurch (1796), 3 Ves. 141; Chapman *v.* Brown (1801), 6 Ves. 404. **Refd.** A.-G. *v.* Boultbee (1794), 2 Ves. 380.

935. —— —— ——.]—A.-G. *v.* WHITCHURCH (1796), 3 Ves. 141; 30 E. R. 937.

Annotations:—**Distd.** A.-G. *v.* Craven (1856), 21 Beav. 392. **Consd.** Warren *v.* Rudall (1858), 4 K. & J. 603. **Apld.** Thomson *v.* Shakspear (1860), 1 De G. F. & J. 399. **Refd.** Hoare *v.* Hoare (1886), 56 L. T. 147; *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427. **Mentd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Edwards *v.* Hall (1855), 6 De G. M. & G. 74; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338.

936. —— Gift to build almshouses—Residuary bequest to charity provided they would furnish piece of ground.]—A.-G. *v.* DAVIES (1802), 9 Ves. 535; 32 E. R. 710, L. C.

Annotations:—**Folld.** A.-G. *v.* Hinxman (1820), 2 Jac. & W. 270. **Consd.** Giblett *v.* Hobson (1834), 3 My. & K. 517. **Distd.** Mitford *v.* Reynolds (1848), 16 Sim. 105. **Consd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Refd.** Pritchard *v.* Arbouin (1827), 3 Russ. 456; Mather *v.* Scott (1837), 2 Keen, 172; Mitford *v.* Reynolds (1842), 1 Ph. 185; Church Bldg. Soc. *v.* Barlow (1853), 22 L. J. Ch. 339; Dunn *v.* Bownas (1855), 1 K. & J. 596; Edwards *v.* Hall (1855), 6 De G. M. & G. 74; Dent. *v* Allcroft (1861), 30 Beav. 335; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272. **Mentd.** Dixon *v.* Butler (1839), 3 Y. & C. Ex. 677.

937. —— —— Residue for support of inmates.]—PRICE *v.* HATHAWAY (1822), 6 Madd. 304; 56 E. R. 1107.

Annotation:—**Refd.** Hawkins *v.* Allen (1870), L. R. 10 Eq. 246.

938. —— —— ——.]—SMITH *v.* OLIVER (1849), 11 Beav. 481; 13 Jur. 159; 50 E. R. 903.

939. —— Bequest to establish charitable receptacle for poor old men—Or if no such institution could be conveniently established for donations to such old men.]—A.-G. *v.* HODGSON (1846), 15 Sim. 146; 15 L. J. Ch. 290; 7 L. T. O. S. 174; 10 J. P. 215; 10 Jur. 300; 60 E. R. 573.

Annotations:—**Distd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74. **Folld.** Philpott *v.* St. George's Hospital (1855), 21 Beav. 134 (*see* 6 H. L. Cas. 338). **Consd.** Hall *v.* Warren (1861), 9 H. L. Cas. 420. **Refd.** *Re* Clancy (1852), 16 Beav. 295; *Re* Smith's Trusts (1865), L. R. 1 Eq. 79.

940. —— Devise of house as Sailors' Home—& gift for repair & other expenses connected with establishment thereof.]—GREEN *v.* BRITTEN (1872), 42 L. J. Ch. 187; 27 L. T. 811.

Annotation:—**Mentd.** Guthrie *v.* Walrond (1883), 22 Ch. D. 573.

941. —— Gift partly to erect dispensary—Remainder for endowment fund.]—*Re* COX, COX *v.* DAVIE (1877), 7 Ch. D. 204; 47 L. J. Ch. 72; 37 L. T. 457; 26 W. R. 74.

942. Secondary gift held valid—Bequest of real & personal estate to take house for school—Trust for education of children of particular persons & other children—Valid as to particular objects but not as general charity.]—BLANDFORD *v.* THACKERELL (1793), 2 Ves. 238; 4 Bro. C. C. 394; 30 E. R. 613, L. C.

Annotations:—**Consd.** A.-G. *v.* Whitchurch (1796), 3 Ves. 141. **Refd.** Kirkbank *v.* Hudson (1819), Dan. 259; Braund *v.* Devon (1868), 3 Ch. App. 800; Rooke *v.* Dawson, [1895] 1 Ch. 480. **Mentd.** Leake *v.* Robinson (1817), 2 Mer. 363.

943. —— Devise of house—Bequest of residuary personalty for promoting religion & purchasing books to be kept in such house.]—A.-G. *v.* STEPNEY (1804), 10 Ves. 22; 32 E. R. 751, L. C.

Annotations:—**Distd.** Thomson *v.* Shakespear (1860), 1 De G. F. & J. 399. **Consd.** Hoare *v.* Hoare (1886), 56 L. T. 147. **Refd.** Morice *v.* Durham (1805), 10 Ves. 522; Baker *v.* Sutton (1836), 1 Keen, 224; A.-G. *v.* Hodgson (1846), 15 Sim. 146.

944. First gift held valid—Secondary gift to build almshouses—Primary object to provide annuities.]—*Re* LUDLOW'S TRUSTS, [1870] W. N. 218.

Gifts for provision of buildings generally.]—*See* Part II., Sect. 3, sub-sect. 2, *ante*.

Ascertainment of amount of gift—Gift of fund after gift within Mortmain Acts uncertain.]—*See* Sect. 2, sub-sect. 3, *ante*.

Apportionment of gifts for several objects some of which are illegal.]—*See* Sect. 3, sub-sect. 2, A., *ante*.

J. Conditional or Future Gifts.

945. Gift to establish bishop in America—None appointed—Valid.]—A.-G. *v.* CHESTER (BP.) (1785), 1 Bro. C. C. 444; 28 E. R. 1229, L. C.

Annotations:—**Consd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338. **Apld.** Sinnett *v.* Herbert (1872), 7 Ch. App. 232. **Refd.** Henshaw *v.* Atkinson (1818), 3 Madd. 306; Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206; Wallis *v.* Solicitor-General for New Zealand, [1903] A. C. 173; *Re* London University Medical Sciences Institute Fund, Fowler & Butlin *v.* A.-G. (1908), 99 L. T. 545. **Mentd.** A.-G. *v.* Parsons (1803), 8 Ves. 186; Giblet *v.* Hobson (1834), 4 L. J. Ch. 41; *Re* Vaughan, Vaughan *v.* Thomas (1886), 33 Ch. D. 187.

946. Gift to asylum to be built for "humane & charitable purposes of that institution"—Asylum built under compulsory powers of Act of Parliament & supported by compulsory rates—Not entitled.]—LECHMERE *v.* CURTLER (1855), 3 Eq. Rep. 938; 24 L. J. Ch. 647; 19 J. P. 709.

947. Gift to endow future church—Valid.]—SINNETT *v.* HERBERT (1872), 7 Ch. App. 232; 41 L. J. Ch. 388; 26 L. T. 7; 36 J. P. 516; 20 W. R. 270, L. C.

Annotations:—**Consd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206. **Refd.** *Re* Jackson, Biscoe *v.* Jackson (1882), 46 L. T. 355; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212; *Re* Gyde, Ward *v.* Little (1898), 78 L. T. 449; Hunter *v.* A.-G., [1899] A. C. 309. **Mentd.** Littledale *v.* Bickersteth (1876), 24 W. R. 507; *Re* Williams (1877), 25 W. R. 689; Champney *v.* Davy (1879), 11 Ch. D. 949.

Gifts for provision of buildings generally.]—*See* Part II., Sect. 3, sub-sect. 2, *ante*.

948. Gift to establish school—Gift for particular purpose & not for general charitable purposes—Particular purpose impossible—Lapse.]—Testator gave all his property to his three daughters & their children, his will continuing as follows: "But if all die without issue"—which event happened—"I give & bequeath the whole principal of their fortunes, the interest to be given to a schoolmaster as a part of his salary. The school & his house to be erected by voluntary subscriptions from the landowners & proprietors of the parish of A., & the school & house to be placed on a hill near to the gate that divided B. and W. Commons. The master to teach five days in a week & six hours each day, Saturday & Sunday excepted, to be able to instruct the pupils in Latin & Greek & all the elementary parts of mathematics, both pure & mixed, the W. scholars to go free, the rest to pay 2*s.* 6*d.* each at Midsummer & Christmas as quarter pence." There was evidence that there was no reasonable chance of any such school being established at or in the neighbourhood of the place where testator directed it to be built:—*Held:* subject to the A.-G. intimating within a limited time his desire for an inquiry whether & how far it would be possible to carry out the directions in the will, the gift fell within the class of cases where

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PART III. SECT. 4, SUB-SECT. 3.—J.

r. *Gift to build & maintain hospital—Condition of equal sum being raised by donations or otherwise.*]—A. left a legacy of $20,000 to the corporation of W. to assist in building & maintaining a hospital for the sick, on condition that the town should "procure a like sum by a tax on the citizens, or from private donations or otherwise, to be added to this bequest." The sum of $6,000 was raised from private donations, & the balance of $14,000 was procured by grant from the Provincial Government:—*Held:* the condition in the will was complied with.—PAULIN *v.* WINDSOR TOWN (1903), 36 M. S. R. 441; *sub nom. Re* PAYZANT, 24 C. L. T. 140.—**CAN.**

s. *Gift to endow future temperance hotel—Void.*]—*Re* DOYLE ESTATE (1913), 25 O. W. R. 837; 5 O. W. N. 911.—**CAN.**

t. *Gift to homes in specified places—Direction for investment if no home in existence—Until home should be founded—No general charitable intention.*]—*Re* SCHJAASTAD ESTATE, *Re* RULES OF COURT (1920), 1 W. W. R. 327; 50 D. L. R. 445; 13 Sask. L. R. 114.—**CAN.**

w. *Gift for benefit of poor of particular place—Condition of painting railing of vault.*]—Bequest of £500 to the treasurer of the Society of St. Vincent de Paul at L., for the benefit of the poor of L.," on condition that the committee of said society should undertake in writing to his exors. to have the railing & ironwork of the two vaults in St. L.'s cemetery . . . painted once in every three years":—*Held:* a valid bequest.—ROCHE *v.* M'DERMOTT, [1901] 1 I. R. 394; 35 I. L. T. 238.—**IR.**

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 3, J., K. & L.; sub-sects. 4 & 5, A.]

on the true construction of the will no paramount general charitable intention could be inferred, but the gift was for a particular purpose, &, as it was impossible to carry out that purpose, the gift failed altogether.—*Re* WILSON, TWENTYMAN *v.* SIMPSON, [1913] 1 Ch. 314; 82 L. J. Ch. 161; 108 L. T. 321; 57 Sol. Jo. 245.

Annotation:—**Consd.** *Re* Packe, Sanders *v.* A.-G., [1918] 1 Ch. 437.

K. Application Illegal or Impossible or only partly Charitable.

See No. 948, *ante*; Part IV., Sect. 2, *post*.

L. Disclaimer of Gift.

See Part IV., Sect. 2; Part IX., Sect. 1, sub-sect. 2, *post*.

SUB-SECT. 4.—FAILURE OF OBJECTS SUBSEQUENT TO COMMENCEMENT OF TRUST.

See Part IV., Sect. 2, sub-sect. 2, C., *post*.

SUB-SECT. 5.—RELIGIOUS TRUSTS.

A. How far Gifts denominational.

949. General rule — Presumption against exclusion of particular denomination.]—A first principle applicable to charities is that the intentions of the founder are to be carried into effect, as far as they are capable of being so, & so far as they are not contrary to law, using the word law in its proper & widest signification, as including the precepts of religion & morality. If, therefore, the founder has directed that only persons conforming to the Church of England shall be recipients of his bounty, his will must be followed.

If a charity be founded to support some religious establishment, or if it seek to promote religious education, &, if in addition to this, the intentions of the founder are not clearly expressed, or if the instrument of foundation be lost, or even never had any existence, the opinions & religious tenets of the founder have a most material bearing on this question, who are the objects of the charity, & in what manner the trusts of it are to be performed, for the purpose of carrying into effect the general purpose, which is known to be the support of religion. In these cases, the presumption in the first instance is, that the founder intended to support an establishment belonging to some particular form of religion, & that he intended some particular doctrine of religion to be taught. The next presumption is that this establishment & that this doctrine was that which he himself supported & professed, & the ct. will look carefully at his course of life & conduct, & spell out expressions, not merely in the instrument of foundation, but in his will & works, to ascertain what were the doctrines & opinions entertained & professed by him.

To some extent, though in a far less degree, the same principle applies when a charity has been founded for purposes of secular education. Here, in the absence of expressed intention, the ct. will not assume that the founder intended any particular religious doctrine to be combined with the secular education; but, on the contrary, will assume that the object was for secular instruction generally, & that admitting that religious education is to form part of the instructions given, it would still allow each person who needed the secular education to obtain the benefit of it, & would not, by enforcing particular rules relative to religious instructions, prevent all denominations of Christians from obtaining the benefit of the instructions so offered. But here again, if the founder has expressed an intention that religious instruction of a particular character shall form a part of the instruction given, the ct. will follow that direction, although the effect may be to exclude a large portion of the community, most in need of the charity, from deriving any benefit from it. But when the charity is purely eleemosynary, a different class of considerations arise.

Prior to the Reformation, almshouses were erected & endowed. The almspeople were required to attend the chapel & say Paternosters, Aves, etc., & pray for the souls of the dead, & if they did not obey the ordinances, were to be expelled. The parson of the parish & churchwardens were to distribute the rents:—*Held:* (1) Dissenters who could conscientiously comply with the directions laid down by the founder, modified by the changes produced by the Reformation & the subsequent statutes, were not excluded from obtaining the benefit of the charity, & if a Dissenter conformed to the rules, the trustees could not examine whether he did so sincerely; (2) the fact of the recipients of a charity being required to rehearse a particular prayer in church, or sit in a particular pew, or attend at the church porch or in the church itself to receive the bounty, did not justify the exclusion of Dissenters from participating in the charity.—A.-G. *v.* CALVERT (1857), 23 Beav. 248; 26 L. J. Ch. 682; 29 L. T. O. S. 61; 21 J. P. 371; 3 Jur. N. S. 500; 53 E. R. 97.

Annotations:—*Generally*, **Folld.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554. **Distd.** *Re* Perry Almshouses, *Re* Ross' Charity, [1899] 1 Ch. 21. **Refd.** A.-G. *v.* Clifton (1863), 32 Beav. 596.

950. —— ——.]—A.-G. *v.* HABERDASHERS' CO. (1854), 19 Beav. 385; 24 L. J. Ch. 329; 23 L. T. O. S. 328; 52 E. R. 399;

Annotation:—**Mentd.** Rendall *v.* Blair (1890), 59 L. J. Ch. 641.

951. Founder's intentions given effect to — Schism—Use of meeting-house limited to those adhering to religious principles of founder.]—CRAIGDALLIE *v.* AIKMAN (1820), 2 Bli. 529; 4 E. R. 435, H. L.

Annotations:—**Consd.** Free Church of Scotland *v.* Overtoun, Macalister *v.* Young, [1904] A. C. 515. **Refd.** Milligan *v.* Mitchell (1837), 3 My. & Cr. 72.

952. —— —— ——.]—BROOM *v.* SUMMERS (1840), 11 Sim. 353; 10 L. J. Ch. 71; 5 Jur. 240; 59 E. R. 909.

953. —— —— ——.]—A.-G. *v.* WELSH (1844), 4 Hare, 572; 67 E. R. 775.

Annotations:—**Consd.** A.-G. *v.* Murdoch (1849), 7 Hare, 445. **Refd.** Natal *v.* Gladstone (1866), L. R. 3 Eq. 1.

954. —— —— **Seceding minister removed.**]—A.-G. *v.* MUNRO (1848), 2 De G. & Sm. 122; 13 L. T. O. S. 521; 64 E. R. 55, L. C.

Annotations:—**Consd.** A.-G. *v.* Murdoch (1852), 1 De G. M. & G. 86. **Refd.** A.-G. *v.* Murdoch (1856), 2 K. & J. 571; Westwood *v.* McKie (1869), 21 L. T. 165.

Removal of ministers generally, *see* Part VI., Sect. 3, sub-sect. 4, *post*.

955. —— —— **Property belongs to those adhering to original religious principles.**]—A.-G. *v.* ANDERSON (1888), 57 L. J. Ch. 513; 36 W. R. 714; 4 T. L. R. 370.

PART III. SECT. 4, SUB-SECT. 5.—A.

951 i. *Founder's intentions given effect to—Schism—Use of meeting house limited to those adhering to religious principles of founder.*]—MCDOUGAL *v.* HAWES (1875), R. E. D. 147.—**CAN.**

951 ii. —— —— ——.]—DILL *v.* WATSON (1836), 2 Jo. Ex. Ir. 48.—**IR.**

951 iii. —— —— ——.]—BURNETT *v.* ST. ANDREW'S EPISCOPAL CHURCH, BRECHIN (1888), 15 R. (Ct. of Sess.) 723; 25 Sc. L. R. 563.—**SCOT.**

956. —— —— ——.]—The identity of a religious community described as a Church consists in the identity of its doctrines, creeds, confessions, formularies & tests. The bond of union of a Christian association may contain a power in some recognised body to control, alter or modify the tenets or principles at one time professed by the association, but the existence of such a power must be proved.

The denomination of Christians which called itself the Free Church of Scotland was founded in 1843. It consisted of ministers & laity who seceded from the Established Church of Scotland, but who professed to carry with them the doctrine & system of the Established Church, only freeing themselves by secession from what they regarded as interference by the State in matters spiritual. Two main fundamental doctrines which applts., the minority of the Free Church, asserted that the seceders in 1843 carried with them & issued in their Claim, Declaration & Protest to their supporters & benefactors in that year to stand for all time were the Establishment principle, & the unqualified acceptance of the Westminster Confession of Faith, & they further asserted that these doctrines were part of the constitution of the church & could not be altered. In 1843 & subsequent years the response to the appeal for funds was most bountiful, & the Free Church was endowed by the liberality of its members, the property being secured under what was called a "Model Trust Deed." For many years efforts had been made to bring about a union between the Free Church & the United Presbyterian Church, also seceders from the Established Church, but a church pledged to disestablishment. In 1900 Acts of Assembly were passed by the majority of the Free Church & unanimously by the United Presbyterian Church for union, under the name of the United Free Church, & the Free Church property was conveyed to new trustees for behoof of the new Church. The United Presbyterian Church was opposed to the Establishment principle, & did not maintain the Westminster Confession of Faith in its entirety. The Act of Union left ministers & laymen free to hold opinions as regards the Establishment principle & the predestination doctrine, in the Westminster Confession, as they pleased. Resps. contended that the Free Church had full power to change its doctrines so long as its identity was preserved. Applts., a very small minority of the Free Church, objected to the union, maintaining that the Free Church had no power to change its original doctrines, or to unite with a body which did not confess those doctrines, & they complained of a breach of trust inasmuch as the property of the Free Church was no longer being used for behoof of that Church, & they brought an action in the name of the General Assembly of the Free Church, asking substantially for a declarator that they, as representing the Free Church, were entitled to the property:—*Held:* (1) the Establishment principle & the Westminster Confession were distinctive tenets of the Free Church; (2) the Free Church had no power, where property was concerned, to alter or vary the doctrine of the Church; (3) there was no true union, as the United Free Church had not preserved its identity with the Free Church, not having the same distinctive tenets; (4) applts. were entitled to hold for behoof of the Free Church the property held by the Free Church before the union in 1900.—FREE CHURCH OF SCOTLAND (GENERAL ASSEMBLY) *v.* OVERTOUN (LORD), MACALISTER *v.* YOUNG, [1904] A. C. 515; 91 L. T. 394; 20 T. L. R. 730, H. L.

Annotation:—Generally, **Refd.** Hawkes *v.* Moxey (1917), 86 L. J. K. B. 1530.

957. —— **Introduction of preachers belonging to other Churches—Is a breach of trust.**]—MILLIGAN *v.* MITCHELL (1837), 3 My. & Cr. 72; 7 L. J. Ch. 37; 1 Jur. 888; 40 E. R. 852, L. C.

*Annotation:—***Refd.** Free Church of Scotland *v.* Overtoun, Macalister *v.* Young, [1904] A. C. 515.

958. —— **Gift for Scotch kirk—Kirk afterwards joining Free Church of Scotland—Differences only in matter of discipline—No failure of gift.**]—WESTWOOD *v.* MCKIE (1869), 21 L. T. 165.

—— **As regards educational charities.**]—*See* Part IV., Sect. 1, sub-sects. 2, B., & 6, B., *post.*

959. Ascertainment of founder's intentions—Meeting-house "for the worship & service of God."]—Information & bill to quiet the possession of the relators & pltfs.', one claiming as the surviving trustee, the other as minister, of a protestant dissenting meeting-house, for an appointment of new trustees, & an injunction to stay proceedings in ejectment by defts., claiming also to be trustees of the meeting-house. Upon motion for an injunction, it appearing that the meeting-house was erected in 1701, under a trust deed, whereby the purpose was declared to be "for the worship & service of God," pltfs. & relators contending, from the purpose so expressed, that the intention was for promoting the doctrine of the Holy Trinity, & that the trust could not be diverted from the purpose for which it was intended, defts. insisting that the intention was as general as the purpose expressed, & had no regard to any particular tenets, it being also made a question, whether a trust for supporting Unitarian worship was legal & could be supported, & it being further disputed who, according to the true construction of the deed, were entitled, as trustees, to the possession, the injunction was granted, upon the parties undertaking to abide by such order as the ct. should thereafter make, & it was referred to the master to inquire (*inter alia*) in whom the legal estate was vested, & the particular object, with respect to worship & doctrine, for which the trust was created.—A.-G. *v.* PEARSON (1817), 3 Mer. 353; 36 E. R. 135, L. C.; *subsequent proceedings* (1835), 7 Sim. 290.

*Annotations:—***Apld.** Shore *v.* Wilson (1842), 9 Cl. & Fin. 355. **Consd.** A.-G. *v.* Shore (1843), 11 Sim. 592; A.-G. *v.* Murdoch (1852), 1 De G. M. & G. 86. **Distd.** A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161; A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554. **Consd.** A.-G. *v.* Anderson (1888), 57 L. J. Ch. 543; Free Church of Scotland *v.* Overtoun, Macalister *v.* Young, [1904] A. C. 515. **Refd.** West *v.* Shuttleworth (1835), 2 My. & K. 684; A.-G. *v.* Bunce (1868), L. R. 6 Eq. 563; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Collier *v.* King (1861), 11 C. B. N. S. 14; R. *v.* Ramsey (1883), Cab. & El. 126; Bowman *v.* Secular Soc., [1917] A. C. 406.

960. —— **Gift to preachers in named town of "the Gospel of Christ under the name of orthodoxy."**]—A.-G. *v.* MOLLAND (1832), 1 You. 562; 159 E. R. 1114.

961. —— **State of law when religious establishment founded regarded.**]—A.-G. *v.* PEARSON (1835), 7 Sim. 290; 58 E. R. 848.

*Annotations:—***Mentd.** Dyson *v.* Morris (1842), 1 Hare, 413; Booth *v.* Creswicke (1844), 13 L. J. Ch. 217.

962. —— **Gift to "poor & godly preachers of Christ's holy Gospel"—Protestant dissenters only entitled—Extrinsic evidence admissible.**]—SHORE *v.* WILSON (1842), 9 Cl. & Fin. 355; 5 Scott, N. R.

x. *Ascertainment of founder's intentions—Nonconformist Chapels Act*, 1844, c. 45, s. 2—*Particular doctrine must appear on face of foundation instrument.*]—A.-G. *v.* HUTTON (1844), Drury *temp.* Sug. 480; 7 I. Eq. R. 612.—**IR.**

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 5, A., B. & C.; sub-sect. 6, A.]

958; 8 E. R. 450, H. L.; *subsequent proceedings, sub nom.* A.-G. *v.* SHORE (1843), 11 Sim. 592.

Annotations:—**Consd.** A.-G. *v.* Murdoch (1849), 7 Hare, 445; Drummond *v.* A.-G. (1849), 2 H. L. Cas. 837; A.-G. *v.* Calvert (1857), 23 Beav. 248. **Distd.** A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161. **Consd.** A.-G. *v.* Bunce (1868), L. R. 6 Eq. 563. **Distd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554. **Consd.** *Re* Perry Almshouses, *Re* Ross' Charity, [1899] 1 Ch. 21. **Refd.** A.-G. *v.* Wilson (1848), 16 Sim. 210; A.-G. *v.* Lawes (1849), 14 Jur. 77; A.-G. *v.* Clapham (1855), 4 De G. M. & G. 591; *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643; *Re* Rayner, Rayner *v.* Rayner, [1904] 1 Ch. 176; Camden *v.* I. R. Comrs., [1914] 1 K. B. 641; Bowman *v.* Secular Soc., [1917] A. C. 406. **Mentd.** Natal *v.* Gladstone (1866), L. R. 3 Eq. 1; Menzies *v.* Lightfoot (1871), L. R. 11 Eq. 459; Neale *v.* Neale (1898), 79 L. T. 629; *Re* Johnson, Greenwood *v.* Greenwood & Robinson (1903), 89 L. T. 520; G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414.

963. —— —— Orthodox dissenters only entitled.]—A.-G. *v.* SHORE (1843), 11 Sim. 592; 1 L. T. O. S. 166; 7 J. P. 302; 7 Jur. 781; 59 E. R. 1002; *subsequent proceedings, sub nom.* A.-G. *v.* WILSON (1848), 16 Sim. 210.

Annotations:—**Consd.** A.-G. *v.* Murdoch (1849), 7 Hare, 445. **Distd.** A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161.

964. —— —— ——.]—A.-G. *v.* WILSON (1848), 16 Sim. 210; 11 L. T. O. S. 370; 60 E. R. 854.

965. —— "Protestant dissenters"—Unitarians not entitled—Extrinsic evidence admissible.]—DRUMMOND *v.* A.-G. (1849), 2 H. L. Cas. 837; 14 Jur. 137; 9 E. R. 1312, H. L.

Annotations:—**Refd.** A.-G. *v.* Clapham (1855), 4 De G. M. & G. 591. **Mentd.** Watcham *v.* East Africa Protectorate, [1919] A. C. 533.

966. —— Services always conducted in conformity with "the Directory"—Chapel treated as Presbyterian chapel.]—A.-G. *v.* MURDOCH (1852), 1 De G. M. & G. 86; 21 L. J. Ch. 694; 19 L. T. O. S. 173; 42 E. R. 484, L. JJ.

Annotations:—**Refd.** A.-G. *v.* Clapham (1853), 10 Hare, 540; A.-G. *v.* Anderson (1888), 57 L. J. Ch. 543.

967. —— Trust deed clear & unambiguous—Extrinsic evidence not admissible.]—A.-G. *v.* CLAPHAM (1855), 4 De G. M. & G. 591; 3 Eq. Rep. 702; 24 L. J. Ch. 177; 24 L. T. O. S. 245; 19 J. P. 54; 1 Jur. N. S. 505; 3 W. R. 158; 43 E. R. 638, L. C.

Annotation:—**Refd.** G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414.

968. —— "Particular Baptists"—Each congregation of Particular Baptists entitled to regulate its own practice except as to fundamental doctrines.]—A.-G. *v.* GOULD (1860), 28 Beav. 485; 30 L. J. Ch. 77; 2 L. T. 494; 24 J. P. 356; 7 Jur. N. S. 34; 8 W. R. 514; 54 E. R. 452.

Annotations:—**Consd.** A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161; A.-G. *v.* Aust (1865), 13 L. T. 235. **Refd.** Camden *v.* I. R. Comrs., [1914] 1 K. B. 641.

969. —— —— ——.]—A.-G. *v.* ETHERIDGE (1862), 32 L. J. Ch. 161; 8 L. T. 14; 11 W. R. 199.

970. —— "Presbyterian"—Does not denote any particular doctrine or mode of worship.]—A.-G. *v.* BUNCE (1868), L. R. 6 Eq. 563; 37 L. J. Ch. 697; 18 L. T. 742.

Annotations:—**Distd.** A.-G. *v.* Anderson (1888), 57 L. J. Ch. 543. **Refd.** Westwood *v.* McKie (1869), 21 L. T. 165.

—— Educational charities.]—*See* Part IV., Sect. 1, sub-sect. 2, B., *& generally* EDUCATION.

—— Admission of extrinsic evidence.]—*See* Nos. 962, 965, 967, *ante*.

971. —— Usage—Twenty-five years—Dissenters' Chapel Act, 1844 (c. 45)—Not conclusive.]—A.-G. *v.* WARD (1848), 6 Hare, 477; 67 E. R. 1253.

Annotation:—**Mentd.** Yem *v.* Edwards (1857), 3 K. & J. 564.

972. —— —— —— —— Conclusive.]—A.-G. *v.* BUNCE (1868), L. R. 6 Eq. 563; 37 L. J. Ch. 697; 18 L. T. 742.

Annotations:—**Refd.** A.-G. *v.* Anderson (1888), 57 L. J. Ch. 543. **Mentd.** Westwood *v.* McKie (1869), 21 L. T. 165.

—— —— As evidence of charitable trusts generally.]—*See* Sect. 7, *post*.

—— Admission of extrinsic evidence to ascertain object of charitable trust generally.]—*See* Sect. 4, sub-sect. 2, *ante*.

Gifts for religious purposes generally.]—*See* Part I., Sect. 4, *ante*.

B. Gifts for Reparation of Churches.

973. Bequest to church—Goes to churchwardens for repairs & improvements of church.]—A.-G. *v.* RUPER (1722), 2 P. Wms. 125; 2 Eq. Cas. Abr. 293, pl. 18; 24 E. R. 667.

Annotations:—**Folld.** De Windt *v.* De Windt (1854), 2 Eq. Rep. 1107. **Mentd.** Cooper *v.* Law (1859), 5 Jur. N. S. 1263.

974. —— Goes to trustees entrusted with repairs.]—DE WINDT *v.* DE WINDT (1854), 2 Eq. Rep. 1107; 23 L. J. Ch. 776; 23 L. T. O. S. 346; 2 W. R. 648.

Annotation:—**Refd.** Choa Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases, App. I.

975. Funds for repairs of chapel & poor of parish—Rebuilding chapel not permitted—Although chapel dilapidated & unequal to wants of inhabitants—& income largely increased.]—*Re* BOOTH'S CHARITIES (1866), 14 W. R. 761.

976. Fund for reparations, ornaments & "other necessary occasions" of church—New parish church erected—Costs of spire allowed—& payment of salaries of persons employed to look after fabric or ornaments.]—An ancient charity existed for the "reparations, ornaments, & other necessary occasions of the parish church of S." A new parish church was built by public subscription & substituted for the old church, the charity & other endowments being transferred from the old to the new church, which became the parish church of S. The new church was intended by the architect to have a spire, but, owing to lack of funds, it was consecrated without one. Upon an application to the ct. for the settlement of a scheme for the future management of the charity & the application of the income thereof:—*Held:* the erection of the spire & the payment of salaries of persons employed in cleaning or maintaining the fabric of the church were objects to which the income of the charity might properly be applied.—*Re* PALATINE ESTATE CHARITY (1888), 39 Ch. D. 54; 57 L. J. Ch. 751; 58 L. T. 925; 36 W. R. 732; 4 T. L. R. 499.

977. Fund to be used by "churchwardens" wholly about parish church—Applicable inter alia to repairs of chancel.]—By a trust deed of 1620 two husbandmen of S. granted certain lands to trustees to the sole use that the rents & profits should be received, employed & bestowed by the churchwardens wholly about the parish church:—*Held:* the fact that the application of the income was placed in the hands of the churchwardens who, to the grantors' knowledge, were not concerned with chancel repairs which fell on the rector as owner of the great tithes, was not enough to show that the income was only given in aid of church rates or other parochial purposes with which the churchwardens were directly concerned, & it was applicable to general expenditure about the church as a whole including repairs of the chancel.—A.-G. *v.* PARR, [1920] 1 Ch. 339; 89 L. J. Ch. 158; 122 L. T. 773; 36 T. L. R. 211; 64 Sol. Jo. 275.

Gifts for endowment & maintenance of churches generally.]—*See* Part I., Sect. 4, sub-sect. 2, *ante*.

C. Other Cases.

978. Gift for benefit of curates whose annual incomes did not exceed £35 & to such as should be recommended in certain manner—Construed as gift to two classes of curates.]—PENNINGTON *v.* BUCKLEY (1848), 6 Hare, 451; 11 Jur. 468; 67 E. R. 1242.

Annotation :—**Mentd.** *Re* Hodgson, *Ex p.* Cunliffe (1854), 18 Jur. 786.

Gifts for support of clergy generally.]—*See* Part I., Sect. 4, sub-sect. 6, *ante*.

Whether gifts to clergy personal gifts or gifts for benefit of office.]—*See* Sub-sect. 6, A., *post*.

979. Gift to be applied by bishop "for general or special purposes in connection with cathedral"—In his absolute discretion—Not applicable to person with general diocesan duties but not connected with cathedral.]—*Re* WHITEHEAD (1908), *Times*, Oct. 14.

980. Gift for widows & daughters of "clergymen of Established Church of England & Ireland"—Disestablishment of Irish & Welsh churches—Clergymen holding cure in disestablished churches within charter.]—In 1854 a society, formed in 1849 & called the Friend of the Clergy, obtained a charter of incorporation. Its defined object was to provide permanent pensions for the widows & orphan unmarried daughters of "clergymen of the established church of England & Ireland" & to afford temporary assistance to necessitous "clergymen of such church" & their families. On Jan. 1, 1871, the Irish church was disestablished by Irish Church Act, 1869 (c. 42). On July 2, 1873, the original charter was confirmed with immaterial amendments. On Mar. 31, 1920, the Welsh Church was disestablished by Welsh Church Acts, 1914 (c. 91) & 1919 (c. 65):—*Held :* (1) clergymen ordained to the ministry of the established church of England retained their status while holding a consistent cure in the disestablished churches of Wales or Ireland, or in the episcopal church of Scotland, or in the British Dominions, & they & their families were within the scope of the charter; (2) in the case of Wales this principle was supported by Welsh Church (Temporalities) Act, 1919, s. 7 (2), & was not inconsistent with Welsh Church Act, 1914, s. 2 (4); (3) having regard to Irish Church Act, 1869, s. 69, & the fact that the original charter was confirmed after the disestablishment effected by that Act, clergymen ordained to the ministry of the disestablished church of Ireland & their families were within the scope of the charter.

(4) *Qu. :* whether clergymen ordained to the ministry of the disestablished Welsh church, or of the episcopal church of Scotland, or of the established Church of England, exclusively for service in the dominions, or of a dominion church, & not licensed to officiate in England, were within the scope of the charter.—*Re* FRIEND OF THE CLERGY'S CHARTERS, FRIEND OF THE CLERGY *v.* A.-G., [1921] 1 Ch. 409; 90 L. J. Ch. 210; 124 L. T. 506.

Compare Nos. 717, 718, *ante*.

981. Bequest for liquidation of debts on chapels—Debts incurred before & after testator's death.]—Testator bequeathed his residuary estate to trustees "upon trust for the Glamorganshire Welsh Union Northern District of Welsh Congregationalists to be applied towards the liquidation of the debts of such of the Welsh Congregational chapels within the area hitherto covered by them as they shall, in conjunction with my trustees, think most deserving of assistance : "—*Held :* the application of the residuary estate was not limited to debts due at testator's death on chapels existing at the death, but extended to debts & liabilities on chapels within the prescribed area, whether such debts & liabilities were incurred, or the chapels built, before or after testator's death.—*Re* WILLIAMS, JAMES *v.* WILLIAMS (1910), 26 T. L. R. 307.

SUB-SECT. 6.—OBJECTS OF MISCELLANEOUS TRUSTS.

A. Gifts to Persons as Holders of Office.

982. Gift to parish church—Construed as gift to parson & parishioners & their successors for ever.]—*Re* ST. ANDREW, HOLBORN (undated), cited in 1 Atk. 437; 26 E. R. 280.

983. Gift to school—Construed as gift to schoolmaster & his successors for ever.]—CHEESEMAN *v.* PARTRIDGE (1739), 1 Atk. 436; 9 Mod. Rep. 213; 26 E. R. 279, L. C.

984. Gift construed as gift for benefit of office & not as personal gift to then holder of office—"To the minister belonging to" Baptist meeting-house.]—A.-G. *v.* COCK (1751), 2 Ves. Sen. 273; 28 E. R. 177.

985. —— Gift to named ministers but if they voluntarily withdrew from their duties then to their successors.]—GRIEVES *v.* CASE (1792), 4 Bro. C. C. 67; 2 Cox, Eq. Cas. 301; 1 Ves. 548; 29 E. R. 782, L. C.

Annotations :—**Mentd.** Morice *v.* Durham (1805), 10 Ves. 522; Kirkbank *v.* Hudson (1819), Dan. 259; Cogan *v.* Stephens (1835), 5 L. J. Ch. 17; Howard *v.* Fingall (1853), 22 L. T. O. S. 12.

986. —— To the "then minister of & his successors, ministers of same chapel for ever as an addition to the stipend at such chapel"—To the "minister at . . . & to his successors for ever"—To the officiating minister at . . . "for & during the term of seven years next after his decease."]—THORNBER *v.* WILSON (1855), 3 Drew. 245; 24 L. J. Ch. 667; 25 L. T. O. S. 309; 19 J. P. 675; 3 W. R. 388; 61 E. R. 897; *subsequent proceedings* (1858), 4 Drew. 350.

Annotations :—**Consd.** Donnellan *v.* O'Neill (1870), 18 W. R. 1188; *Re* Delany, Conoley *v.* Quick, [1902] 2 Ch. 642. **Reid.** *Re* Garrard, Gordon *v.* Craigie, [1907] 1 Ch. 382. **Mentd.** *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567.

987. —— To the then minister of the Catholic chapel at . . . .]—THORNBER *v.* WILSON (1858), 4 Drew. 350; 28 L. J. Ch. 145; 32 L. T. O. S. 115; 22 J. P. 769; 4 Jur. N. S. 1268; 7 W. R. 24; 62 E. R. 135.

Annotations :—**Consd.** *Re* Delany, Conoley *v.* Quick, [1902] 2 Ch. 642. **Reid.** *Re* Garrard, Gordon *v.* Craigie, [1907] 1 Ch. 382. **Mentd.** *Re* Davidson, Minty *v.* Bourne, [1909] 1 Ch. 567.

988. —— "To the vicar for the time being of N. for ever on condition of his preaching an anniversary sermon, the dividends to be received in augmentation of the vicarage."]—*Re* PARKER'S CHARITY (1863), 32 Beav. 654; 2 New Rep. 434; 9 L. T. 72; 27 J. P. 644; 9 Jur. N. S. 884; 11 W. R. 937; 55 E. R. 257.

PART III. SECT. 4, SUB-SECT. 6.—A.

a. *Gift construed as gift for benefit of office & not as personal to holder of office—"To Archbishop of Sydney, his successors & assigns."*]—SMITH *v.* KEARNEY (1881), 2 N. S. W. Eq. 49.—**AUS.**

b. —— *To successor as parish priest.*]—A. bequeathed personal property to the persons as for the time being priests in charge of the S. parish, for their use, on condition that they remembered him daily at the altar, & said masses for the repose of his soul :—*Held :* a good charitable gift.—QUEENSLAND TRUSTEES, LTD. *v.* GREEN, [1911] St. R. Qd. 105.—**AUS.**

c. —— *"To Archbishop of diocese & his successors to be used as Archbishops judge best for good of religion in diocese."*]—A. left the residue of his estate to the Archbishop of his diocese & his successors to be used & expended, wholly or in part, as the Archbishop should judge most conducive to the good of religion in the diocese :—*Held :* the gift of the residue was not a personal gift, but a gift upon trust.—BYRNE *v.* DUNN (1910), 11 C. L. R. 637.—**AUS.**

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 6, A., B., C. & D.; sub-sects. 7 & 8, A. (a) & (b), B.]

989. —— To the Provincial for the time being absolutely to be used for furtherance of specified Order.]—*Re* VAN WART, RAMSAY *v.* BOURNE (1911), *Times*, Feb. 17.

990. —— To vicar & his successors to keep graves in repair—Gift over on non-performance.]—Testator, who died in 1914, by his will gave £50 to the vicar of C. & his successors to be invested in trust security, & committed to their care & charge certain graves in the churchyard of C., the same to be kept in good order & repair, with a gift over of the trust fund, if the vicar & his successors should at any time fail to comply with the directions, to the superannuation fund of the Cardiganshire constabulary. There was no such fund, but testator, as a retired member of the Cardigan constabulary, had for many years received a pension paid by the Cardigan County Council under Police Act, 1890 (c. 45), ss. 1, 2, 16, which established a pension fund for the members of every police force or their dependants on retirement of a member or on his death whilst in the force:—*Held:* (1) the Cardigan County Council sufficiently represented the police authority of that county for the purposes of the summons; (2) there was a good gift of the income of the £50 to the vicar & his successors as an accretion to the endowment of the living; (3) testator had not sufficiently described the police pension fund as the object of the gift over, but if he had, that fund was not wholly a charity, & the gift over on failure to repair the graves was void under the rule against perpetuities.—*Re* DAVIES, LLOYD *v.* CARDIGAN COUNTY COUNCIL, [1915] 1 Ch. 543; 84 L. J. Ch. 493; 112 L. T. 1110; 79 J. P. 291; 59 Sol. Jo. 413; 13 L. G. R. 437.

Conditional gifts generally, *see* Sect. 6, sub-sect. 1, *post*.

991. —— "To the Lord Mayor of London for the time being"—Lord Mayor at testator's death entitled.]—Testator bequeathed a legacy to the Lord Mayor of London for the time being to be by him distributed among such charitable objects as he might select:—*Held:* the person entitled to the legacy was the person who filled the office at testator's death.—*Re* DANIELS, LONDON CITY & MIDLAND EXECUTOR & TRUSTEE CO., LTD. *v.* DANIELS (1918), 87 L. J. Ch. 661; 118 L. T. 435.

992. Gift construed as personal gift—Devise to preacher of meeting-house for life with devise over after his death—Devise over within Mortmain Acts—Valid life estate.]—DOE d. PHILLIPS *v.* ALDRIDGE (1791), 4 Term Rep. 264; 100 E. R. 1010.

Annotations:—**Consd.** Grieves *v.* Case (1792), 2 Cox, Eq. Cas. 301. **Refd.** *Re* Delany, Conoley *v.* Quick, [1902] 2 Ch. 642. **Mentd.** Stewart *v.* Greene (1870), 19 W. R. 202.

B. Gifts for Benefit of "Parishioners," "Inhabitants," etc.

993. Gift for benefit of "as many inhabitants of parish as were able to buy three cows"—Extends to every inhabitant who has three cows.]—WRIGHT *v.* HOBERT (1723), 9 Mod. Rep. 64; 88 E. R. 318.

Annotations:—**Consd.** Saltash Corpn. *v.* Goodman (1881), 7 Q. B. D. 106. **Refd.** Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520.

994. Gift for inhabitants of named street—All inhabitants entitled.]—ROGERS *v.* THOMAS (1837), 2 Keen, 8; 48 E. R. 531.

Annotations:—**Mentd.** Langdale *v.* Whitfield (1858), 4 K. & J. 426; Williams *v.* Williams (1878), 8 Ch. D. 789; *Re* Cadogan, Cadogan *v.* Palagi (1883), 25 Ch. D. 154; *Re* Egan, Mills *v.* Penton, [1899] 1 Ch. 688.

Gifts to classes generally.]—*See* WILLS.

995. "Parishioner"—Construed in ordinary sense of person occupying premises liable to be rated in parish.]—ETHERINGTON *v.* WILSON (1875), 1 Ch. D. 160; 45 L. J. Ch. 153; 33 L. T. 652; 40 J. P. 164; 24 W. R. 303, C. A.

Annotations:—**Consd.** Davey *v.* Hinde, [1901] P. 95. **Refd.** Kensit *v.* St. Ethelburga, Bishopsgate Within, [1900] P. 80. **Mentd.** Beresford-Hope *v.* Sandhurst (1889), 23 Q. B. D. 79; *Re* Barnett & Eccles Corpn. (1901), 65 J. P. 757; Davey *v.* Hinde, [1903] P. 221.

C. Persons in Receipt of Parochial Relief.

996. General rule—Such persons not proper objects—Gift to poor inhabitants of parish.]—A.-G. *v.* CLARKE (1762), Amb. 422; 27 E. R. 282.

997. —— —— Gift for relief of poverty of poor citizens & inhabitants of town.]—A.-G. *v.* EXETER CORPN. (1827), 3 Russ. 395; 6 L. J. O. S. Ch. 50; 38 E. R. 624, L. C.

Annotations:—**Distd.** A.-G. *v.* Bushby (1857), 24 Beav. 299. **Mentd.** A.-G. *v.* Newbury Corpn. (1831), Coop. Pr. Cas. 72; A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647; A.-G. *v.* East Retford Corpn. (1838), 3 My. & Cr. 484; A.-G. *v.* Compton (1842), 1 Y. & C. Ch. Cas. 417; A.-G. *v.* Eastlake (1853), 2 Eq. Rep. 145; Hicks *v.* Sallitt (1854), 3 De G. M. & G. 782; Andrews *v.* M'Guffog (1886), 11 App. Cas. 313.

998. —— —— Gift for relief of poor.]—A.-G. *v.* GUTCH (1830), Shelford's Law of Mortmain, 628.

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d. —— *To successors as chaplain.*]—A. bequeathed to R. £500 upon trust to invest same & to pay the annual income to the chaplain of the R. Chapel at the time of A.'s death during his life, & to his successors in said chaplaincy:—*Held:* the legacy was intended by A. as an endowment for the Chapel, & not as a gift for the personal benefit of the clergyman who filled the office of chaplain at her death.—GIBSON *v.* REPRESENTATIVE CHURCH BODY (1881), 9 L. R. Ir. 1.—**IR.**

e. *Gift construed as gift for support of missions & not as personal gift to the missionary.*]—A. bequeathed to his exors. money to be paid by them towards the support of any mission which might be undertaken or established by W.:—*Held:* not a bequest to W. personally, but to the exors. for the support of the missions.—TORONTO GENERAL TRUSTS CO. *v.* WILSON (1895), 26 O. R. 671.—**CAN.**

f. *Gift construed as personal gift—To "Sisters of Charity of H. to be their property absolutely"—Corporate capacity not presumed.*]—WALKER *v.* MURRAY (1884), 5 O. R. 638.—**CAN.**

g. —— *To "E. Superioress of convent & to Superioress for time being to be used by her for use & benefit of community"—Life interest to E. only.*]—STEWART *v.* GREEN (1870), 19 W. R. 202.—**IR.**

h. —— *To "S., Superioress of convent at K. for purposes solely of convent or such other person as may be Superioress at testator's death."*]—*Re* WILKINSON'S TRUSTS (1887), 19 L. R. Ir. 531.—**IR.**

k. —— *Bequest to "J. Provincial of Franciscan Missionaries for Masses"—To "M., Superioress of St. Ann's Convent of Mercy"—To "Marist Sisters of Convent"—To "G., Superioress of Convent in trust for maintenance of convent."*]—BRADSHAW *v.* JACKMAN (1887), 21 L. R. Ir. 12.—**IR.**

l. —— *To "T. parish priest for a Roman Catholic school or for whatever other purpose he pleases."*]—A. bequeathed his dwelling house, office house, yard, & garden to T., parish priest, for a Roman Catholic school, or for whatever other purpose he pleases:—*Held:* T. was entitled beneficially to the gift.—*Re* HARBISON, MORRIS *v.* LARKIN, [1902] 1 I. R. 103.—**IR.**

PART III. SECT. 4, SUB-SECT. 6.—B.

m. *Poor of county—Town in county detached for municipal purposes only—Within class.*]—A. gave the residue of her estate in trust for a certain class of the poor of a cty., "who must have been *bonâ fide* residents of the said cty. before becoming destitute or needy." A town in the cty. originally formed part thereof for all purposes, but was in 1859, under the Municipal Act then in force, detached from the cty. for municipal purposes only:—*Held:* residents of the town coming within the class referred to in the bequest were included therein.—STEELE *v.* GROVER (1894), 26 O. R. 92.—**CAN.**

PART III. SECT. 4, SUB-SECT. 6.—C.

996 i. *General rule—Such persons not proper objects—Gift for benefit of poor of parish.*]—A. bequeathed for the benefit of the poor of the parish of K. money, declaring that the legacy should be paid over by his trustees to the parish council of K. to be administered by them:—*Held:* the bequest was not limited in its application to the "legal poor," but might be applied for the benefit of poor persons who

999. ——— ——— ———.] — A.-G. *v.* WILKINSON (1839), 1 Beav. 370 ; 3 Jur. 358 ; 48 E. R. 983.
Annotation :—**Consd.** Mary Clark Home Trustees *v.* Anderson, [1904] 2 K. B. 645.

1000. ——— ——— **Rule doubted.**]—A.-G. *v.* BOVILL (1840), 1 Ph. 762 ; 4 Jur. 548 ; 41 E. R. 822, L. C.
Annotations :—**Mentd.** A.-G. *v.* Worcester (1851), 9 Hare, 328 ; A.-G. *v.* Stewart (1872), L. R. 14 Eq. 17 ; *Re* Campden Charities (1881), 18 Ch. D. 310.

1001. ——— ——— **Rule affirmed.**]—A.-G. *v.* LEAGE (1881), *Times*, Dec. 13 ; Tudor's Law of Charities & Mortmain 4th ed., 1041.

D. Gifts in Relief of Rates, etc.

1002. What amounts to gift in relief of poor rates—Conveyance of property for erecting & maintaining house of correction & for maintaining & ordering poor therein & other sturdy & idle persons.]—A.-G. *v.* BERWICK-UPON-TWEED CORPN. (1829), Taml. 239 ; 48 E. R. 95.

1003. ——— **Grant of land for workhouse & "employment & support of poor of parish."**]—A.-G. *v.* BLIZARD (1855), 21 Beav. 233 ; 25 L. J. Ch. 171 ; 26 L. T. O. S. 181 ; 20 J. P. 3 ; 1 Jur. N. S. 1195 ; 52 E. R. 848.
Annotations :—**Distd.** A.-G. *v.* Bushby (1857), 24 Beav. 299. **Expld.** *Re* St. Botolph without Bishopsgate Parish Estates (1887), 35 Ch. D. 142. **Refd.** Webster *v.* Southey (1887), 36 Ch. D. 9.

1004. Gifts held for benefit of inhabitants in general—Gift for benefit of inhabitants for ease of taxes & relief of poor.]—ANON. (1675), 1 Cas. in Ch. 269 ; 22 E. R. 795.

1005. ——— **Gift for discharge of tax of commonalty to king for ever—No such tax.**]—A.-G. *v.* BUSHBY (1857), 24 Beav. 299 ; 53 E. R. 373.
Annotation :—**Refd.** Webster *v.* Southey (1887), 36 Ch. D. 9.

1006 Gift for discharge of taxes of poor of parish —Gentlemen's lands not to be discharged—Yeoman purchasing gentlemen's lands not entitled.]—BUGGS *v.* SUMPNER (1601), Toth. 120 ; 21 E. R. 142.

SUB-SECT. 7.—DELEGATION OF POWER TO DETERMINE OBJECTS.

1007. Discretion of trustees—Not fettered by expressions in testator's will.] — *Re* SQUIRE'S TRUSTS, CHESTER & FLOWER *v.* OXFORD & CAMBRIDGE UNIVERSITIES & A.-G. (1901), 17 T. L. R. 724.

1008. ——— ———.]—*Re* MOLY, LYME REGIS CORPN. *v.* A.-G. (1911), 75 J. P. Jo. 580.

1009. ——— **Construction of will.**]—Testator by clause 8 of his will, after declaring that he had during his life made sufficient provision for the persons & South African institutions therein named, declared that he disposed of his property in manner thereafter appearing in order to advance Christianity, benefit young people, support hospitals, alleviate suffering, & encourage education & emigration. By clause 9 he gave legacies to certain charities, & by clause 10 he gave a large sum for the benefit of charities in a particular town & bequeathed the residue of his estate on trust for sale & conversion. By clause 15 he directed that the residue should be applied for the benefit of the charitable institutions, purposes & objects mentioned in clauses 8 to 10 as his trustees should think fit :—*Held :* the expression in clause 15 "purposes & objects mentioned in clause 8" included in clause 15 such purposes enumerated in clause 8 as were of a charitable nature with the exception of South African charities, & the trustees were not bound to apply the residue exclusively for the benefit of the institutions named in clauses 9 & 10.—*Re* DUNN, COMMERCIAL UNION ASSURANCE Co. *v.* SCOTTISH CORPN. (1918), 34 T. L. R. 469.

——— **Gifts for benefit of poor—Particular persons or classes of persons.**]—*See* Part I., Sect. 2, sub-sect. 1, *ante*.

——— ——— **Of towns.**]—*See* Sect. 4, sub-sect. 6, B., *ante*.

——— **Discretionary powers of trustees generally.**]—*See* Part VII., Sect. 5, sub-sect. 1, *post*.

Validity of discretionary gifts.]—*See* Sect. 2, sub-sect. 2, A. (b), *ante*.

Apportionment—Of funds divisible amongst objects at discretion of trustees.]—*See* Sect. 3, sub-sect. 2, B., *ante*.

Failure of trustees to ascertain objects of trust.]—*See* Part IV., Sect. 2, sub-sect. 2, D., *post*.

SUB-SECT. 8.—NOMINATION OF BENEFICIARIES.

A. Right of Nomination.

(a) In whom vested.

1010. In founder & his heirs.]—A.-G. *v.* LEIGH (1721), 3 P. Wms. 145, n. ; cited in 2 Ves. 389 ; 24 E. R. 1005.
Annotation :—**Consd.** A.-G. *v.* Boultbee (1794), 2 Ves. 380.

1011. ——— **Rent in fee granted out of manor as charity—Alienation of manor—Nomination does not go with manor.**]—A.-G. *v.* RIGBY (1732), 3 P. Wms. 145 ; 2 Eq. Cas. Abr. 201, pl. 2 ; 24 E. R. 1005, L. C.
Annotation :—**Consd.** A.-G. *v.* Boultbee (1794), 2 Ves. 380.

1012. In subscribers to charity—Bargain as to voting—Not against public policy.]—BOLTON *v.* MADDEN (1873), L. R. 9 Q. B. 55 ; 43 L. J. Q. B. 35 ; 29 L. T. 505 ; 38 J. P. 118 ; 22 W. R. 207.

(b) Alienation of.

Right capable of alienation—Appointment of schoolmaster.]—*See* EDUCATION.

1013. Right capable of alienation—Appointment of guardians of grammar school.]—A.-G. *v.* BRENTWOOD SCHOOL (MASTER) (1832), 3 B. & Ad. 59 ; 1 L. J. K. B. 57 ; 110 E. R. 23 ; *subsequent proceedings* (1833), 1 My. & K. 376.
Annotation :—**Foll.** A.-G. *v.* Boucherett (1858), 25 Beav. 116.

1014. ——— **Appointment of master of hospital.**]—A.-G. *v.* EWELME HOSPITAL (1853), 17 Beav. 366 ; 1 Eq. Rep. 563 ; 22 L. J. Ch. 846 ; 23 L. T. O. S. 4 ; 1 W. R. 523 ; 51 E. R. 1075.
Annotations :—**Refd.** A.-G. *v.* Boucherett (1858), 25 Beav. 116. **Mentd.** A.-G. *v.* Windsor Dean & Canons (1860), 30 L. J. Ch. 529.

Appointment of officers, etc., generally.] — *See* Part VI., *post*.

1015. Under Metropolis Local Management Act, 1856 (c. 112)—Election of almspeople—Not transferred to new vestry appointed under Act.]—A.-G. *v.* DRAPERS' Co. (1858), 4 Drew. 299 ; 27 L. J. Ch. 542 ; 22 J. P. 514 ; 6 W. R. 357 ; 62 E. R. 116.
Annotation :—**Distd.** *Re* Hayle's Estate (1862), 31 Beav. 139.

B. Beneficiaries required to possess certain Qualifications.

1016. Nomination to school—Objects confined to children of resident inhabitants—& of Protestant parents.]—A.-G. *v.* CHRIST CHURCH (DEAN, ETC.)

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were not in receipt of parochial relief.—KINLOSS PARISH COUNCIL *v.* MORGAN, [1908] S. C. 192.—**SCOT.**

n. —— *Such persons proper objects*— "*For behoof of poor of parish*"—*Poor Law Amendment Act*, 1845, *s.* 52.]—FLOCKHART *v.* ABERDOUR KIRK-SESSION (1869), 8 Macph. (Ct. of Sess.) 176 ; 42 Sc. Jur. 77.—**SCOT.**

o. *Poor sons of tradesmen of certain trades in S.—Preference to testator's kindred—Kinsman entitled to*

Sect. 4.—Ascertainment of objects of trust: Sub-sect. 8, B. Sects. 5 & 6: Sub-sect. 1, A., B., C. & D.]

(1822), Jac. 474; 37 E. R. 929; *revsd.* on another point (1826), 2 Russ. 321, L. C.

1017. —— "Poor" boys of city—Not confined to boys requiring parish relief or children of persons requiring such relief.]—CANTERBURY GUARDIANS *v.* CANTERBURY CORPN. (1862), 31 L. J. Ch. 810; 6 L. T. 637; 10 W. R. 609.

1018. —— Children of "parishioners"—Includes children of persons occupying premises liable to be rated in parish.]—ETHERINGTON *v.* WILSON, (1875), 1 Ch. D. 160; 45 L. J. Ch. 153; 33 L. T. 652; 40 J. P. 164; 24 W. R. 303, C. A.

Annotations :—**Refd.** Kensit *v.* St. Ethelburga, Bishopsgate Within, [1900] P. 80; Davey *v.* Hinde, [1901] P. 95. **Mentd.** Beresford-Hope *v.* Sandhurst (1889), 23 Q. B. D. 79; *Re* Barnett & Eccles Corpn. (1901), 65 J. P. 757; Davey *v.* Hinde, [1903] P. 221.

Educational charities generally.]—*See* Part VI., Sect. 1, sub-sect. 3, *post*; *&, generally,* EDUCATION.

1019. Admission to almshouse—Bye-law excluding married persons—Person nominated by false misrepresentation that he was unmarried rightly dismissed.]—R. *v.* TANCRED'S CHARITY (1843), 1 L. T. O. S. 230; 8 J. P. 441.

1020. —— Almspeople to attend chapel & say specified prayers—Dissenters not necessarily excluded.]—A.-G. *v.* CALVERT, No. 949, *ante.*

Denominational gifts generally.]—*See* Sect. 4, sub-sect. 5, A., *ante.*

Election to fellowships, scholarships & exhibitions at universities.]—*See* Part VI., Sect. 1, *post.*

SECT. 5.—TRUSTEES.

See Part VII., *post.*

SECT. 6.—RULES APPLICABLE TO CREATION OF CHARITABLE TRUSTS.

SUB-SECT. 1.—GIFTS SUBJECT TO CONDITIONS AND CONDITIONS CREATING TRUSTS.

A. Conditions precedent.

1021. What amount to—Not bequest to build almshouses as soon as land given therefor.]—CHAMBERLAYNE *v.* BROCKETT, No. 1095, *post.*

1022. —— ——.]—*Re* GYDE, WARD *v.* LITTLE, No. 1096, *post.*

1023. —— Not bequest for annuities for poor inhabitants not payable until reserve fund reached specified figure.]—*Re* SWAIN, MONCKTON *v.* HANDS, No. 1097, *post.*

1024. Failure of—Gift conditional on purchase of presentation—Price demanded exceeding residuary personal estate.]—CHERRY *v.* MOTT (1836), 1 My. & Cr. 123; 5 L. J. Ch. 65; 40 E. R. 323.

Annotations :—**Consd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206; Biscoe *v.* Jackson (1887), 35 Ch. D. 460. **Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

1025. —— Gift conditional on purchase of land—Refusal of owner to sell.]—MITFORD *v.* REYNOLDS (1848), 16 Sim. 105; 17 L. J. Ch. 238; 10 L. T. O. S. 499; 12 Jur. 197; 60 E. R. 812.

Annotations :—**Refd.** Fowler *v.* Fowler (1864), 33 Beav. 616; *Re* Dean, Cooper-Dean *v.* Stevens (1889), 41 Ch. D. 552.

1026. —— Gift conditional on income of estate amounting to certain sum.]—THOMAS *v.* HOWELL (1874), L. R. 18 Eq. 198; 43 L. J. Ch. 511; 22 W. R. 676.

Annotations :—**Distd.** Nickall *v.* Fawkes (1905), 50 Sol. Jo. 126. **Mentd.** *Re* Corcoran, Corcoran *v.* Riddell (1892), 62 L. J. Ch. 267.

1027. Impossibility of performance—Failure of gift.]—Testator bequeathed legacies to two charities, B. & S., subject to his trustees being made members or governors to the intent that they might have votes & voices in the maintenance & conduct of the societies to the fullest possible extent. The B. charity had no governors, but had members, who were entitled to vote at general meetings. The S. charity had neither members nor governors. One of the trustees refused to become a member of the B. charity :—*Held :* the condition was a condition precedent, not subsequent, & referred to the obligation of the charities, not to that of the trustees, & the gift to B. was good & the gift to S. failed.—*Re* EMSON, GRAIN *v.* GRAIN (1905), 74 L. J. Ch. 565; 93 L. T. 104; 21 T. L. R. 623.

Annotation :—**Distd.** *Re* Grove, Public Trustee *v.* Dixon, [1919] 1 Ch. 249.

B. Conditions subsequent.

1028. What amount to—Not mere expression of intention.]—YATES *v.* UNIVERSITY COLLEGE, LONDON (1875), L. R. 7 H. L. 438; 45 L. J. Ch. 137; 32 L. T. 43; 23 W. R. 408, H. L.

Annotation :—**Folld.** *Re* Williams, Taylor *v.* University of Wales (1908), 24 T. L. R. 716.

1029. —— Not direction to repair within specified time.]—Testatrix bequeathed all her diamonds upon trust for sale, & upon trust, in the

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limited relief.]—On a special case as to the meaning of a clause in a deed of mortification :—*Held :* a descendant of the founder was entitled to participate, to a limited and qualified extent, in the benefit of the charity.—GRAHAM *v.* STIRLING MAGISTRATES (1847), 9 Dunl. (Ct. of Sess.) 1296; 19 Sc. Jur. 554.—SCOT.

PART III. SECT. 6, SUB-SECT. 1.—A.

p. *What amounts to—Not condition that annual subsidy should be paid out of Consolidated Fund.]*—A. left property to trustees upon trusts to apply the income thereof at their absolute discretion for the maintenance & benefit of a designated charitable institution under Hospitals & Charitable Institutions Act, 1885, on the express condition only that there should at all times for ever thereafter be paid out of the Consolidated Fund to the Board of the district having the control of the said charitable institution an annual subsidy :—*Held :* the payment of the subsidy out of the Consolidated Fund was not a condition precedent to the vesting of the Board's interest.—MOULE *v.* OVERTON (1896), 16 N. Z. L. R. 106.—N.Z.

q. *Failure of—Conditional gift to charity if testator's son did not return to colony & claim.]*—A. gave his residuary estate on trust to be realised & divided between his two sons. "Should they not return to the colony & claim their shares within seven years" then he authorised his exors. to divide the same between certain charities :—*Held :* one son having returned & claimed his share, the gift to the charities failed.—MORAN *v.* A.-G. (1905), 5 S. R. N. S. W. 142.—AUS.

r. —— *Gift conditional on approval of settlor of trustees' discretion—Settlor's death before selection.]*—A settlor created a trust as follows : "to expend after the liquidation of all debts, Rs.500 per month for such medical & educational charities within the zemindaris of the settlor as shall with the approval of the settlor, appear just to the trustees." The settlor died without approving any trust & the zemindari was sold before any charitable trust was selected by the trustees :—*Held :* the conditions precedent to the constitution of the trust were not satisfied & it failed.—SANTANA RAY *v.* ADV.-GEN. OF BENGAL (1920), I. L. R. 48 Calc. 124.—IND.

1027 i. *Impossibility of performance—Failure of gift.]*—A. directed his trustees to expend two sums upon the erection of two Roman Catholic churches or "such smaller sum or sums as might be necessary . . . my intention being merely to have such church . . . completed." Upon the completion of the buildings the trustees were directed to convey them, on certain specified conditions, to trustees to be appointed respectively by the Bishop of the Roman Catholic Diocese in which the churches were to be situated. The bishops refused to accept the bequests under the conditions specified :—*Held :* the bequests having lapsed owing to the refusal of the bishops to accept them on the conditions specified, the sums in question fell into residue.—BUTE'S (MARQUESS) TRUSTEES *v.* BUTE (MARQUESS) (1905), 7 F. (Ct. of Sess.) 49.—SCOT.

PART III. SECT. 6, SUB-SECT. 1.—B.

s. *What amount to—Gift to erect church—On condition that church be built on certain land only.]*—A. bequeathed money to the trustees of the Presbyterian Church at S. "to be applied towards the erection of a new

events which happened, out of the proceeds to expend such a sum of money not exceeding £600 in repairing a certain church, as the trustees should in their discretion think proper, such repairs to be commenced within the period of twelve months from the decease of testatrix, & she directed that so much of the £600 as should not be expended in the repairs should fall into her residuary personal estate. She also directed that out of the proceeds of sale £700 should be laid out in building six labourers' cottages, but testatrix did not otherwise deal with the surplus, if any, of the proceeds of sale of the diamonds. The diamonds only realised £900. The £700 gift was held void, & the trustees did not commence the repairs within twelve months of testatrix's death :—*Held :* (1) the words as to commencing repairs within twelve months were directory only, & the gift took effect ; (2) the £600 was in effect a first charge on the proceeds of sale of the diamonds, which must be satisfied in full before the residuary legatee could take anything.—*Re* TUNNO, RAIKES *v.* RAIKES (1890), 45 Ch. D. 66 ; 59 L. J. Ch. 573 ; 63 L. T. 23 ; 38 W. R. 636.

1030. —— Proviso for reverter of land not used for purposes specified.]—By indentures of lease & release of May 18, 1726, hereditaments were assured to J. to have & to hold unto J., his heirs & assigns to the use of T., & certain other persons therein named, being the trustees of a charity known as H.'s Hospital upon the trusts therein mentioned for the maintenance & management of the hospital, subject to the following proviso : " Provided always, & it is hereby agreed by & between the parties to these presents that if, at any time hereafter the premises hereby conveyed or any part thereof, or the rents, profits & issues of same, or of any part thereof, shall be employed or converted to or for any other use or uses, interests or purposes than as are hereinbefore mentioned & specified, then & from thenceforth the buildings, lands & premises hereinbefore conveyed to the uses & upon the trusts hereinbefore mentioned shall revert to the right heirs of T., party hereto, anything herein contained to the contrary hereof in any wise notwithstanding. E. had entered into a contract with an agent acting for the majority of the trustees of the charity for the purchase of a portion of the freehold property. E. was willing to accept the title & a draft conveyance had been approved, when one of the trustees wrote to E.'s solrs. stating in effect that, as heir-at-law of T. he had not concurred in the sale of the property & calling attention to the above proviso in the title deeds :—*Held :* (1) the proviso constituted a common law condition subsequent ; (2) the rule against perpetuities applied to such a condition.—*Re* HOLLIS' HOSPITAL TRUSTEES & HAGUE'S CONTRACT, [1899] 2 Ch. 540 ; 68 L J. Ch. 673 ; 81 L. T. 90 ; 47 W. R. 691 ; 43 Sol. Jo. 644.
Annotations :—As to (1) **Follo.** *Re* Da Costa, Clarke *v.* Church of England Collegiate School of St. Peter, [1912] 1 Ch. 337. *As to* (2) **Refd.** *Re* Ashforth, Sibley *v.* Ashforth, [1905] 1 Ch. 535.

1031. —— Accounts to be published annually with gift over on default.]—*Re* DA COSTA, CLARKE *v.* CHURCH OF ENGLAND COLLEGIATE SCHOOL OF ST. PETER, No. 722, *ante.*

1032. When condition becomes operative—Benefice " never to be held in plurality "—Parishes subsequently united.]—A clergyman, who had for many years down to shortly before his death been rector of K., by his will bequeathed £1000 as an augmentation fund for that benefice " upon condition that the benefice or rectory never be held in plurality by any neighbouring clergyman." Steps towards the union of the rectory of K. with a neighbouring rectory & vicarage were commenced by the bishop of the diocese in the year preceding testator's death & subsequently, in the year of his decease, the rectory of M. with the vicarage of S. & the rectory of K. were united into one benefice for ecclesiastical purposes, deft., incumbent of M. cum- S., being presented to the rectory of K. :—*Held :* testator having used " plurality," which was a technical expression involving the holding of a benefice by some clergyman who at the same time holds one or more other benefices, the rector of the one united parish or benefice was not holding in plurality, & the event contemplated by the condition of defeasance had not arisen.—*Re* MACNAMARA, HEWITT *v.* JEANS (1911), 104 L. T. 771.

C. Void Conditions.

1033. Repugnancy—Condition not binding—Condition limiting length of leases.]—LYDIATT *v.* FOACH (1700), 2 Vern. 410 ; 23 E. R. 864.
Annotations :—**Consd.** Watson *v.* Hemsworth Hospital (1807), 14 Ves. 324 ; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223.

1034. —— —— Restriction against increase of rents.]—A.-G. *v.* CATHERINE HALL, CAMBRIDGE (MASTER, ETC.) (1820), Jac. 381 ; 37 E. R. 894, L. C.
Annotations :—**Consd.** A.-G. *v.* Drapers' Co. (1843), 6 Beav. 382. **Refd.** A.-G. *v.* Greenhill (1863), 33 Beav. 193.

1035. Illegality—Legatee discharged of condition—Bequest of leaseholds—Condition to assign part to charity.]—POOR *v.* MIAL (1821), 6 Madd. 32 ; 56 E. R. 1001.

1036. —— —— Devise of copyholds—Condition to pay specified sum to charitable purposes.]—HENCHMAN *v.* A.-G. (1834), 3 My. & K. 485 ; 40 E. R. 185, L. C.
Annotations :—**Mentd.** Taylor *v.* Haygarth (1844), 14 Sim. 8 ; Lett *v.* Randall, Lett *v.* Dormer (1855), 3 Sm. & G. 83 ; Rittson *v.* Stordy (1855), 3 Sm. & G. 230 ; Talbot *v.* Jevers [1917] 2 Ch. 363.

D. Acceptance of conditional Gifts.

1037. What amounts to—Not acts done merely to preserve fund.]—A.-G. *v.* ANDREW (1798), 3 Ves. 633 ; 30 E. R. 1194, L. C. ; *affd.* 1800, Feb. 20, H. L. (*see* 7 Ves. 223).
Annotations :—**Consd.** A.-G. *v.* Catherine Hall, Cambridge (1820), Jac. 381. **Follo.** A.-G. *v.* Christ's Hospital (1830),

church, but solely on condition that such new church be built on the land belonging to that denomination so as to front " a certain street, " otherwise such sum shall lapse into the residue of my estate " :—*Held :* (1) a condition subsequent, (2) the trustees of the church were entitled to the immediate payment of the legacy.—*Re* MACLACHLAN, MACLACHLAN *v.* CAMPBELL (1900), 26 V. L. R. 548.—**AUS.**

1030 j. —— *Proviso for reverter if application made to Parliament or court to vary trusts.*]—A. gave her residuary estate on trust for three charitable institutions, & directed that, if an institution should make an application to Parliament or to the ct. to vary the trusts, the trusts should be void :—*Held :* the gifts were defeasible by a condition subsequent.—*Re* BAILLIE, FAITHFUL *v.* SYDNEY INDUSTRIAL BLIND INSTITUTION (1907), 7 S. R. N. S. W. 265.—**AUS.**

t. —— *Direction to keep cemetery in order.*]—Testator devised land in trust for a religious order, &, in consideration of the above bequest, ordered that a cemetery upon the land be kept in order :—*Held :* the direction to keep the cemetery in order was a mere condition annexed to the gift, & not a trust attached to the property.—GLEESON *v.* PHELAN (1914), 15 S. R. N. S. W. 30.—**AUS.**

a. —— *Obligation to celebrate mass in particular church.*]—A. bequeathed property to the parish priest for the time being of St. Peter's Roman Catholic Parish, with an obligation that in consideration thereof he should celebrate mass in public in the C. Church on each Monday morning for the repose of the souls of A. & of deceased members of A.'s family :—*Held :* the obligation to celebrate masses was a condition subsequent.—BRANNIGAN *v.* MURPHY, [1896] 1 I. R. 418.—**IR.**

b. —— ——.] — BUCHANAN *v.* BRADY (1902), 36 I. L. T. 146.—**IR.**

Sect. 6.—Rules applicable to creation of charitable trusts: Sub-sect. 1, D. & E.; sub-sects. 2 & 3, A.]

1 Russ. & M. 626. **Refd.** Cherry *v.* Mott (1836), 1 My. & Cr. 123; Sinnett *v.* Herbert (1872), 7 Ch. App. 232. **Mentd.** Corbyn *v.* French (1799), 4 Ves. 418.

1038. Effect of—Condition must be performed—Though at a loss.]—A.-G. *v.* CHRIST'S HOSPITAL (1790), 3 Bro. C. C. 165; 29 E. R. 468, L. C.

Annotation :—**Folld.** A.-G. *v.* Christ's Hospital (1831), 1 Russ. & M. 626.

1039. —— —— Subsequent repudiation ineffective.]—A.-G. *v.* CHRIST'S HOSPITAL (1831), 1 Russ. & M. 626; Taml. 393; 9 L. J. O. S. Ch. 186; 39 E. R. 240.

Annotation :—**Distd.** *Re* Robinson, Wright *v.* Tugwell, [1892] 1 Ch. 95.

1040. —— Condition based on wrong assumption—Strict observance not essential.]—JOYCE *v.* OSBORNE (1636), Nels. 40; 21 E. R. 784.

1041. —— Continuing condition.]—Testatrix bequeathed £1,500 towards the endowment of a church, provided certain conditions were carried out in every particular, & under that stipulation alone was her exor. empowered to pay it. One of the conditions, called by testatrix an "abiding condition," was that the black gown should be worn in the pulpit, unless there should be any alteration in the law rendering it illegal :—*Held :* the condition was a continuing condition, so as to entitle the incumbent of the church to the income of the fund from time to time so long as he performed the condition.—*Re* ROBINSON, WRIGHT *v.* TUGWELL, [1897] 1 Ch. 85; 66 L. J. Ch. 97; 76 L. T. 95; 61 J. P. 132; 45 W. R. 181; 13 T. L. R. 72; 41 Sol. Jo. 96, C. A.

Annotation :—**Mentd.** *Re* Church Patronage Trust, Laurie *v.* A.-G. (1904), 73 L. J. Ch. 712.

E. Conditions creating Trusts.

1042. Trust created—"For this intent & purpose & upon this condition."]—Little stress can be laid on the use, in a will making a gift to a charity, of the word "condition"; it may mean the same as "intent & purpose," & may be employed to create a trust & nothing more.

In 1558 testator gave houses in O. to his son & the son's heirs, but, if the son died without issue, to the Wax Chandlers of the City of London, "for this intent & purpose & upon this condition," that they should distribute annually £8 in the manner therein described, & the rest of the profits of the houses & tenements he directed should be bestowed upon the reparation of the houses & tenements. If the Wax Chandlers should leave any of these things undone, the property was to go over to testator's next of kin, upon condition that they should do all those things. The son died unmarried, & the Wax Chandlers entered into possession, kept the premises in repair, &, after the great fire of London, rebuilt them. The rents had largely increased :—*Held :* (1) the will created a trust; (2) & all the income was exhausted by the appropriations of it directed by the will, & was properly applicable to purposes of charity; (3) "reparation" of premises used in a gift of those premises to a charity comprehended their restoration in the event of any catastrophe befalling them.—A.-G. *v.* WAX CHANDLERS' CO. (MASTER, WARDENS, ETC.) (1873), L. R. 6 H. L. 1; 42 L. J. Ch. 425; 28 L. T. 681; 37 J. P. 532; 21 W. R. 361, H. L.; *revsg.* (1870), 5 Ch. App. 503, L. C.

Annotations :—*As to* (1) **Distd.** Cunningham *v.* Foot (1878), 38 L. T. 839. **Refd.** Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; Haigh *v.* West, [1893] 2 Q. B. 19. *As to* (3) **Consd.** *Re* Palatine Estate Charity (1888), 39 Ch. D. 54. *Generally* **Distd.** Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512.

1043. —— "Upon trust & confidence."]—MARTIDALE *v.* MARTIN (1592), Cro. Eliz. 288; 78 E. R. 542; *sub nom.* GIBONS *v.* MARLTIWARD, Moore, K. B. 594; *sub nom.* GIBBONS *v.* MALTYARD & MARTIN, Poph. 6.

Annotation :—**Refd.** Williams *v.* Fry (1672), 3 Keb. 19.

1044. —— "Upon express condition."]—WRIGHT *v.* WILKIN (1862), 2 B. & S. 259; 31 L. J. Q. B. 196; 6 L. T. 22; 9 Jur. N. S. 715; 10 W. R. 403; 121 E. R. 1070, Ex. Ch.

Annotations :—**Refd.** Macdonald *v.* Irvine (1878), 8 Ch. D. 101; *Re* Gwynne's Charity, Charity Comrs. *v.* Moulden (1894), 10 T. L. R. 428. **Mentd.** *Re* Williams, Williams *v.* Williams, [1897] 2 Ch. 12.

1045. —— "To this intent & upon this condition."]—MERCHANT TAYLORS' CO. *v.* A.-G. (1871), 6 Ch. App. 512; 40 L. J. Ch. 545; 25 L. T. 109; 35 J. P. 774; 19 W. R. 641, L. C. & L. JJ.

Annotation :—**Consd.** A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1.

1046. —— Power to frame ordinances for regulation of property—Negatives beneficial interest.]—A.-G. *v.* MERCERS' CO. (1870), 22 L. T. 222; 18 W. R. 448.

1047. —— Bequest of capital sum—To be applied in specified way—Gift over on non-performance of condition.]—*Re* RICHARDSON, SHULDHAM *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION (1887), 56 L. J. Ch. 784; 57 L. T. 17; 35 W. R. 710; *subsequent proceedings sub nom. Re* RICHARDSON'S WILL, 58 L. T. 45.

Annotation :—**Refd.** *Re* Robinson, Wright *v.* Tugwell, [1892] 1 Ch. 95.

1048. No trust created—Bequest of specified sum—To be applied in specified way—Gift over on non-performance of condition.]—A.-G. *v.* CORDWAINERS' CO. (1833), 3 My. & K. 534; 40 E. R. 203.

Annotations :—**Consd.** Jack *v.* Burnett (1846), 12 Cl. & Fin. 812. **Distd.** A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1. **Refd.** A.-G. *v.* Coopers' Co. (1840), 4 Jur. 572; A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11.

1049. —— —— ——.]—A.-G. *v.* GROCERS' CO. (1843), 6 Beav. 526; 12 L. J. Ch. 195; 7 J. P. 66; 8 Jur. 1155; 49 E. R. 929.

1050. —— Bequest of indefinite sum—To be applied in specified way—Gift over on non-performance of condition.]—In searching for the intention of a donor, which is the standard to govern the construction of a deed of gift, the facts, (1) that the gift is subject to the condition of making certain payments to others, (2) that forfeiture will be incurred by non-performance of that condition, & (3) that the donee may be subjected to loss by the performance of that condition, are sufficient to raise the presumption that in case of the increase of the fund, the donor intended to give to the donee the benefit of that increase.

A donor granted to the principal & professors of a college, certain lands, "upon the conditions hereinafter specified," to maintain three bursars, "according to the manner, measure & quality, & as the rest of the bursars of philosophy, presently in the college already founded, are educated & entertained," & imposed as a condition, the penalty for the breach of which was forfeiture, that the principal & professors should admit to the bursarships the presentees of the donor & his family :—*Held :* this was a grant upon condition, & not a mere trust, & the principal & professors were entitled, after satisfying the conditions of the deed of gift, to appropriate to themselves any surplus arising from the lands thus given.—JACK *v.* BURNETT (1846), 12 Cl. & Fin. 812; 8 E. R. 1032, H. L.

Annotations :—**Refd.** A.-G. *v.* Merchant Venturers' Co., Bristol (1848), 17 L. J. Ch. 137; A. G. *v.* Beverley Corpn. (1852), 15 Beav. 540.

1051. —— Construction of instrument of endowment of college.]—A.-G. *v.* ST. JOHN'S

COLLEGE (1834), Coop. *temp.* Brough. 394; 47 E. R. 141, L. C.

SUB-SECT. 2.—LIMITED GIFTS.

1052. On continuance of particular state of circumstances—So long as school continued to be endowed—Freehold estate so devised only given quousque.]—A.-G. *v.* PYLE (1738), 1 Atk. 435; 26 E. R. 278; *sub nom.* A.-G. *v.* MONTAGUE, West *temp.* Hard. 587, L. C.

Annotation:—**Refd.** Biscoe *v.* Jackson (1887), 35 Ch. D. 460.

1053. —— So long as particular doctrines preached—Minister for time being entitled so long as such doctrines preached.]—A.-G. *v.* MOLLAND (1832), 1 You. 562; 159 E. R. 1114.

Gifts to persons as holders of office generally, *see* Sect. 4, sub-sect. 6, A., *ante*.

1054. —— So long as free sittings in church permitted—No general charitable purpose—Fund not applicable cy-près.]—Testatrix bequeathed £14,000 on trust to pay the income to the incumbent of the church at H. for the time being so long as he permitted the sittings to be occupied free: in case payment for sittings was ever demanded, she directed the £14,000 to fall into her residue:—*Held:* (1) testatrix had not expressed a general intention to devote the £14,000 to charitable purposes, so that in case of failure of the trust for the benefit of the incumbent the fund would be applied *cy-près*; (2) the direction that the fund should fall into the residue being a direction that the fund should go as the law would otherwise carry it, did not offend the rule against perpetuities.—*Re* RANDELL, RANDELL *v.* DIXON (1888), 38 Ch. D. 213; 57 L. J. Ch. 899; 58 L. T. 626; 36 W. R. 543; 4 T. L. R. 307.

Annotations:—*As to* (1) **Consd.** *Re* Peel's Release, [1921] 2 Ch. 218. *As to* (2) **Consd.** *Re* Bowen, Lloyd Phillips *v.* Davis, [1893] 2 Ch. 491. **Foll.** *Re* Blunt's Trusts, Wigan *v.* Clinch, [1904] 2 Ch. 767.

Application of *cy-près* doctrine generally, *see* Part IV., Sect. 2, *post*.

1055. —— So long as schools conducted in particular way.]—Testatrix, who died in 1900, by will dated in 1891 bequeathed to her trustees a sum sufficient when invested to produce a yearly sum of £20, & she directed them to pay such yearly sum to the treasurer for the time being of certain National schools so long as they should be carried on under the conditions contained in a deed of trust dated in 1873 & the funds necessary for so carrying them on should be supplied by voluntary contributions, & she declared that the bequest should not take effect but should be null & void in certain events (*inter alia*), if the funds necessary for carrying on the school should be raised under powers for that purpose contained in any then present or future Act of Parliament, & that upon the happening of such event the payment of the yearly sum should cease, & the fund purchased should fall into her residuary estate. By the deed of 1873 it was declared that the schools should be conducted according to the principles & designs of the National Society. Subject to certain superintendence by the principal officiating minister of the parish, the control & management of the schools & premises & the funds & endowments thereof were vested in & exercised by a committee consisting of such minister & certain other persons being communicants:—*Held:* (1) on the coming into operation of Education Act, 1902 (c. 42), the schools ceased to be any longer carried on under the conditions contained in the trust deed of 1873; (2) as regarded the gift over, there was no infringement of the rule against perpetuities, for the ct. was entitled to look at the will in order to ascertain whether the event had happened on which the yearly sum was to cease & determine; (3) on the coming into operation of the above Act the event contemplated by testatrix had happened, & the fund producing the yearly sum fell into the residue.—*Re* BLUNT'S TRUSTS, WIGAN *v.* CLINCH, [1904] 2 Ch. 767; 74 L. J. Ch. 33; 91 L. T. 687; 68 J. P. 571; 53 W. R. 152; 20 T. L. R. 754; 48 Sol. Jo. 687; 2 L. G. R. 1295.

Annotation:—*As to* (3) **Consd.** *Re* Peel's Release, [1921] 2 Ch. 218.

1056. —— Bequest for "maintenance" of home—Carried on in house held under lease for 999 years.]—At the time of her will & her death, testatrix, who held her house under a 999 years' lease, was carrying it on as a home in connection with a charitable society. By her will dated Mar. 13, 1902, she bequeathed the house to the treasurer & two other members of the society to be used as a home. She also directed her exors. & trustees to hold the proceeds of sale of her residuary estate in trust to pay certain life annuities & to pay the treasurer of the society £120 a year "for the maintenance & expenses of maintaining" the home, & "after the final expiration of the aforesaid trusts" the trustees were to hold the residuary trust funds in trust for certain residuary charities. On the construction of the will it was clear that these annuities were charged on corpus. Testatrix died on Nov. 6, 1910, & the society carried on the home for another eighteen months. It was then voluntarily discontinued & sold by the society under 1891 Act, the society having formerly decided not to apply for a retaining order. The proceeds of sale were applied under a *cy-près* scheme:—*Held:* the £120 annuity continued during the 999 years of the lease, & it was neither limited to the duration of the home, nor carried into residue for the benefit of the residuary charities on the cesser of the home, but, on the failure of the particular purpose after testatrix's death, the general charitable intention in favour of the society prevailed, & the annuity was applicable *cy-près*.—*Re* CUNNINGHAM, DULCKEN *v.* CUNNINGHAM, [1914] 1 Ch. 427; 83 L. J. Ch. 342; 110 L. T. 371.

Failure of particular charitable purpose—Before testator's death.]—*See* Sect. 4, sub-sect. 3, H., *ante*.

—— **After testator's death.**]—*See* Part IV., Sect. 2, sub-sect. 2, C., *post*.

1057. Springing use—Real estate vested in trust to keep it ready for plague patients—Present gift & not gift contingent on reappearance of plague.]—A.-G. *v.* CRAVEN (EARL) (1856), 21 Beav. 392; 25 L. J. Ch. 291; 27 L. T. O. S. 23; 20 J. P. 261; 2 Jur. N. S. 296; 4 W. R. 340; 52 E. R. 910.

Annotations:—**Refd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

SUB-SECT. 3.—GIFTS OVER.

A. When Effective.

1058. Land not used in manner directed.]—BERD *v.* ROBINSON (1626), Benl. 171; 73 E. R. 1033.

1059. Neglect of trustees—Not where general charitable intention—Primary object to benefit

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PART III. SECT. 6, SUB-SECT. 3.—A. c. *General rule.*]—An immediate gift to a charity for charitable uses, with a gift over on an event which may be beyond the ordinary limit of perpetuities to another charity, is not invalid.—ADMINISTRATOR-GENERAL OF BENGAL *v.* HUGHES (1912), I. L. R. 40 Calc. 192.—**IND.**

Sect. 6.—Rules applicable to creation of charitable trusts: Sub-sect. 3, A. & B.; sub-sect. 4, A.]

specified places.]—*Re* UPTON WARREN (PARISH) (1833), 1 My. & K. 410; 39 E. R. 736, L. C.

1060. —— Contingent limitation dependent on conduct of trustees.]—CHRIST'S HOSPITAL *v.* GRAINGER (1849), 1 Mac. & G. 460; 1 H. & Tw. 533; 19 L. J. Ch. 33; 15 L. T. O. S. 497; 13 J. P. 778; 14 Jur. 339; 41 E. R. 1343, L. C.; *affg.* (1848), 16 Sim. 83.

Annotations:—**Consd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252; *Re* Bowen, Lloyd Phillips *v.* Davis, [1893] 2 Ch. 491. **Distd.** *Re* Da Costa, Clarke *v.* Church of England Collegiate School of St. Peter, [1912] 1 Ch. 337. **Refd.** A.-G. *v.* Grainger (1859), 7 W. R. 684; Worthing Corpn. *v.* Heather, [1906] 2 Ch. 532. **Mentd.** R. *v.* East Mark Tithing (1848), 12 Jur. 332; Braund *v.* Devon (1868), 16 W. R. 1180.

1061. Church services—"Neglect" in performing—Wilful neglect essential.]—*Re* CONNINGTON'S WILL (1860), 2 L. T. 535; *sub nom. Re* CONINGTON'S WILL, 24 J. P. 419; 6 Jur. N. S. 992; 8 W. R. 444.

1062. —— Failure to perform.]—BETHLEHEM & BRIDEWELL HOSPITALS *v.* IRONMONGERS' CO. (1881), Tudor's Charitable Trusts, 4th ed. 139.

1063. Failure to nominate & present to living.]—ST. JOHN'S COLLEGE, CAMBRIDGE *v.* EFFINGHAM (EARL) (1873), 29 L. T. 447; 22 W. R. 125.

1064. Failure of incumbent to allow free sittings in church.]—*Re* RANDELL, RANDELL *v.* DIXON, No. 1054, *ante*.

1065. General failure of gifts to charity—Gift over limited on construction of will.]—HALL *v.* WARREN (1861), 9 H. L. Cas. 420; 5 L. T. 190; 7 Jur. N. S. 1089; 10 W. R. 66; 11 E. R. 791, H. L.; *varying* S. C. *sub nom.* WARREN *v.* RUDALL (1858), 4 K. & J. 603.

Annotations:—**Consd.** *Re* Smith's Trusts (1865), L. R. 1 Eq. 79. **Refd.** Cramp *v.* Playfoot (1858), 4 K. & J. 479; Wing *v.* Angrave (1860), 8 H. L. Cas. 183; Evans *v.* Stratford (1864), 2 Hem. & M. 142. **Mentd.** Warren *v.* Kelson (1859), 28 L. J. P. & M. 122; Brookman *v.* Smith (1871), L. R. 6 Exch. 291.

Construction of gifts over in wills generally.]—*See* WILLS.

1066. Not when trust property acquired under statutory powers—School property taken by school board under Elementary Education Acts.]—*Re* ORCHARD STREET SCHOOLS (TRUSTEES), [1878] W. N 211.

1067. Gift for support of school—On Education Act, 1902 (c. 42), coming into operation.]—*Re* BLUNT'S TRUSTS, WIGAN *v.* CLINCH, No. 1055, *ante*.

1068. —— ——.]—Testator, who died in 1891, bequeathed investments to trustees upon trust to apply the income towards the annual expenses of a National school so long as it was supported by voluntary subscriptions as theretofore in addition to the government grant, with a gift over in the event of the school ceasing to be so supported or becoming subject to the control of a school board. Since the death of testator the necessity for subscriptions had practically ceased owing to the bequest, but the managers were in debt to a small extent. In consequence of the passing of the above Act, the school, as a public elementary school, came under the control of the county council as the education authority:—*Held:* there had been no forfeiture on either of the grounds mentioned by testator, & the gift over did not take effect.—*Re* BEARD'S TRUSTS, BUTLIN *v.* HARRIS, [1904] 1 Ch. 270; 73 L. J. Ch. 176; 90 L. T. 274; 68 J. P. 141; 52 W. R. 312; 20 T. L. R. 163; 48 Sol. Jo. 192; 2 L. G. R. 320.

1069. —— ——.]—By a declaration of trust a sum of money was vested in trustees to be invested by them & the income paid by them to the trustees of the National schools at A. for the purposes of education at such schools & the carrying on of same until a school board or other representative body under Education Acts should be formed for the parish of A. or the National schools should otherwise cease to be carried on for the purposes of education, & upon the happening of those events the funds were to go for the benefit of certain almshouses. By Education Act, 1902, county councils became the local education authority & school boards & other representative educational bodies were abolished. The school continued to be carried on as a non-provided school under the county council:—*Held:* the events upon the happening of which the gift over was to take place had not happened, & the income of the trust funds must be paid to the managers of the school.—*Re* SMALLWOOD'S TRUSTS, GOTHARD *v.* CHAPMAN (1909), 79 L. J. Ch. 256; 101 L. T. 806; 74 J. P. 45.

1070. —— ——.]—A trust deed of 1881 recited that certain persons had paid £1,498 to trustees for the purpose of founding two scholarships for the benefit of scholars of the S. School, & clause 3 of the deed provided that if & whenever the school should cease to exist, the trustees should apply the net income arising from the sum of £1,498 in or towards the advancement & encouragement of education & learning as the trustees should in their absolute discretion think best, provided nevertheless that in the event of the school becoming vested in a corporate body for the purposes of a school or college & its constitution being thereby changed, the trusts thereof should be executed in favour of such school or college so incorporated so far as they could reasonably be made applicable in priority to any other application of the net income. In 1883 the body of proprietors of the school was incorporated under Companies Acts by the name of the S. School, which in 1884 was changed to that of W. College. The school continued to be mainly a denominational school, but it was not exclusively so as it had previously been. In 1904 the school premises were sold to defts. as the education authority under above Act, & thereafter the school was carried on on undenominational lines:—*Held:* (1) the school had ceased to exist within the trust deed when the proprietary body was incorporated & became the W. College; (2) the proviso to clause 3 then came into & continued in operation so long as the school was carried on by the old body of proprietors; (3) when the school was transferred to defts. the proviso ceased to operate; (4) thereafter the discretion of the trustees under clause 3 as to the application of the income was unfettered.—*Re* BARRETT'S TRUST, DYSON *v.* SHEFFIELD CORPN. (1910), 26 T. L. R. 330.

1071. Gift not for charitable purposes.]—*Re* BARNETT, WARING *v.* PAINTER STAINERS' CO., No. 256, *ante*.

1072. Impracticability of carrying on religious society—Members changing religion.]—An abbey was conveyed to trustees for the benefit of a society or community founded for the advancement of religion according to the principles of the Church of England, & the deed provided that if it should appear to the trustees impracticable to carry on the society, they should convey the property to the English Abbeys Restoration Fund. Subsequently all the members of the community, except two, acknowledged the supremacy of the Pope, & were admitted to the Roman Catholic Church. A meeting of the trustees resolved to give effect to the gift over, & two of them applied to the ct. for directions as to whether

they ought to join in executing the deed of conveyance:—*Held:* they must join in executing the deed.—*Re* MALLING ABBEY TRUSTS, BEAUMONT *v.* DALE (1915), 31 T. L. R. 397, C. A

B. Validity.

1073. Prior gift void—By statute & law—Gift over valid—Fund not subject to general trust for charity.]—DE THEMMINES *v.* DE BONNEVAL (1828), 5 Russ. 288; 7 L. J. O. S. Ch. 35; 38 E. R. 1035.

Annotations:—**Consd.** Carter *v.* Green (1857), 3 K. & J. 591; Bourne *v.* Keane, [1919] A. C. 815. **Refd.** Warren *v.* Rudall, Hall *v.* Warren (1858), 4 K. & J. 603; Barton *v.* Muir (1874), L. R. 6 P. C. 134; Bowman *v.* Secular Soc., [1917] A. C. 406.

1074. —— —— ——.]—CARTER *v.* GREEN (1857), 3 K. & J. 591; 26 L. J. Ch. 845; 29 L. T. O. S. 342; 21 J. P. 626; 3 Jur. N. S. 905; 5 W. R. 856; 69 E. R. 1245.

Annotations:—**Consd.** *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565. **Refd.** *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594. **Mentd.** Topham *v.* Portland (1863), 1 De G. J. & Sm. 517; Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96.

1075. —— —— **Gift over void—So blended with prior gift.**]—RUDALL *v.* WARREN (1857), Dea. & Sw. 306; 29 L. T. O. S. 204; 3 Jur. N. S. 822; 164 E. R. 584; *subsequent proceedings, sub nom.* WARREN *v.* RUDALL (1858), 4 K. & J. 603; & *sub nom.* HALL *v.* WARREN (1861), 9 H. L. Cas. 420, H. L.

Annotation:—**Consd.** Warren *v.* Kelson (1859), 1 Sw. & Tr. 290.

1076. Gift over void—For repugnancy—Gift over on legacy not being laid out in particular way—. Within definite time.]—*Re* RESTELL, ROYAL HOSPITAL FOR INCURABLES *v.* RESTELL (1901), 17 T. L. R. 395.

—— **Not charitable.**]—*See* Part I., *ante*.

—— **For uncertainty.**]—*See* Sects. 2 & 4, sub-sect. 3, *ante*.

—— **For remoteness.**]—*See* Sect. 6, sub-sect. 4, D., *post*.

1077. Effect of invalidity—Prior estate not extended.]—ROBINSON *v.* WOOD (1858), 27 L. J. Ch. 726; 31 L. T. O. S. 311; 4 Jur. N. S. 625; 6 W. R. 728.

Annotations:—**Consd.** Hurst *v.* Hurst (1882), 21 Ch. D. 278. **Refd.** *Re* Deacon's Trusts, Deacon *v.* Deacon, Hagger *v.* Heath (1906), 95 L. T. 701.

SUB-SECT. 4.—RULE AGAINST PERPETUITIES.

A. Whether Trust for perpetual non-charitable Purpose.

1078. Gift to non-charitable institution—Public library—Supported by private subscriptions—Void.]—CARNE *v.* LONG (1860), 2 De G. F. & J. 75; 29 L. J. Ch. 503; 2 L. T. 552; 24 J. P. 676; 6 Jur. N. S. 639; 8 W. R. 570; 45 E. R. 550, L. C.

Annotations:—**Distd.** Cocks *v.* Manners (1871), L. R. 12 Eq. 574. **Consd.** *Re* Dutton (1878), 4 Ex. D. 54. **Distd.** *Re* Dutton, *Ex p.* Peake (1879), 40 L. T. 430. **Consd.** Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* Nottage, Jones *v.* Palmer, [1895] 2 Ch. 649. **Distd.** *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110. **Consd.** *Re* Clifford, Mallam *v.* McFie (1911), 81 L. J. Ch. 220. **Refd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; Choon Cheow Neo *v.* Spottiswoode (1869), Wood's Oriental Cases App. L.; *Re* Clark's Trust (1875), 1 Ch. D. 497; *Re* Amos, Carrier *v.* Price, [1891] 3 Ch. 159; *Re* Swain, Phillips *v.* Poole (1908), 99 L. T. 604.

1079. —— —— —— **Gift of income only.**]—Testator by his will made in 1899 gave a life interest to his wife in all his real & personal estate, & on her demise the will continued: "I give the same income to the chess club at P. for the support & furtherance of chess & the perpetuity of the club of that town, & in case the chess club shall have ceased to exist by the time this my bequest shall have come into effect, then I give the same income to the P. Library":—*Held:* nothing but the income was intended to pass, & the gift did not amount to a gift of the corpus, & was a perpetuity, & void.—*Re* SWAIN, PHILLIPS *v.* POOLE (1908), 99 L. T. 604.

1080. —— **Friendly society—Funds raised by members' subscriptions—Void.**]—*Re* CLARK'S TRUST (1875), 1 Ch. D. 497; 45 L. J. Ch. 194; 24 W. R. 233.

Annotations:—**Apld.** *Re* Dutton (1878), 4 Ex. D. 54. **Expld.** Pease *v.* Pattinson (1886), 32 Ch. D. 154. **Consd.** Cunnack *v.* Edwards, [1896] 2 Ch. 679; *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110. **Refd.** *Re* Amos, Carrier *v.* Price, [1891] 3 Ch. 159; *Re* White, White *v.* White, [1893] 2 Ch. 41. **Mentd.** *Re* Buck, Bruty *v.* Mackey, [1896] 2 Ch. 727; Braithwaite *v.* A.-G., [1909] 1 Ch. 510.

1081. —— **Mechanics' Institution—Void.**]—*Re* DUTTON, *Ex p.* PEAKE (1878), 4 Ex. D. 54; 48 L. J. Q. B. 350; 40 L. T. 430; 27 W. R. 398; *sub. nom Re* DUTTON, *Ex p.* TUNSTALL ATHENÆUM TRUSTEES, 43 J. P. 6.

Annotations:—**Consd.** *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110. **Refd.** *Re* Nottage, Jones *v.* Palmer (1895), 72 L. T. 795. **Mentd.** *Re* Bristol Athenæum (1889), 38 W. R. 396.

1082. —— —— ——.]—*Re* SHERATON'S TRUSTS, [1884] W. N. 174.

1083. —— **Trade union—Void.**]—J. by his will provided as follows: "I give, devise, & bequeath unto T. the property known as 27, B. Terrace, at present occupied by T., the conditions to be as follows: that the property be left to him for his life & for the life of his heir, after which it becomes the property of the B. Society; & to H. the property known as 41, R. Street, at present occupied by me, J., the conditions to be as follows: that the property be left to him for his life & for the life of his heir, after which it becomes the property of the B. Society; & to W. the property known as 40, R. Street, at present occupied by P., the conditions to be as follows: that the property be left to him for his life, & for the life of his heir, after which it becomes the property of the B. Society." The B. Society was registered as a trade union under Trade Union Acts, 1871 (c. 31) & 1876 (c. 22). The houses 40 & 41 R. Street, were freehold. & the house 27, B. Terrace, was leasehold:—*Held:* the gifts to the society were void as perpetuities. —*Re* AMOS, CARRIER *v.* PRICE, [1891] 3 Ch. 159; 60 L. J. Ch. 570; 65 L. T. 69; 39 W. R. 550; 7 T. L. R. 559.

Annotation:—**Consd.** *Re* Clarke, Clarke *v.* Clarke, [1901] 2 Ch. 110.

PART III. SECT. 6, SUB-SECT. 3.—B.

1073 i. *Prior gift void—By statute & law—Gift over valid.*]—DONNELLAN *v.* O'NEILL (1870), 18 W. R. 1188.—IR.

PART III. SECT. 6, SUB-SECT. 4.—A.

d. *Gift to non-charitable institution—Incorporated body of Freethinkers—If any impediment to them taking—Accumulation.*]—A. provided that his trustees should hand over all his estate "to four trustees, appointed by the Incorporated Body of Freethinkers of S. A.," for the benefit of that institution, for the purpose of propagating & spreading the doctrine of their faith in S. A., & should there be no incorporated body of freethinkers at the time of his death, the estate should accumulate until such body was incorporated, & should there be any impediment as to their receiving it, it should accumulate until such impediment was removed:—*Held:* (1) the gift not being for the relief of poverty, the advancement of education or religion, or for other purposes beneficial to the community, did not show a general charitable intention; (2) the gift failed as being contrary to the rule against perpetuities.—*Re* JONES, [1907] S. A. L. R. 190.—AUS.

e. —— *Religious order—Land not to be sold.*]—A. devised to an abbot certain land, to be held by him & his successors in trust for a religious order, & ordered that the property could never be sold, & must always remain the property of the Roman Catholic Church:—*Held:* A. intended to create a perpetuity, & the gift was void.—GLEESON *v.* PHELAN (1914), 15 S. R. N. S. W. 30.—AUS.

Sect. 6.—Rules applicable to creation of charitable trusts: Sub-sect. 4, A., B., C. & D.]

1084. —— Voluntary association—Corps of commissionaires—Valid.]—*Re* CLARKE, CLARKE *v.* CLARKE, No. 250, *ante*.

1085. —— —— Angling society—Void.]—*Re* CLIFFORD, MALLAM *v.* MCFIE, No. 251, *ante*.

Gifts to private associations & institutions generally.]—*See* Part I., Sect. 6, sub-sect. 2, *ante*.

Gift for non-charitable object—Repair of tombs.]—*See* Part I., Sect. 6, sub-sect. 1, *ante*.

1086. —— Encouragement of yacht racing—Void.]—*Re* NOTTAGE, JONES *v.* PALMER, No. 266, *ante*.

1087. —— Benefit of particular class—Without reference to age or poverty—Void.]—*Re* GASSIOT, FLADGATE *v.* VINTNERS' CO., No. 255, *ante*.

1088. —— Leasehold houses for old officers of regiment—During their life—Void.]—*Re* GOOD, HARINGTON *v.* WATTS, No. 197, *ante*.

1089. —— Contribution to holiday expenses of workpeople—Void.]—*Re* DRUMMOND, ASHWORTH *v.* DRUMMOND, No. 267, *ante*.

B. Where Trust not necessarily too Remote.

1090. Contingent gift—On alienation of estate—Void.]—PEWTERERS CO. *v.* CHRIST'S HOSPITAL (GOVERNORS) (1683), 1 Vern. 161; 23 E. R. 388.

Annotation :—**Distd.** Christ's Hospital *v.* Grainger (1848), 16 Sim. 83.

1091. —— On indefinite failure of issue—Void.]—*Re* JOHNSON'S TRUSTS (1866), L. R. 2 Eq. 716; 12 Jur. N. S. 616.

1092. —— After life interests of descendants—Bearing certain name—Valid.]—*Re* ROBERTS, REPINGTON *v.* ROBERTS-GAWEN (1881), 19 Ch. D. 520; 45 L. T. 450, C. A.

Annotations :—**Refd.** *Re* Harvey, Peek *v.* Savory (1888), 39 Ch. D. 289. **Mentd.** Wainwright *v.* Miller, [1897] 2 Ch. 255; Manchester Ship Canal Co. *v.* Manchester Racecourse Co., [1900] 2 Ch. 352.

1093. —— On event not certain to happen—"On appointment of next lieutenant-colonel"—Void.]—*Re* STRATHEDEN & CAMPBELL (LORD), ALT *v.* STRATHEDEN & CAMPBELL (LORD), No. 196, *ante*.

1094. Immediate gift—Application postponed—Valid.]—LUDLOW *v.* STEVENSON (1857), 1 De G. & J. 496; 29 L. T. O. S. 371; 5 W. R. 828; 44 E. R. 815, L. C.

1095. —— —— Words not amounting to condition precedent—Valid.]—Testatrix, after stating to the effect that as she could not feel confidence that any of her relatives would spend her money in the way she would approve, she felt she was doing right in giving it in charity, bequeathed her residuary personal estate, consisting of pure personalty, to trustees upon trust to invest it in consols, & to make out of the dividends certain fixed annual payments for charitable purposes. She further directed that when & so soon as land should at any time be given for the purpose as thereinafter mentioned, almshouses should be built in three specified places; & she further directed that the surplus remaining, after building the almshouses, should be appropriated to making allowances to the inmates:—*Held*: the residue was well given in charity, for the gift to charity was not conditional & contingent, but there was an absolute immediate gift to charity, the mode of execution only being made dependent on future events.—CHAMBERLAYNE *v.* BROCKETT (1872), 8 Ch. App. 206; 42 L. J. Ch. 368; 28 L. T. 248; 37 J. P. 261; 21 W. R. 299, L. C. & L. JJ.

Annotations :—**Expld. & Distd.** Biscoe *v.* Jackson (1881), 50 L. J. Ch. 597. **Apld.** *Re* White's Trusts (1886), 33 Ch. D. 449; *Re* Stratheden & Campbell, Alt *v.* Stratheden & Campbell, [1894] 3 Ch. 265. **Consd.** *Re* Gyde, Ward *v.* Little (1898), 79 L. T. 261. **Expld. & Apld.** *Re* Swain, Monckton *v.* Hands, [1905] 1 Ch. 669. **Consd.** *Re* Barnett, Waring *v.* Painter Stainers' Co. (1908), 24 T. L. R. 788. **Apld.** *Re* University of London Medical Sciences Institute Fund, Fowler *v.* A.-G., [1909] 2 Ch. 1. **Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236; *Re* Bowen, Lloyd Phillips *v.* Davis, [1893] 2 Ch. 491; Wallis *v.* New Zealand Solicitor-General, [1903] A. C. 173. **Mentd.** *Re* Hartley Colliery Accident Relief Fund, Plummer *v.* Jordan (1908), 102 L. T. 165, n.; *Re* Weir Hospital, *Re* Charitable Trusts Acts, 1853 to 1894 (1910), 102 L. T. 354.

1096. —— —— —— ——.]—Testator, who died in Mar. 1894, by his will dated in July 1893, after devising his residuary real estate to trustees upon trust for sale, & to hold the proceeds upon the trusts declared of his residuary personal estate, gave £10,000 to his trustees upon trust to transfer same to trustees to be appointed by them, or the trustees for the time being of his will, such appointed trustees to be not less than three or more than six in number, to be held by them upon trust, "as soon as any land shall at any time be given or obtained for the purpose, to employ same in erecting almshouses" in a certain parish for the deserving poor of that parish, without regard to religious denomination, & in making weekly or other periodical allowances to the inmates of such almshouses; & he empowered the trustees so appointed, in conjunction with the trustees of his will, to makes rules for the regulation & maintenance of the almshouses. After giving other charitable & general legacies, testator gave all his residuary & personal estate to his trustees upon trust for sale & conversion, & to pay debts & legacies, & hold the residue of the money upon trust, to pay or transfer same to trustees to be nominated by the trustees of his will, upon trust, "as soon as any land, shall at any time be given or obtained for the purpose, to employ same in

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f. Gift for non-charitable object—Socialist Labour party—Income pending life interest—Valid—Capital after life interest.]—B. devised his real estate to the general secretary of the Socialist Labour party of A., in trust to sell the same, & to pay the moneys arising from the sale to the executive committee for the time being of the party for such purposes & objects as the executive might think fit in the interests of the party:—*Held*: (1) the gift of the income was not void as a perpetuity, (2) the gift of capital was not void as a perpetuity.—VAN KERKWORDE *v.* HEDLEY (1917), 17 S. R. N. S. W. 265.—AUS.

g. Education of missionaries.]—R. directed his exors. "by & out of the moneys which shall be received by them" to pay $1,500 to the bishop for the time being of A., to be invested by him, & "the income of such investment to be applied in & for the education of E. & others as missionaries:—*Held*: the bequest was intended to set apart a fund which was to have perpetual continuance & was void.—LABATT *v.* CAMPBELL (1884), 7 O. R. 250.—CAN.

h. To superior of body of laymen bound by religious vows—For masses—Void.]—KEHOE *v.* WILSON (1880), 7 L. R. Ir. 10.—IR.

j. Ceremonies called "Sin Chew."]—C. directed that the rents & profits of his residuary land should be expended on certain ceremonies called "Sin Chow" to be performed at least four times in each year:—*Held*: the bequest was void as being in perpetuity.—CHOA CHOON NEOH *v.* SPOTTISWOODE (1869), Wood's Oriental Cases, App. 1; 1 Kyshe's Reports, 216.—STRAITS SETTLEMENTS.

PART III. SECT. 6, SUB-SECT. 4.—B.

k. Immediate gift—Application postponed.]—M. left his property to trustees upon trusts for realisation & investment, & to pay an annuity to his wife during widowhood, & to invest the surplus income, & then directed his trustees, after the decease of his wife, to pay & apply the net income thereof in their absolute discretion for the maintenance & benefit of a charitable institution:—*Held*: inasmuch as it was a bequest to a charity under which the Board on the death of the annuitants acquired a vested interest, the rule against perpetuities did not apply.—MOULE *v.* OVERTON (1896), 16 N. Z. L. R. 106.—N.Z.

erecting & maintaining" an orphanage or institution; and the will contained directions for the management & regulation of the institution:—*Held:* (1) the language of the will did not constitute a condition precedent to the gifts, but was introduced for the purpose of mere machinery so as to avoid the provisions of Mortmain Acts; & the principle to be applied was that explained in *Chamberlayne* v. *Brockett*, No. 1095, *ante*; (2) without prejudice to any question if land could not be obtained, there must be a declaration that the £10,000 & the residue were well given to charities, & special trustees thereof must be appointed as directed by the will.—*Re* GYDE, WARD *v.* LITTLE (1898), 79 L. T. 261; 15 T. L. R. 1, C. A.

1097. —— —— —— ——.]—Testator gave his residuary real & personal estate to a trustee upon trust thereout to form a reserve fund for the purposes thereinafter mentioned, & to pay the balance of the income of his residuary estate, after payment of outgoings to his niece during her life, & after her death to pay such income, after payment into the reserve fund every quarter of a year of 10 per cent. of such income, & also certain outgoings, by equal monthly payments to three annuitants for their respective lives, who should be poor inhabitants of M., & testator directed that "the annuities shall not become payable until the reserve fund shall amount to £400," & that the reserve fund should be invested & only used in case of dire need, but be always kept up at £400, & that if, after the annuities were payable, it should exceed £400, then the overplus might be used either to increase the amounts of the three annuities or to create another annuity. Testator's net residue consisted solely of real estate, & during the lifetime of the niece, there was no income available for forming a reserve fund:—*Held:* (1) subject to the life estate, the residue had been effectually devoted to charity as from testator's death, & the direction to postpone the payment of the annuities until the reserve fund reached £400 was not a condition precedent to the charitable gift coming into effect, but was only a direction as to the particular application of the charitable fund & intended to secure the beneficial working of the charity; (2) the reserve fund was equally devoted to a charitable purpose.—*Re* SWAIN, MONCKTON *v.* HANDS, [1905] 1 Ch. 669; 74 L. J. Ch. 354; 92 L. T. 715, C. A.

1098. —— ——.]—Where it appeared that certain Maori chiefs had, in 1848, ceded 500 acres of land, part of the native reserves, with the consent of the Crown, which waived its right of pre-emption thereof, to the Bishop of New Zealand in trust for a college to be erected thereon for the general purpose of promoting religion, & no college had been erected, the land having in course of time become an unsuitable site, while the accumulations of its rent had amounted to a considerable sum:—*Held:* (1) there had been an express gift of land & money for charitable purposes; (2) such gift was not invalidated by the fact that the particular application directed could not immediately take effect, or would not of necessity take effect within any definite limit of time, & might never take effect at all; (3) the doctrine of *cy-près* was applicable.—WALLIS *v.* SOLICITOR-GENERAL FOR NEW ZEALAND, [1903] A. C. 173; 72 L. J. P. C. 37; 88 L. T. 65; 19 T. L. R. 230, P. C.

C. Not Applicable when Trust once established.

1099. Grant of fishery to corporation—Trust in favour of inhabitants—Valid.]—GOODMAN *v.* SALTASH CORPN. (1882), 7 App. Cas. 633; 52 L. J. Q. B. 193; 48 L. T. 239; 47 J. P. 276; 31 W. R. 293, H. L.; *revsg.* S. C. *sub nom.* SALTASH CORPN. *v.* GOODMAN (1881), 7 Q. B. D. 106, C. A.

Annotations:—**Consd.** *Re* Free Fishermen of Faversham (1887), 36 Ch. D. 329. **Foll.** *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520. **Consd.** *Re* Norwich Town Close Estate Charity (1888), 40 Ch. D. 298; *Re* St. Stephen, Coleman Street, *Re* St. Mary the Virgin, Aldermanbury (1888), 39 Ch. D. 492. **Expld. & Distd.** Tilbury *v.* Silva (1890), 45 Ch. D. 98. **Consd.** I. R. Comrs. *v.* Scott, *Re* Bootham, Ward Strays, York, [1892] 2 Q. B. 152; Haigh *v.* West, [1893] 2 Q. B. 19; Eliot *v.* Bristol Corpn. (1894), 71 L. T. 659. **Distd.** *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643. **Consd.** *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400; A.-G. *v.* Antrobus, [1905] 2 Ch. 188; Fitzhardinge *v.* Purcell, [1908] 2 Ch. 139; R. *v.* Income Tax Special Comrs., *Ex p.* University College of North Wales (1908), 98 L. T. 446; Harris *v.* Chesterfield, [1911] A. C. 623. **Refd.** Stanley *v.* Norwich Corpn. (1887), 3 T. L. R. 506; Johnston *v.* O'Neill, [1911] A. C. 552; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113. **Mentd.** Neill *v.* Devonshire (1882) 8 App. Cas. 135; Blount *v.* Layard, [1891] 2 Ch. 681, n.; Smith *v.* Andrews, [1891] 2 Ch. 678; Wheaton *v.* Maple, [1893] 3 Ch. 48; Eliot *v.* Bristol Corpn. (1895), 72 L. T. 752; Simpson *v.* Godmanchester Corpn. (1895), 65 L. J. Ch. 154; A.-G. *v.* Wright, [1897] 2 Q. B. 318; Tyne Improvement Comrs. *v.* Imrie, A.-G. *v.* Tyne Improvement Comrs. (1899), 81 L. T. 174; A.-G. *v.* Simpson, [1901] 2 Ch. 671; A.-G. *v.* Tonkin (1901), 18 T. L. R. 29; Mercer *v.* Denne, [1904] 2 Ch. 534; Foley's Charity Trustees *v.* Dudley Corpn., [1910] 1 K. B. 317; Mitcham Common Conservators *v.* Banks (1912), 76 J. P. 43; A.-G. *v.* Horner, [1913] 2 Ch. 140; Nesbitt *v.* Mablethorpe U. D. C., [1918] 2 K. B. 1.

D. Where Gift over.

1100. From one charity to another—Not within rule.]—Bequest to a charitable institution, subject to a condition that they should keep testator's tomb in repair, with a gift over to another charitable institution on failure to comply with the condition:—*Held:* the rule against perpetuities had no application & the condition was valid.—*Re* TYLER, TYLER *v.* TYLER, [1891] 3 Ch. 252; 60 L. J. Ch. 686; 65 L. T. 367; 40 W. R. 7; 7 T. L. R. 654, C. A.

Annotations:—**Distd.** *Re* Bowen, Lloyd Phillips *v.* Davis, [1893] 2 Ch. 491. **Foll.** *Re* Davies, Lloyd *v.* Cardigan County Council, [1915] 1 Ch. 543. **Refd.** Worthing Corpn. *v.* Heather, [1906] 2 Ch. 532.

1101. —— ——.]—CHRIST'S HOSPITAL *v.* GRAINGER (1849), 1 Mac. & G. 460; 1 H. & Tw. 533; 19 L. J. Ch. 33; 15 L. T. O. S. 497; 13 J. P. 778; 14 Jur. 339; 41 E. R. 1343, L. C.; *affg.* (1848), 16 Sim. 83.

Annotations:—**Consd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206. **Foll.** *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252. **Distd.** *Re* Bowen, Lloyd Phillips *v.* Davis, [1893] 2 Ch. 491; *Re* Da Costa, Clarke *v.* Church of England Collegiate School of St. Peter, [1912] 1 Ch. 337. **Refd.** A.-G. *v.* Grainger (1859), 7 W. R. 684; Worthing Corpn. *v.* Heather, [1906] 2 Ch. 532. **Mentd.** R. *v.* East Mark Tithing (1848), 12 Jur. 332; Braund *v.* Devon (1868), 16 W. R. 1180.

1102. Immediate gift to charity—Executory gift over to individuals—Event not necessarily within perpetuity limits—Void.]—The principle established by *Christ's Hospital* v. *Grainger*, No. 1101, *ante*, & *Re Tyler*, *Tyler* v. *Tyler*, No. 1100, *ante*, that the rule against perpetuities has no application to the transfer in a certain event of property from one charity to another, does not extend to cases where (1) an immediate gift in favour of private individuals is followed by an executory gift in favour of charity, or (2) an immediate gift in favour of charity is followed by an executory gift in favour of private individuals.

PART III. SECT. 6, SUB-SECT. 4.—D.

1100 i. *From one charity to another—Not within rule.*]—An immediate gift to a charity for charitable uses with a gift over on an event which may be beyond the ordinary limit of perpetuities to another charity is not invalid.—ADMINISTRATOR-GENERAL OF BENGAL *v.* HUGHES (1912), I. L. R. 40 Calc. 192.—**IND.**

I. *Immediate gift to charity—Surplus rents to individuals—Gift over to charity.*]—CHARITABLE DONATIONS COMRS. *v.* DE CLIFFORD (1841), 1 Dr. & War. 245.—**IR.**

Sect. 6.—Rules applicable to creation of charitable trusts: Sub-sect. 4, D., E., F., G. & H.; Sub-sect. 5, A.]

Testator, who died in 1847, by his will, dated in 1846, bequeathed two sums of money to trustees upon trust to establish schools in certain parishes & to continue same for ever thereafter; & he declared that, if at any time thereafter, the Govt. should establish a general system of education, the several trusts of the legacies should cease & determine, & he bequeathed the sums of money in the same manner as he had bequeathed the residue of his personal estate; & he appointed his three sisters to be his extrixes. & residuary legatees:—*Held:* (1) testator had made an immediate disposition in favour of charity in perpetuity, followed by a gift over of a future interest, to arise upon an event which need not necessarily occur within perpetuity limits; (2) the gift over failed.—*Re* BOWEN, LLOYD PHILLIPS *v.* DAVIS, [1893] 2 Ch. 491; 62 L. J. Ch. 681; 68 L. T. 789; 41 W. R. 535; 9 T. L. R. 380; 37 Sol. Jo. 386; 3 R. 529.

Annotations:—As to (1) **Consd.** Worthing Corpn. *v.* Heather, [1906] 2 Ch. 532. *Generally,* **Distd.** *Re* Blunt's Trusts, Wigan *v.* Clinch, [1904] 2 Ch. 767. **Folld.** *Re* Peel's Release, [1921] 2 Ch. 218. **Refd.** *Re* Barnett, Waring *v.* Painter Stainers' Co. (1908), 24 T. L. R. 788.

1103. For purpose not wholly charitable—Void.]—*Re* DAVIES, LLOYD *v.* CARDIGAN COUNTY COUNCIL, No. 990, *ante.*

1104. Prior gifts void for remoteness—Gift over alternative & independent gift.]—Testator made provision out of part of the residuary estate for R. during his life, & as to all the residue gave same upon trust for the first son born of the body of R. as should live to attain twenty-one, provided such son should be christened J. or should assume the name of J., the whole of the capital to be paid to him on attaining twenty-one, & in default of any such son upon trust for the first son born of the body of either of the daughters of R. who should attain twenty-one, provided as aforesaid & in default of any such son of a daughter then in trust as to one half of the capital for the first daughter of R. who should have attained twenty-one, her exors. & administrators & as to the other half for charities, & in case of the death of R. without leaving lawful issue as before mentioned then as to the whole thereof upon trust for certain charities. R. died without ever having had a child, & his next of kin & heir-at-law claimed his residuary estate on the ground that the ultimate gift to charities was void for remoteness:—*Held:* (1) the trusts for the first son of a daughter of R. who attained twenty-one & in default for the first daughter of R. who should have attained twenty-one were void for remoteness; (2) although "without leaving" might be construed as meaning "without having" in cases where such a construction was necessary in order to obviate the divesting of an otherwise actually vested interest, yet such a construction was not admissible in the present case for the sole purpose of rendering the ultimate gift over to the charities void for remoteness; (3) "issue as before mentioned" meant nothing further than before mentioned issue, *i.e.* a son, a son of a daughter, or a daughter, & did not import as well the qualifications by majority or name attached to the vesting of their original gifts; (4) the ultimate trust for the charities was an alternative & independent gift upon an event ascertainable at the death of R. & was good.—*Re* DAVEY, PRISK *v.* MITCHELL, [1915] 1 Ch. 837; 84 L. J. Ch. 505; 113 L. T. 60, C. A.

Gifts over generally.]—*See* Sect. 6, sub-sect. 3, *ante.*

E. Options to Purchase.

1105. Proviso in lease of land—For thirty years—To corporation for charitable purposes—Void.]—In 1878 land was demised to pltfs.' predecessors for thirty years from Sept. 29, 1876, to be used as a public park & the lease contained a proviso that at any time during the term the lessor, her heirs or assigns would, on receiving notice from pltfs. of their desire to purchase the land, convey it to them for £1325. The lessor died in 1902. In 1905 pltfs. served on her devisees notice of their desire to purchase. The devisees maintained that the option was void as infringing the rule against perpetuities:—*Held:* the option to purchase was void for remoteness & could not be enforced by specific performance, & that defect was not cured by the fact that the option was given for charitable purposes, inasmuch as the interest of the charity did not become effective till the happening of the future event, but pltfs. were entitled to recover damages from defts. for breach of the covenant to convey.—WORTHING CORPN. *v.* HEATHER, [1906] 2 Ch. 532; 75 L. J. Ch. 761; 95 L. T. 718; 22 T. L. R. 750; 50 Sol. Jo. 668; 4 L. G. R. 1179.

F. Reverter.

1106. Conveyance of land for charitable purposes—Proviso for perpetual leases to donor's descendants—Void.] — HOPE *v.* GLOUCESTER CORPN. (1855), 7 De G. M. & G. 647; 25 L. J. Ch. 145; 26 L. T. O. S. 144; 2 Jur. N. S. 27; 4 W. R. 138; 44 E. R. 252, L. JJ.

Annotation:—**Consd.** A.-G. *v.* Greenhill (1863), 33 Beav. 193.

1107. —— —— ——.] — A.-G. *v.* GREENHILL (1863), 33 Beav. 193; 3 New Rep. 236; 33 L. J. Ch. 208; 9 L. T. 500; 12 W. R. 188; 55 E. R. 341.

Annotation:—**Refd.** A.-G. *v.* Sidney Sussex College, Cambridge (1866), 15 L. T. 518.

1108. —— Reversion to rightful heirs of donor—If premises not used for purposes specified—Void.]—*Re* HOLLIS' HOSPITAL TRUSTEES & HAGUE'S CONTRACT, No. 1030, *ante.*

1109. —— Reversion to donor, his heirs & assigns—If premises not used for purposes specified—Gift expressed to be perpetual—Void.]—P. in 1837 by deed granted & released an acre of land to trustees, upon trust to permit same to be "for ever thereafter" used as & for a place for the instruction of seventy poor children resident within the parish in the principles of the Church of England as by law established, & in reading, writing, casting accounts & other proper, useful & common learning for poor children. The deed also provided that if, by any law or statute or otherwise, the release should, as to the charitable purposes thereby intended to be made & established, "either not take effect, or, having taken effect, shall afterwards cease or determine or be defeated, or, the precise objects of these presents being for the education of poor children in the principles of the Church of England, become prevented," then the trustees for the time being should stand seised of the land & the school-house, if any, to be built thereon in trust for P., his heirs & assigns. By a codicil to his will P. provided for raising a sum of money for building a school-house on the land, the balance to be applied as an endowment for the school for the payment of the schoolmaster & schoolmistress. P. died in 1838, & after his death the school-house was built, & a sum of money stood invested in the names of the trustees of the deed, representing the money set apart by P. for the maintenance & support of the school. The school was carried on until about 1920, but the income of the fund was insufficient for the maintenance of the schoolmistress; the scholars'

attendance was very small; & the school was practically derelict through the income being insufficient to enable it to be carried on:—*Held:* the event contemplated by the clause of reverter had arisen, but the clause was void as a perpetuity, & the original gift being expressed to be perpetual, there could be no reverter or resulting trust to P.'s heirs or personal representatives, either of the school & site or of the endowment fund, & a scheme must be prepared.—*Re* PEEL'S RELEASE, [1921] 2 Ch. 218; 90 L. J. Ch. 369; 65 Sol. Jo. 580.

See, also, No. 1110, *post.*

G. Undisposed of Interests.

1110. So long as charity carried on under certain conditions—Realty given quousque—Reversion for benefit of heir.]—A.-G. *v.* PYLE (1738), 1 Atk. 435; 26 E. R. 278; *sub nom.* A.-G. *v.* MONTAGUE, West *temp.* Hard. 587, L. C.

Annotation:—**Mentd.** Biscoe *v.* Jackson (1887), 35 Ch. D. 460.

1111. —— Gift of personalty—Gift over to persons entitled by operation of law—Rule not applicable.] — *Re* RANDELL, RANDELL *v.* DIXON, No. 1054, *ante.*

1112. —— —— —— ——.] — *Re* BLUNT'S TRUSTS, WIGAN *v.* CLINCH, No. 1055, *ante.*

1113. —— —— Gift to East India Company—Subsequent Public Act abolishing East India Company vesting property in Crown—Trust funds not vested in Crown to be applied for same purposes.]—WALSH *v.* SECRETARY OF STATE FOR INDIA (1863), 10 H. L. Cas. 367; 2 New Rep. 339; 32 L. J. Ch. 585; 8 L. T. 839; 9 Jur. N. S. 757; 11 W. R. 823; 11 E. R. 1068, H. L.

Annotations:—**Apld.** *Re* Randell, Randell *v.* Dixon (1888), 38 Ch. D. 213. **Refd.** Borland's Trustee *v.* Steel, [1901] 1 Ch. 279. **Mentd.** Grant *v.* Secretary of State for India (1877), 2 C. P. D. 445; S. E. Ry. *v.* Associated Portland Cement Manufacturers (1900), [1910] 1 Ch. 12.

H. Accumulations.

1114. Exceeding twenty-one years — Void.] — MARTIN *v.* MARGHAM (1844), 14 Sim. 230; 13 L. J. Ch. 392; 3 L. T. O. S. 433; 8 J. P. 532; 8 Jur. 609; 60 E. R. 346.

Annotations:—**Consd.** *Re* Swain, Monckton *v.* Hands, [1905] 1 Ch. 669. **Mentd.** Rochford *v.* Hackman (1852), 9 Hare, 475; Adams *v.* Adams, [1892] 1 Ch. 369; *Re* Porter, Coulson *v.* Capper, [1892] 3 Ch. 481.

1115. Absolute vested interest payable at future date—Whether charity entitled to immediate distribution.]— Where there is an absolute vested gift made payable in a future event, with direction to accumulate the income & pay it with the principal, the ct. will not enforce the trust for accumulation, in which no person has any interest but the legatee; in other words, a legatee may put an end to an accumulation exclusively for his benefit. This principle is applicable whether the legatee is a charity corporate or unincorporate or an individual.—WHARTON *v.* MASTERMAN, [1895] A. C. 186; 64 L. J. Ch. 369; 72 L. T. 431; 43 W. R. 449; 11 T. L. R. 301; 11 R. 169, H. L.; *subsequent proceedings sub nom.* HARBIN *v.* MASTERMAN, [1896] 1 Ch. 351, C. A.

Annotation:—**Consd.** *Re* Travis, Frost *v.* Greatorex, [1900] 2 Ch. 541.

1116. —— ——.]—Testator gave his estate & effects to trustees in trust to pay the income to his brother for life, & after his death in trust to pay out of the income an annuity of £200 to his niece for her life, & directed the surplus income of his trust estate to accumulate till the death of his niece, & subject & without prejudice to the trusts & provisions aforesaid directed his trust estate to be held upon trust for the children of his niece, & in default of children, after the death of the survivor of his brother & niece & the failure of her issue, upon trust as to one third part for his cousins & as to two third parts for a charity. Testator died in 1877, & the brother, who was his heir-at-law & sole next of kin, died in 1878. The niece, who was married, was fifty-four years of age, & had had no child. The accumulations were made after the brother's death up to 1898, when further accumulation was forbidden by Accumulations Act, 1800 (c. 98). The charity claimed to have the residue of the estate immediately distributed after providing for the annuity:—*Held:* (1) the surplus income during the remainder of the niece's life went as undisposed of to the representatives of the brother, & the estate was not distributable till the niece's death; (2) on the construction of the will, the words "trust estate" included the *corpus* of the past accumulations.—*Re* TRAVIS, FROST *v.* GREATOREX, [1900] 2 Ch. 541; 69 L. J. Ch. 663; 83 L. T. 241; 49 W. R. 38; 44 Sol. Jo. 625, C. A.

See, generally, PERPETUITIES.

SUB-SECT. 5.—SURPLUS INCOME.

A. Income Exhausted at Date of Gift.

1117. General rule.] — Where testator clearly declares an intention of devoting the whole income of a property to charitable purposes, then, although he does not, in specifically directing the application of portions of it, exhaust the whole income, still the general intention that the whole shall be applied to charitable purposes will prevail; & on the other hand, although he does not make any such general declaration of devoting the whole to charity, but gives each & every portion of the whole income at the time to some charitable purpose, & by that means exhausts the whole, then, if the income should afterwards increase, the increase will also be applicable to the charitable purposes.

Testator devised a house to the C. Co., upon condition, & to the use, intent, & purposes of maintaining, augmenting, & supporting a school

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PART III. SECT. 6, SUB-SECT. 4.—H.

1114 i. *Exceeding twenty-one years—Void.*]—MAXWELL'S TRUSTEES *v.* MAXWELL (1877), 5 R. (Ct. of Sess.) 248.—**SCOT.**

m. *Accumulations by trustees for want of objects—Accumulations Act, 1800 (c. 98)—Act not applicable.*]—M. directed his trustees "from time to time" to make such special payments of the residue of his estate to such of his children or children's children as they might think most deserving, with special instructions to relieve any of them who might appear to be in want, "provided always that they have not brought themselves into such circumstances by their own misconduct." For a period of twenty-one years from the testator's death the income of the residue was accumulated, no distribution thereof being made by the trustees owing to the fact that they were not satisfied that among the testator's children & grandchildren any cases existed which warranted payments out of the trust funds:—*Held:* as the accumulation of income was due, not to the direction, express or implied, of the testator, but to the extraneous circumstance that no occasion for payments out of income had, in the opinion of the trustees, arisen, Accumulations Act, 1800 (c. 98), did not apply.—MITCHELL'S TRUSTEES *v.* FRASER, [1915] S. C. 350.—**SCOT.**

n. *Gift conditional on uncertain event—Absence of charitable intention—Failure of gift.*]—A gift by will was to "the First N. L. Orphans' Home built in S. or A.," & the will provided that "should one of the N. L. Orphans' Homes not be founded therein at the time of his demise" testator's exors. should invest the proceeds "from term to term until such time as one of the institutions" should have been founded. No home was built in S. or A. at the time of testator's death or had since been built:—*Held:* the testator had not intended to benefit charity generally, & the gift was so remote & indefinite as to transgress the rule against perpetuities. — *Re* SCHJAASTAD ESTATE, *Re* RULES OF COURT (1920), 1 W. W. R. 327; 50 D. L. R. 445; 13 Sask. L. R. 114.—**CAN.**

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at R., lately erected, & the rent, which he represented to be £11 should be bestowed in manner following. He then gave different sums to different objects, amounting in the whole to £8, & amongst them 5*s.* to the C. Co., & then gave £3 which he represented as that which remained ungiven, to the C. Co., to put in their common box, towards the repair of the house when need be. He then gave the house over beneficially to the G. Co. if the C. Co. did not bestow the £8 as he willed them to do. The rents increased to £75:—*Held:* all the objects of testator's bounty were entitled to participate in the increased rents, & the C. Co. took the three elevenths beneficially, subject to the repairs.—A.-G. *v.* COOPERS' CO. (1840), 3 Beav. 29; 4 Jur. 572; 49 E. R. 12.

Annotations:—**Consd.** Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310. **Distd.** A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1.

1118. No express gift of surplus—Surplus applicable to similar purposes—In similar proportions.]—THETFORD SCHOOL CASE (1609), 8 Co. Rep. 130 b; 77 E. R. 671.

Annotations:—**Consd.** A.-G. *v.* Coventry Corpn. (1700), 3 Madd. 353; A.-G. *v.* Smart (1748), 1 Ves. Sen. 72. **Apld.** A.-G. *v.* Johnson (1753), Amb. 190. **Expld. & Apld.** A.-G. *v.* Painter-Stainers Co. (1788), 2 Cox, Eq. Cas. 51. **Folld.** A.-G. *v.* Minshull (1798), 4 Ves. 11. **Expld.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294; A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407. **Distd.** *Re* Jordon's Charity (1832), 5 Sim. 571; A.-G. *v.* Skinners' Co. (1833), 5 Sim. 596. **Expld. & Folld.** A.-G. *v.* Smythies (1833), 2 Russ. & M. 717. **Expld.** A.-G. *v.* Brazen Nose College (1834), 8 Bli. N. S. 377. **Folld.** A.-G. *v.* St. John's College, Cambridge (1834), Coop. *temp.* Brough. 394. **Distd.** Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1. **Expld. & Apld.** Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310. **Consd.** Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512. **Reid.** Sutton's Hospital Case (1612), 10 Co. Rep. 1 a; A.-G. *v.* Hurst (1790), 2 Cox, Eq. Cas. 364; A.-G. *v.* Winchelsea (1791), 3 Bro. C. C. 373; Jack *v.* Burnett (1846), 12 Cl. & Fin. 812; A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383; A.-G. *v.* Windsor (1860), 30 L. J. Ch. 529; A.-G. *v.* Jesus College, Oxford (1861), 29 Beav. 163; *Re* Hackney Charities, *Ex p.* Nicholls (1865), 34 L. J. Ch. 169; A.-G. *v.* Wax Chandlers' Co. (1870), 5 Ch. App. 503.

1119. —— —— ——.]—A.-G. *v.* TOWNSEND (1670), Duke, 34.

1120. —— —— ——.]—A.-G. *v.* COVENTRY CORPN. (1702), Colles, 280; 1 E. R. 286, H. L.

Annotations:—**Consd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294. **Folld.** A.-G. *v.* Brazen Nose College (1834), 2 Cl. & Fin. 295. **Reid.** A.-G. *v.* Smythies (1833), 2 Russ. & M. 717. **Mentd.** A.-G. *v.* Skinners' Co. (1833), 5 Sim. 596.

1121. —— —— ——.]—COVENTRY CORPN. *v.* A.-G. (1720), 7 Bro. Parl. Cas. 235; 2 Eq. Cas. Abr. 192; 3 E. R. 153, H. L.

Annotations:—**Folld.** A.-G. *v.* Brazen Nose College (1834), 8 Bli. N. S. 377. **Reid.** Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1. **Mentd.** A.-G. *v.* Foundling Hospital (1793), 2 Ves. 42; A.-G. *v.* Clarendon (1810), 17 Ves. 491.

1122. —— —— ——.]—A.-G. *v.* SPARKS (1753), Amb. 201; 27 E. R. 134.

Annotations:—**Consd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294. **Refd.** A.-G. *v.* Smithies (1833), Coop. *temp.* Brough. 5; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1.

1123. —— —— ——.] — A.-G. *v.* BARHAM (1835), 4 L. J. Ch. 128.

1124. —— —— ——.]—A.-G. *v.* DRAPERS' CO., KENDRICK'S CHARITY (1841), 4 Beav. 67; 49 E. R. 263; *subsequent proceedings* (1847), 10 Beav. 558.

Annotations:—**Consd.** Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1; A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310.

1125. —— —— ——.]—A.-G. *v.* ROCHESTER CORPN. (1854), 5 De G. M. & G. 797; 23 L. T. O. S. 104; 43 E. R. 1079, L. JJ.

Annotations:—**Mentd.** A.-G. *v.* Sidney Sussex College (1869), 4 Ch. App. 722; *Re* Campden Charities (1881), 18 Ch. D. 310.

1126. —— —— ——.]—RUSSELL *v.* KELLETT (1855), 3 Sm. & G. 264; 26 L. T. O. S. 193; 20 J. P. 131; 2 Jur. N. S. 132; 65 E. R. 653.

Annotations:—**Mentd.** Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521; *Re* Maguire (1870), L. R. 9 Eq. 632; *Re* Clark's Trust (1875), 1 Ch. D. 497; *Re* Ovey, Broadbent *v.* Barrow (1885), 29 Ch. D. 560; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

1127. —— —— ——.]—A.-G. *v.* JESUS COLLEGE, OXFORD (1861), 29 Beav. 163; 30 L. J. Ch. 675; 4 L. T. 728; 7 Jur. N. S. 592; 9 W. R. 449; 54 E. R. 589.

1128. —— —— —— **Court has power to vary in special circumstances.**]—In distributing the increased income of estates devoted to charitable purposes, where it is apportioned by the founder of the charity amongst different objects, the accretions are *primâ facie* to be applied ratably amongst the several objects of the charity; & some valid reason for a preference must be shown to induce the ct. to deviate from this general rule of ratable apportionment.—A.-G. *v.* MARCHANT (1866), L. R. 3 Eq. 424; 36 L. J. Ch. 47; 12 Jur. N. S. 957; 15 W. R. 144.

Annotation:—**Mentd.** *Re* Campden Charities (1881), 18 Ch. D. 310.

1129. —— —— —— ——.]—A.-G. *v.* WINDSOR (DEAN & CANONS) (1860), 8 H. L. Cas. 369; 30 L. J. Ch. 529; 2 L. T. 578; 24 J. P. 467; 6 Jur. N. S. 833; 8 W. R. 477; 11 E. R. 472, H. L.

Annotations:—**Apld.** A.-G. *v.* Marchant (1866), L. R. 3 Eq. 424. **Refd.** A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1; *Re* Campden Charities (1881), 18 Ch. D. 310. **Mentd.** I. R. Comrs. *v.* Walker, [1915] A. C. 509; Usher's Wiltshire Brewery *v.* Bruce, [1915] A. C. 433.

1130. —— ——.] — KENNINGTON HASTINGS CASE (1612), Duke, 71.

Annotation:—**Refd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

1131. —— ——.] — HYNSHAW *v.* MORPETH CORPN. (1629), Duke, 69.

Annotations:—**Consd.** A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407. **Refd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

1132. —— ——.] — SUTTON COLEFIELD CASE (1635), Duke, 68.

Annotations:—**Consd.** A.-G. *v.* Coventry Corpn. (1700), 3 Madd. 353. **Refd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

1133. —— ——.]—A.-G. *v.* JOHNSON (1753), Amb. 190; 27 E. R. 128, L. C.

Annotations:—**Folld.** A.-G. *v.* Sparks (1753), Amb. 201. **Consd.** A.-G. *v.* Minshull (1798), 4 Ves. 11; A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294; A.-G. *v.* Ward (1829), 7 L. J. O. S. Ch. 114. **Distd.** Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1. **Refd.** A.-G. *v.* Smithies (1833), Coop. *temp.* Brough. 5; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310.

1134. —— ——.]—A.-G. *v.* HURST (1790), 2 Cox, Eq. Cas. 364; 30 E. R. 167.

Annotations:—**Mentd.** Eyre *v.* Marsden (1839), 4 My. & Cr. 231: Christian *v.* Foster (1846), 2 Ph. 161.

1135. —— ——.] — A.-G. *v.* HABERDASHERS' CO. (1792), 4 Bro. C. C. 103; 29 E. R. 800, L. C.

Annotations:—**Consd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294. **Refd.** A.-G. *v.* Smythies (1833), 2 Russ. & M. 717.

1136. —— ——.]—*Ex p.* JORTIN (1802), 7 Ves. 340; 32 E. R. 139, L. C.

1137. —— ——.]—A.-G. *v.* COOPERS' CO. (1812), 19 Ves. 187; 34 E. R. 488, L. C.

Annotation:—**Refd.** A.-G. *v.* Stamford (1842), 1 Ph. 737.

1138. —— ——.]—A.-G. *v.* WILSON (1834), 3 My. & K. 362; 3 L. J. Ch. 126; 40 E. R. 138.

Annotations:—**Distd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236. **Refd.** *Re* Honnor's Trusts (1855), 25 L. T. O. S. 301.

1139. —— ——.]—A.-G. *v.* WISBEACH CORPN. (1842), 11 L. J. Ch. 412 ; 6 J. P. 427 ; 6 Jur. 655.

1140. ——— **Notwithstanding donee a charity.**] —A.-G. *v.* CHRIST'S HOSPITAL (1841), 4 Beav. 73 ; 49 E. R. 265.

Annotation :—**Mentd.** Merchant Taylors' Co. *v.* A.-G. (1871), 19 W. R. 641.

1141. —— **If specific sum to one charity & residue to another—First charity not entitled to participate—If whole income given to several charities in proportion—All entitled.**]—A.-G. *v.* SOLLY (1835), 5 L. J. Ch. 5.

1142. —— —— **Surplus not included in residue where testator's intention would be defeated—Gift of residue to six "almswomen"—Surplus applicable to charity generally.**]— *Re* ASHTON'S CHARITY (1859), 27 Beav. 115 ; 33 L. T. O. S. 195 ; 23 J. P. 469 ; 5 Jur. N. S. 665 ; 7 W. R. 659 ; 54 E. R. 45.

Annotation :—**Refd.** Philpott *v.* St. George's Hospital (1859), 27 Beav. 107.

1143. —— **Application of increased income ordered by court in specified sums—No implied gift of further increase to trustee-corporation.**]—A.-G. *v.* DRAPERS' CO. (1843), 6 Beav. 382 ; 12 L. J. Ch. 421 ; 1 L. T. O. S. 107 ; 7 J. P. 272 ; 8 Jur. 1060 ; 49 E. R. 873.

Annotation :—**Refd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383.

1144. —— **Gift subject to trust—Residue for repair of premises—Surplus applicable to charitable purposes.**]—MERCHANT TAYLORS' CO. *v.* A.-G. (1871), 6 Ch. App. 512 ; 40 L. J. Ch. 545 ; 25 L. T. 109 ; 35 J. P. 774 ; 19 W. R. 641, L. C. & L. JJ.

Annotation :—**Refd.** A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1.

1145. —— —— —— ——.]—A.-G. *v.* WAX CHANDLERS' CO., No. 1042, *ante*.

1146. Express gift of surplus—To be divided between objects of original gift—No beneficial interest in trustees.]—A.-G. *v.* GILBERT (1847), 10 Beav. 517 ; 50 E. R. 681.

B. Income not Exhausted at Date of Gift.

1147. No express gift of surplus—General rule—Intention to benefit donee presumed—Donee entitled itself a charity.]—Where property is given for charitable purposes which do not exhaust the whole income one rule is, that this, *primâ facie*, is an indication of an intention to benefit the donee.

In charity cases, the contemporaneous acts of a donor are of importance for the purpose of putting a construction upon the instrument of gift, but the contemporaneous acts of the donee are only valuable as showing the intention & view of the donee in accepting the gift.

When property is given for charitable objects which do not exhaust the whole income, & the question is as to the right of the donee to the surplus, the case is varied where the donee is a charity, from that where the donee is a trading corporation.

In 1558, testator devised real estates, which he described as of the clear yearly value of fourscore pounds or thereabouts, to T. College, to their only proper use & behalf, to the intent following, with part of the rents to keep, find & maintain three grammar schools, & pay every master £13 6*s*. 8*d*., & with part of the rents to keep a chaplain, & pay him £13 6*s*. 8*d*., & he directed other charitable payments. At testator's death the rents exceeded the specific payments by £1 6*s*. 8*d*. The rents having greatly increased :—*Held :* after providing for the charitable objects, the college was entitled to the surplus rents.—A.-G. *v.* TRINITY COLLEGE, CAMBRIDGE (1856), 24 Beav. 383 ; 53 E. R. 405.

1148. —— **Surplus applicable to charity—General charitable intention appearing.**]—ARNOLD *v.* A.-G. (1698), Show. Parl. Cas. 22 ; 1 E. R. 15, H. L.

Annotations :—**Consd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294 ; A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407. **Distd.** *Re* Jordon's Charity (1832), 5 Sim. 571 ; A.-G. *v.* Skinners' Co. (1833), 5 Sim. 596 ; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1. **Consd.** Beverley *v.* A.-G. (1857), 6 H. L. Cas. 310. **Refd.** A.-G. *v.* Smithies (1836), 1 Keen, 289.

1149. —— —— ——.]—A.-G. *v.* PAINTER-STAINERS CO. (1788), 2 Cox, Eq. Cas. 51 ; 30 E. R. 24, L. C.

1150. —— —— ——.]—A.-G. *v.* WINCHELSEA (EARL) (1791), 3 Bro. C. C. 373 ; 29 E. R. 591.

Annotations :—**Distd.** Dawson *v.* Clark (1809), 15 Ves. 409. **Refd.** Chapman *v.* Brown (1801), 6 Ves. 404. **Mentd.** Howse *v.* Chapman (1799), 4 Ves. 542 ; Paice *v.* Canterbury (1807), 14 Ves. 364 ; Eyre *v.* Marsden (1839), 4 My. & Cr. 231 ; Christian *v.* Foster (1846), 2 Coop. *temp.* Cott. 348 ; Hopkinson *v.* Ellis (1846), 10 Beav. 169.

1151. —— —— ——.]—A.-G. *v.* MINSHULL (1798), 4 Ves. 11 ; 31 E. R. 6.

1152. —— —— —— **Salary of beneficiary increased subject to new conditions.**]—*Re* KINGSBRIDGE SCHOOL, *Ex p.* LANE (1819), 4 Madd. 479 ; 56 E. R. 782.

1153. —— —— ——.]—A.-G. *v.* DRAPERS' CO. (1840), 2 Beav. 508 ; 48 E. R. 1279.

Annotations :—**Consd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383. **Refd.** A.-G. *v.* Beverley Corpn. (1855), 6 De G. M. & G. 256.

1154. —— —— ——.]—A.-G. *v.* COOPERS' CO., No. 1117, *ante*.

1155. —— —— —— **Purposes directed by deed.**] —MYSTERY OF MERCERS *v.* A.-G. (1828), 2 Bli. N. S. 165 ; 4 E. R. 1094, H. L.

Annotations :—**Distd.** A.-G. *v.* Trinity College, Cambridge (1836), 24 Beav. 383. **Consd.** Beverley *v.* A.-G. (1857), 6 H. L. Cas. 310 ; A.-G. *v.* Wax Chandlers' Co. (1870), 5 Ch. App. 503.

1156. —— —— ——.]—*Re* FORESTER, JERVIS *v.* FORESTER (1897), 13 T. L. R. 555 ; 41 Sol. Jo. 696.

1157. —— **Applied by trustees to own use—In lifetime & with knowledge of donor—Charity not entitled.**]—A.-G. *v.* SKINNERS' CO. (1833), 5 Sim. 596 ; 58 E. R. 463.

C. Whether Party charged with Payments or Performance of Duties entitled.

(a) Where express Gift of Surplus to Party so charged.

1158. Residuary donee entitled to whole increase — Subject to specified payments.] — A.-G. *v.* CATHERINE HALL, CAMBRIDGE, (MASTER, ETC.) (1820), Jac. 381 ; 37 E. R. 894, L. C.

Annotations :—**Refd.** A.-G. *v.* Drapers' Co. (1843), 6 Beav. 382 ; A.-G. *v.* Greenhill (1863), 33 Beav. 193.

1159. —— ——.]—A.-G. *v.* SKINNERS' CO. (1827), 2 Russ. 407 ; 38 E. R. 389, L. C.

Annotations :—**Consd.** A.-G. *v.* Drapers' Co. (1840), 2 Beav. 508 ; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310.

1160. —— ——.]—*Re* JORDEYN'S CHARITY (1833), 1 My. & K. 416 ; Coop. *temp.* Brough. 78 ; 39 E. R. 739, L. C.

Annotation :—**Refd.** A.-G. *v.* Drapers' Co. (1840), 2 Beav. 508.

1161. —— ——.]—Testator gave land to a City co. subject to a direction to distribute £40 a year in charity & with a provision that the residue of the rents should be employed & bestowed according to their discretion, & in the event of his will not being carried out for the space of a year there was a gift over :—*Held :* there was no direction in the will to hold the surplus rents above £40 for any purposes which would in law be charitable.—*Re* ROWE, MERCHANT TAYLORS' CO. *v.* LONDON CORPN. (1914), 30 T. L. R. 528.

1162. —— **"Surplus" or "Residue"—Not necessarily decisive that gift is residuary.**]—SOUTHMOLTON CORPN. *v.* A.-G. (1854), 5 H. L. Cas. 1 ; 23

Sect. 6.—Rules applicable to creation of charitable trusts: Sub-sect. 5, C. (a) & (b) & D.; sub-sect. 6.]

L. J. Ch. 567; 23 L. T. O. S. 117; 18 Jur. 435; 10 E. R. 796, H. L.

Annotations:—**Distd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383. **Consd.** A.-G. *v.* Windsor (1860), 8 H. L. Cas. 369; Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512. **Refd.** Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310; A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1.

1163. —— "Overplus"—Construed in its ordinary meaning of "surplus."]—BEVERLEY CORPN. *v.* A.-G. (1857), 6 H. L. Cas. 310; 27 L. J. Ch. 66; 30 L. T. O. S. 13; 21 J. P. 675; 3 Jur. N. S. 871; 5 W. R. 840; 10 E. R. 1315, H. L.; *revsg.* (1855), 6 De G. M. & G. 256, L. JJ.

Annotations:—**Consd.** A.-G. *v.* Wax Chandlers' Co. (1870), 5 Ch. App. 503. **Refd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383; A.-G. *v.* Windsor (1860), 8 H. L. Cas. 369; Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512. **Mentd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338; Conybeare *v.* New Brunswick etc., Co. (1860), 1 De G. F. & J. 578.

1164. —— Executors taking beneficially.]—A.-G. *v.* GASCOIGNE (1833), 2 My. & K. 647; 1 L. J. Ch. 122; 39 E. R. 1091.

Annotations:—**Refd.** A.-G. *v.* Solly (1835), 5 L. J. Ch. 5; *Re* Herbage Rents Greenwich. Charity Comrs. *v.* Green, [1896] 2 Ch. 811.

(b) Where no express Gift of Surplus to Party so charged.

1165. Party charged with making payments—Entitled to surplus—No general intention to devote whole to charity.]—A.-G. *v.* CORDWAINERS' CO. (1833), 3 My. & K. 534; 40 E. R. 203.

Annotations:—**Consd.** Jack *v.* Burnett (1846), 12 Cl. & Fin. 812. **Distd.** A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1. **Refd.** A.-G. *v.* Coopers' Co. (1840), 4 Jur. 572; A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11.

1166. —— —— Fund given to members of corporation as trustees—Discretion of trustees.]—A.-G. *v.* BRAZEN NOSE COLLEGE (1834), 8 Bli. N. S. 377; 2 Cl. & Fin. 295; 5 E. R. 983, H. L.

Annotations:—**Consd.** A.-G. *v.* Drapers' Co. (1840), 2 Beav. 508. **Folld.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383. **Refd.** Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1. **Mentd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

1167. —— —— Estates devised to company—Subject to payments for trust.]—A.-G. *v.* GROCERS' CO. (1843), 6 Beav. 526; 12 L. J. Ch. 195; 7 J. P. 66; 8 Jur. 1155; 49 E. R. 929.

1168. —— —— Construction of intention.]—JACK *v.* BURNETT, No. 1050, *ante*.

1169. —— —— Construction of letters patent—Long usage.]—A.-G. *v.* SMYTHIES (1833), 2 Russ. & M. 717; Coop. *temp.* Brough. 5; 2 L. J. Ch. 58; 39 E. R. 568, L. C.

Annotations:—**Consd.** A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11. **Refd.** A.-G. *v.* St. John's College (1834), Coop. *temp.* Brough 394; A.-G. *v.* Solly (1835), 5 L. J. Ch. 5; Jack *v.* Burnett (1846), 12 Cl. & Fin. 812; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1.

1170. —— ——.]—A.-G. *v.* WINDSOR (DEAN & CANONS) (1860), 8 H. L. Cas. 369; 30 L. J. Ch. 529; 2 L. T. 578; 24 J. P. 467; 6 Jur. N. S. 833; 8 W. R. 477; 11 E. R. 472, H. L.

Annotations:—**Refd.** A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1. **Mentd.** A.-G. *v.* Marchant (1866), L. R. 3 Eq. 424; *Re* Campden Charities (1881), 18 Ch. D. 310; I. R. Comrs. *v.* Walker, [1915] A. C. 509; Usher's Wiltshire Brewery *v.* Bruce, [1915] A. C. 433.

1171. —— —— Devise to college.]—A.-G. *v.* SIDNEY SUSSEX COLLEGE (1869), 4 Ch. App. 722; 38 L. J. Ch. 656; 34 J. P. 52, L. C.

1172. —— Not entitled to surplus—College entrusted with management of testator's charity—College partially object.]—A.-G. *v.* CAIUS COLLEGE (1837), 2 Keen, 150; 6 L. J. Ch. 282; 48 E. R. 585.

Annotation:—**Mentd.** Solicitor General *v.* Bath Corpn., A.-G. *v.* Blair (1849), 18 L. J. Ch. 275.

1173. —— & covenanting to be personally liable therefor—Entitled to surplus—Donee a charity.]—A.-G. *v.* BRISTOL CORPN. (1820), 2 Jac. & W. 294; 37 E. R. 640, L. C; *revsg.* (1818), 3 Madd. 319.

Annotations:—**Distd.** A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407. **Consd.** Mercers, Mystery of *v.* A.-G. (1828), 2 Bli. N. S. 165; A.-G. *v.* Ward (1829), 7 L. J. O. S. Ch. 114; A.-G. *v.* Smithies (1833), Coop. *temp.* Brough. 5; Jack *v.* Burnett (1846), 12 Cl. & Fin. 812; A.-G. *v.* Merchant Venturers' Co. Bristol (1848), 17 L. J. Ch. 137; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310. **Refd.** A.-G. *v.* Catherine Hall, Cambridge (1820), Jac. 381; A.-G. *v.* Skinners' Co. (1833), 5 Sim. 596; A.-G. *v.* Brazen Nose College (1834), 8 Bli. N. S. 377; A.-G. *v.* St. John's College (1834), Coop. *temp.* Brough 394; A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1; A.-G. *v.* Sidney Sussex College (1869), 4 Ch. App. 722; Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512; A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Ludlow Corpn. *v.* Greenhouse (1827), 1 Bli. N. S. 17; A.-G. *v.* Ironmongers' Co. (1840), 2 Beav. 313; A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395; A.-G. *v.* Boston Corpn. (1847), 1 De G. & Sm. 519; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223; Hebbert *v.* Purchas (1871), L. R. 3 P. C. 605.

1174. —— —— Not entitled to surplus—Forfeiture clause.]—A.-G. *v.* MERCHANT VENTURERS' CO., BRISTOL (1848), 17 L. J. Ch. 137, L. C.

1175. Gift to party for performance of duties—Augmentation of salary allowed.]—DAY *v.* CROFT (1843), 1 L. T. O. S. 431.

1176. —— Reasonable compensation exceeded—Surplus must be applied to other charitable purposes.]—A.-G. *v.* BRENTWOOD SCHOOL (MASTER) (1833), 1 My. & K. 376; 39 E. R. 723.

Annotation:—**Mentd.** A.-G. *v.* Boucherett (1858), 25 Beav. 116.

1177. Gift to poor & guardian—Guardian not entitled to participate in surplus.]—ANON. (1681), 2 Cas. in Ch. 53; 22 E. R. 843.

D. Application Cy-près.

See Part IV., Sect. 2, sub-sect. 2, E., *post*.

SUB-SECT. 6.—RESULTING TRUSTS.

1178. Not where general charitable intention.]—LLOYD *v.* SPILLET (1741), 2 Atk. 148; Barn. Ch. 384; 26 E. R. 493, L. C.

Annotations:—**Refd.** Cook *v.* Duckenfield (1743), 2 Atk. 562; Benbow *v.* Townsend (1833), 1 My. & K. 506.

1179. —— Notwithstanding failure of object——Annuity for payment of schoolmaster—No schoolmaster for six years.]—AYLET *v.* DODD (1741), 2 Atk. 238; 26 E. R. 547, L. C.

Annotation:—**Mentd.** Denton *v.* Richmond (1833), 3 Tyr. 630.

1180. —— Although objects uncertain—To "such persons as trustees should think fit."]—COOK *v.* DUCKENFIELD (1743), 2 Atk. 562; 26 E. R. 737, L. C.

Annotations:—**Refd.** A.-G. *v.* Herrick (1772), Amb. 712; Moggridge *v.* Thackwell (1803), 7 Ves. 36.

1181. —— —— Gift by deed of site for almshouses—Gift revoked by will as intention abandoned.]—*Re* SHUM'S TRUST, PRICHARD *v.* RICHARDSON, [1904] W. N. 146.

1182. —— Notwithstanding application of property to charity suspended.]—A.-G. *v.* BOWYER

PART III. SECT. 6, SUB-SECT. 6.

1178 i. *Not where general charitable intention.*]—W., by deed poll, gave certain land to trustees "on trust for the purpose of dedicating the said land & founding & adapting the same as & for a training home for neglected children to be called the [W.] trust for neglected children." W. died in 1902. Up to 1910 no steps had been taken to erect a home. In that year part of the land had been acquired by a stranger by adverse possession. The balance was then still in its natural state, & required large outlay to clear it & make it productive & fit for a training home as designed by W., & it was

(1798), 3 Ves. 714; 30 E. R. 1235, L. C.; *subsequent proceedings* (1800), 5 Ves. 300, L. C.

Annotations:—**Distd.** Henshaw *v.* Atkinson (1818), 3 Madd. 306. **Consd.** Abbott *v.* Fraser (1874), L. R. 6 P. C. 96. **Refd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Mentd.** A.-G. *v.* Mansfield (1827), 2 Russ. 501.

1183. ——— ———.]—CHAMBERLAYNE *v.* BROCKETT, No. 1095, *ante*.

1184. ——— **Devise to college to buy advowsons—College having as many as allowed by Mortmain Acts—Devise performed by exchange of advowsons.**]—A.-G. *v.* GREEN (1789), 2 Bro. C. C. 492; 29 E. R. 270, L. C.

Annotations:—**Consd.** A.-G. *v.* Minshull (1798), 4 Ves. 11. **Refd.** Whittaker *v.* Whittaker (1792), 4 Bro. C. C. 31.

1185. ——— **Notwithstanding charity becoming extinct.**]—A.-G. *v.* HICKS (1810), 3 Bro. C. C. 166, n.; Highmore's Mortmain 2nd ed. 336; 29 E. R. 468.

1186. ——— **Grant of land for building church—Rent & profits applicable to same use until church built.**]—FISHER *v.* BRIERLEY (1863), 10 H. L. Cas. 159; 1 New Rep. 452; 32 L. J. Ch. 281; 8 L. T. 37; 27 J. P. 280; 9 Jur. N. S. 313; 11 W. R. 404; 11 E. R. 986, H. L.

Annotation:—**Mentd.** *Re* Patrick, Bills *v.* Tatham (1890), 63 L. T. 752.

Application of *cy-près* doctrine on failure of object, *see* Part IV., Sect. 2, sub-sect. 2, *post*.

1187. When resulting trust arises—No general charitable intention—Failure of objects.]—WINSOR (DEAN & CANONS) & WEBB'S CASE (1613), Godb. 211; 78 E. R. 128.

Annotation:—**Consd.** Page *v.* Wilson (1821), 2 Jac. & W. 513.

1188. ——— ——— ———.]—*Re* WHITE'S TRUSTS (1886), 33 Ch. D. 449; 55 L. J. Ch. 701; 55 L. T. 162; 50 J. P. 695; 34 W. R. 771; 2 T. L. R. 830.

1189. ——— ——— ———.]—Testatrix devised & bequeathed to the P. Corpn. a cottage & a sum of money upon trust to use the premises as a holiday home for clergymen of the Church of England, to apply the income of the money to carry on the premises as such a home, &, in the event of their declining the devise, revoked the bequest of the sum of money & devised & bequeathed the cottage & the money upon trust for any other society which her trustees might select upon trust to use the premises as a holiday home for ladies or gentlemen of limited means whom it might benefit. The corpn. having declined the gift, the cottage & its position being very unsuitable & the trustees being unable to find any society to undertake the trusts:—*Held*: there was no general charitable intention but merely directions with regard to carrying on a house of testatrix as a holiday home, & the particular object of the gift being incapable of being carried out, the gift failed & passed with the residue of the estate, & the doctrine of *cy-près* was inapplicable.—*Re* PACKE, SANDERS' *v.* A.-G., [1918] 1 Ch. 437; 87 L. J. Ch. 300; 118 L. T. 693; 62 Sol. Jo. 488.

Failure of objects generally, after death of donor, *see* Part IV., Sect. 2, sub-sect. 2, C., *post*.

1190. ——— **Contingent gift—Resulting trust in meantime.**]—A.-G. *v.* CRAVEN (EARL) (1856), 21 Beav. 392; 25 L. J. Ch. 291; 27 L. T. O. S. 23; 20 J. P. 261; 2 Jur. N. S. 296; 4 W. R. 340; 52 E. R. 910.

Annotations:—**Consd.** Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206. **Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

1191. ——— **Disclaimer by charity—Residuary legatee entitled.**]—HOBBS *v.* WAYET (1887), 36 Ch. D. 256; 56 L. J. Ch. 819; 57 L. T. 225; 36 W. R. 73.

Annotations:—**Mentd.** Wolmershausen *v.* Gullick, [1893] 2 Ch. 514; St. Thomas's Hospital *v.* Richardson, [1910] 1 K. B. 271.

See, further, Part IV., Sect. 2, *post*.

1192. ——— **Invalid gift—Gift void by Mortmain Acts—Heir-at-law entitled.**]—ARNOLD *v.* CHAPMAN (1748), 1 Ves. Sen. 108; 27 E. R. 922, L. C.

Annotations:—**Distd.** Dawson *v.* Clark (1809), 15 Ves. 409; Currie *v.* Pye (1811), 17 Ves. 462. **Consd.** Tregonwell *v.* Sydenham (1815), 3 Dow. 194; Henchman *v.* A.-G. (1834), 3 My. & K. 485. **Refd.** Doe d. Howson *v.* Waterton (1819), 3 B. & Ald. 149; Amphlett *v.* Parke (1831), 2 Russ. & M. 221; Doe d. Chidgey *v.* Harris (1847), 16 M. & W. 517; Young *v.* Grove (1847), 4 C. B. 668; Smith *v.* Lomas (1864), 4 New Rep. 318. **Mentd.** Hilliard *v.* Taylor (1773), Dick. 476; Field *v.* Mostin (1778), Dick. 543; Kennell *v.* Abbott (1799), 4 Ves. 802; Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262; Philanthropic Soc. *v.* Kemp (1842), 4 Beav. 581; Robinson *v.* Geldard (1852), 3 Mac. & G. 735; Heptinstall *v.* Gott (1862), 2 John. & H. 449.

1193. ——— ——— ———.]—GRAVENOR *v.* HALLUM (1767), Amb. 643; 27 E. R. 417, L. C.

Annotations:—**Consd.** Henchman *v.* A.-G. (1834), 3 My. & K. 485. **Refd.** Tregonwell *v.* Sydenham (1815), 3 Dow. 194; Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262; Doe d. Chidgey *v.* Harris (1847), 16 M. & W. 517; *Re* Cooper (1853), 23 L. J. Ch. 27, n.; Lamson *v.* Lamson (1854), 24 L. J. Ch. 46; Smith *v.* Lomas (1864), 4 New Rep. 318. **Mentd.** Turner *v.* Ogden (1787), 1 Cox, Eq. Cas. 316.

1194. ——— ——— ——— ———.]—GIBBS *v.* RUMSEY (1813), 2 Ves. & B. 294; 35 E. R. 331.

Annotations:—**Distd.** Green *v.* Jackson (1828), 5 Russ. 35. **Consd.** Amphlett *v.* Parke (1831), 2 Russ. & N. 221. **Distd.** Ellis *v.* Selby (1836), 1 My. & Cr. 286. **Consd.** Buckle *v.* Bristow (1864), 5 New Rep. 7; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381; *Re* Howell, *Re* Buckingham, Liggins *v.* Buckingham, [1914] 2 Ch. 173. **Refd.** Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262; Whitaker *v.* Tatham (1831), 7 Bing. 628; Briggs *v.* Penny (1849), 3 De G. & Sm. 525; Pocock *v.* A.-G. (1876), 3 Ch. D. 342.

1195. ——— ——— ———.]—JONES *v.* MITCHELL (1823), 1 Sim. & St. 290; 1 L. J. O. S. Ch. 163; 57 E. R. 117.

Annotation:—**Refd.** Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262.

1196. ——— ——— ——— ———.]—TAYLOR *v.* BLAND, [1880] W. N. 155.

1197. ——— ——— ——— **Devisee entitled.**]—BARRINGTON *v.* HEREFORD (1778), cited in 1 Bro. C. C. 61; 28 E. R. 984, L. C.

Annotation:—**Refd.** Tregonwell *v.* Sydenham (1815), 3 Dow. 194.

1198. ——— ——— ——— ———.]—WRIGHT *v.* ROW (1779), 1 Bro. C. C. 61; 28 E. R. 984.

Annotations:—**Consd.** Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262. **Refd.** Tregonwell *v.* Sydenham (1815), 3 Dow. 194; Henchman *v.* A.-G. (1834), 3 My. & K. 485.

1199. ——— ——— ——— **Heir-at-law & next of kin entitled in proportions.**]—MIDDLETON *v.* CATER (1793), 4 Bro. C. C. 409; 29 E. R. 962, L. C.

Annotation:—**Refd.** Cooke *v.* Stationers' Co. (1831), 3 My. & K. 262.

1200. ——— ——— ——— **Falls into residue.**]—PAGE *v.* LEAPINGWELL (1812), 18 Ves. 463; 34 E. R. 392.

Annotations:—**Distd.** Aston *v.* Wood (1874), 43 L. J. Ch. 715. **Refd.** A.-G. *v.* Barham (1835), 4 L. J. Ch. 128; Green *v.* Pertwee (1846), 5 Hare, 249; A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383; Springett *v.* Jennings (1870), 39 L. J. Ch. 652; *Re* Currie, Bjorkman *v.* Kimberley (1888), 57 L. J. Ch. 743. **Mentd.** Parrott *v.* Worsfold (1820), 1 Jac. & W. 594; Scott *v.* Salmond (1833), 1 My. & K. 363; Rishton *v.* Cobb (1839), 5 My. & Cr. 145; Newman *v.* Williams (1840), 10 L. J. Ch. 106; Creed *v.* Creed (1844), 11 Cl. & Fin. 491; Laurie *v.* Clutton (1851), 15 Beav. 65; Petre *v.* Petre (1851), 14 Beav. 197; Hewitt *v.* George (1854), 18 Beav. 522; Booth *v.* Alington (1856), 6 De G. M. & G. 613; Bernard *v.* Minshull (1859), John. 276; *Re* Harries' Trust (1859),

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accordingly sold by the trustees, who applied for the direction of the ct. as to the application of the proceeds of sale. The establishment of such a home as was designed by W. was impracticable, undesirable & unnecessary:—*Held*: there was no resulting trust, inasmuch as on the true construction of the deed poll W. had evidenced a general charitable intention.—WISEMAN *v.* EQUITY TRUSTEES & Co., LTD., [1915] V. L. R. 439.—AUS.

o. *When resulting trust arises—Grant of land for building church—Change of doctrine.*]—DOUGLAS *v.* HAWES (1875), R. E. D. 147.—CAN.

Sect. 6.—Rules applicable to creation of charitable trusts: Sub-sect. 6. Sects. 7 & 8.]

John. 199; Wright *v.* Weston (1859), 26 Beav. 429; Haslewood *v.* Green (1860), 28 Beav. 1; Harley *v* Moon (1861), 1 Drew. & Sm. 623; Elwes *v.* Causton (1862), 30 Beav. 554; Hodgson *v.* Bective (1863), 1 Hem. & M. 376; Lakin *v.* Lakin (1865), 34 Beav. 443; Penny *v.* Penny (1865), 13 L. T. 496; *Re* Jeaffresons' Trusts (1866), L. R. 2 Eq. 276; *Re* Jeffery's Trusts (1866), L. R. 2 Eq. 68; Walpole *v.* Apthorp (1867), L. R. 4 Eq. 37; Baker *v.* Farmer (1868), 3 Ch. App. 537; Miller *v.* Huddlestone (1868), L. R. 6 Eq. 65; Wilday *v.* Barnett (1868), L. R. 6 Eq. 193; De Lisle *v.* Hodges (1874), L. R. 17 Eq. 440; Stokes *v.* Bridgman (1878), 47 L. J. Ch. 759; Gilbert *v.* Whitfield (1882), 52 L. J. Ch. 210; *Re* Judkin's Trusts (1884), 50 L. T. 200; Wilson *v.* Kenrick (1885), 31 Ch. D. 658; *Re* Saunders-Davies, Saunders-Davies *v.* Saunders-Davies (1887), 34 Ch. D. 482; *Re* Tunno, Raikes *v.* Raikes (1890), 45 Ch. D. 66; *Re* Doane (1893), 10 T. L. R. 100; *Re* Tilt, Lampet *v.* Kennedy (1896), 74 L. T. 163; *Re* Phillips, Eddowes *v.* Phillips (1897), 66 L. J. Ch. 714; *Re* Margetts, Smith *v.* Margetts (1906), 50 Sol. Jo. 290.

1201. —— —— —— Heir-at-law & next of kin entitled according to nature of gift.]—HOPKINSON *v.* ELLIS (1846), 10 Beav. 169; 16 L. J. Ch. 59; 8 L. T. O. S. 490; 50 E. R. 547.

Annotation :—**Refd.** Simmons *v.* Rose (1856), 6 De G. M. & G. 411.

1202. Fund raised by subscription—For support of two ladies—Death of beneficiaries—Resulting trust of surplus to subscribers.]—A fund was collected for the support of two ladies & was supplemented by annual subscriptions & donations. The circular inviting subscriptions stated that the object was to enable the two ladies, who had been deprived of means of support, to reside in lodgings in C., & to provide for their very moderate wants, & that annual statements would be furnished to donors. No accounts were in fact ever furnished to the donors. At the death of the survivor of the two ladies there remained a surplus unapplied :—*Held :* the proper inference was that the subscribers contributed on the footing that the fund would be applied for the benefit of the ladies, & not that they were to become the absolute owners of the fund, & there was a resulting trust of the surplus in favour of the subscribers.—*Re* ABBOTT FUND TRUSTS, SMITH *v.* ABBOTT, [1900] 2 Ch. 326; 69 L. J. Ch. 539; 48 W. R. 541.

Annotation :—**Distd.** *Re* Andrew's Trust, Carter *v.* Andrew, [1905] 2 Ch. 48.

1203. —— For " education " of certain children —Children grown up—No resulting trust of surplus to subscribers.]—A fund was subscribed by the friends of a deceased clergyman for the education of his children, all of whom were then infants, & the document declaring the trusts of the fund stated that the money was not intended for the exclusive use of any one of them in particular, nor for equal division among them, but as deemed necessary to defray the expenses of all, & that solely in the matter of education. The education of the children was paid for partly out of the trust fund & partly out of money respectively coming to them under their father's will. When all the children had grown up there remained a portion of the trust fund unapplied :—*Held :* (1) there was no resulting trust of the balance for the subscribers; (2) the balance ought to be divided equally amongst the children.—*Re* ANDREW'S TRUST, CARTER *v.* ANDREW, [1905] 2 Ch. 48; 74 L. J. Ch. 462; 92 L. T. 766; 53 W. R. 585; 21 T. L. R. 512; 49 Sol. Jo. 565.

1204. Grant of land under School Sites Act, 1841 (c. 38)—School ceasing to be used for purposes specified—Reverter to estate of donor.]—In 1868 S. executed a deed poll under above Act, s. 2, conveying to the minister & churchwardens of a parish a piece of land for the purposes of the Act & upon trust to permit the premises & all buildings to be erected thereon to be used as a school for the education of children & adults of the poorer classes of the parish & for no other purpose. The schools were to be open to the inspection of the Established Church inspectors & managed by the principal minister of the parish who was to superintend the religious & moral instruction of the scholars & might use the premises for a Sunday school. A school was erected on the land & used till 1907 as a public elementary school, when it ceased to be used except as a Sunday school. S. claimed that the premises had reverted to him under the Act; the Board of Education contended that they were still devoted to charity & that a scheme ought to be settled for the future administration thereof :—*Held :* inasmuch as the school had ceased to be used for the purposes specified in the deed poll it had reverted to the estate of S., the donor, although it had been continuously used for other purposes specified in the Act.—A.-G. *v.* SHADWELL, [1910] 1 Ch. 92; 79 L. J. Ch. 113; 101 L. T. 630; 26 T. L. R. 82; 54 Sol. Jo. 180.

Annotation :—**Refd.** A.-G. *v.* Price (1911), 75 J. P. 566.

SECT. 7.—USAGE AS EVIDENCE IN REFERENCE TO CHARITABLE TRUSTS.

See, generally, CUSTOM & USAGES; EVIDENCE.

1205. Is presumptive evidence—To explain arrangement made at date of foundation.]—A.-G. *v.* CAIUS COLLEGE (1837), 2 Keen, 150; 6 L. J. Ch. 282; 48 E. R. 585.

Annotation :—**Mentd.** Solicitor-General *v.* Bath Corpn., A.-G. *v.* Blair (1849), 18 L. J. Ch. 275.

1206. —— To show conditions on which trust accepted.]—A.-G. *v.* DRAPERS' CO., HOWELL'S CHARITY (1843), 6 Beav. 382; 12 L. J. Ch. 421; 1 L. T. O. S. 107; 7 J. P. 272; 8 Jur. 1060; 49 E. R. 873.

Annotation :—**Refd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383.

1207. —— To explain ambiguous instrument of endowment—Latin charter of time of Philip & Mary.]—A.-G. *v.* BOSTON CORPN. (1845), 2 Holt, Eq. 107; 1 New Pract. Cas. 59; 5 L. T. O. S. 304; 9 Jur. 838; 71 E. R. 812; *subsequent proceedings* (1847), 1 De G. & Sm. 519.

1208. —— —— ——.]—A.-G. *v.* BOSTON CORPN. (1847), 1 De G. & Sm. 519; 63 E. R. 1175.

1209. —— ——.]—A.-G. *v.* GOULD (1860), 28 Beav. 485; 30 L. J. Ch. 77; 2 L. T. 494; 24 J. P. 356; 7 Jur. N. S. 34; 8 W. R. 514; 54 E. R. 452.

Annotations :—**Consd.** A.-G. *v.* Aust (1865), 13 L. T. 235. **Refd.** Camden *v.* I. R. Comrs., [1914] 1 K. B. 641. **Mentd.** A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161.

1210. —— ——.]—A.-G. *v.* SIDNEY SUSSEX COLLEGE (1869), 4 Ch. App. 722; 38 L. J. Ch. 656; 34 J. P. 52, L. C.

1211. —— Where instrument of endowment lost or absent.]—A.-G. *v.* ST. CROSS HOSPITAL (1853), 17 Beav. 435; 1 Eq. Rep. 585; 22 L. J. Ch. 793; 22 L. T. O. S. 188; 1 W. R. 525; 51 E. R. 1103; *subsequent proceedings* (1854), 18 Beav. 475, 601; (1856), 8 De G. M. & G. 38, L. JJ.

1212. —— ——.]—A.-G. *v.* GOULD (1860), 28 Beav. 485; 30 L. J. Ch. 77; 2 L. T. 494; 24 J. P. 356; 7 Jur. N. S. 34; 8 W. R. 514; 54 E. R. 452.

Annotations :—**Consd.** A.-G. *v.* Aust. (1865), 13 L. T. 235. **Refd.** Camden *v.* I. R. Comrs., [1914] 1 K. B. 641. **Mentd.** A.-G. *v.* Etheridge (1862), 8 L. T. 14.

1213. —— That everything done to make charity valid.]—A.-G. *v.* MOOR (1855), 20 Beav. 119; 52 E. R. 547.

Annotation :—**Refd.** Haigh *v.* West, [1893] 2 Q. B. 19.

1214. Is not presumptive evidence—To vary or sanction breach of trust—Where origin of trust free

from doubt.]—A.-G. *v.* FISHMONGERS' CO. (1841), 5 My. & Cr. 16 ; 5 Jur. 693 ; 41 E. R. 278, L. C.

Annotations :—**Distd.** A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933. **Mentd.** A.-G. *v.* Hospital of St. John, Bedford (1865), 34 L. J. Ch. 441 ; Bourne *v.* Keane, [1919] A. C. 815.

1215. —— —— ——.]—DRUMMOND *v.* A.-G. (1849), 2 H. L. Cas. 837 ; 14 Jur. 137 ; 9 E. R. 1312, H. L.

Annotations :—**Consd.** Watcham *v.* A.-G. of East African Protectorate, [1919] A. C. 533. **Refd.** A.-G. *v.* Clapham (1855), 4 De G. M. & G. 591.

1216. —— —— ——.] —A.-G. *v.* DALTON (1851), 13 Beav. 141 ; 20 L. J. Ch. 569 ; 16 L. T. O. S. 530 ; 15 Jur. 412 ; 51 E. R. 55 ; *subsequent proceedings, sub nom. Re* HAYLE'S ESTATE (1862), 31 Beav. 139.

1217. —— —— ——.]—A.-G. *v.* ST. CROSS HOSPITAL (1853), 17 Beav. 435 ; 1 Eq. Rep. 585 ; 22 L. J. Ch. 793 ; 22 L. T. O. S. 188 ; 1 W. R. 525 ; 51 E. R. 1103 ; *subsequent proceedings* (1854), 18 Beav. 475, 601 ; (1856), 8 De G. M. & G. 38, L. JJ.

1218. —— —— ——.]—A.-G. *v.* ROCHESTER CORPN. (1854), 5 De G. M. & G. 797 ; 23 L. T. O. S. 104 ; 43 E. R. 1079, L. JJ.

Annotations :—**Consd.** A.-G. *v.* Sidney Sussex College (1869), 4 Ch. App. 722. **Mentd.** *Re* Campden Charities (1881), 18 Ch. D. 310.

1219. —— —— ——.]—A.-G. *v.* ST. JOHN'S HOSPITAL, BEDFORD (1865), 2 De G. J. & Sm. 621 ; 34 L. J. Ch. 441 ; 12 L. T. 714 ; 11 Jur. N. S. 629 ; 13 W. R. 955 ; 46 E. R. 516, L. JJ.

Annotation :—**Mentd.** *Re* Thompson's Settlmt. Trusts, Thompson *v.* Alexander, [1905] 1 Ch. 229.

1220. —— **To explain unambiguous instrument of endowment.**] —A.-G. *v.* EWELME HOSPITAL (1853), 17 Beav. 366 ; 1 Eq. Rep. 563 ; 22 L. J. Ch. 846 ; 23 L. T. O. S. 4 ; 1 W. R. 523 ; 51 E. R. 1075.

Annotations :—**Mentd.** A.-G. *v.* Boucherett (1858), 25 Beav. 116 ; A.-G. *v.* Windsor (1860), 30 L. J. Ch. 529.

1221. —— ——.]—A.-G. *v.* GOULD (1860), 28 Beav. 485 ; 30 L. J. Ch. 77 ; 2 L. T. 494 ; 24 J. P. 356 ; 7 Jur. N. S. 34 ; 8 W. R. 514 ; 54 E. R. 452.

Annotations :—**Consd.** A.-G. *v.* Aust (1865), 13 L. T. 235. **Refd.** Camden *v.* I. R. Comrs., [1914] 1 K. B. 641. **Mentd.** A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161.

1222. —— ——.]—A.-G. *v.* DARTMOUTH CORPN. (1883), 48 L. T. 933.

1223. Under City of London Parochial Charities Act, 1883 (c. 36)—Usage admissible—User of rents for three hundred years for general parish purposes.] — *Re* ST. ALPHAGE, LONDON WALL, No. 169, *ante*.

1224. —— —— **Site of church vested in rector & churchwardens for two hundred years.**]—*Re* ST. NICHOLAS ACONS (PARISH), No. 170, *ante*.

To show whether religious gifts denominational or not.]—*See* Sect. 4, sub-sect. 5, A., *ante*.

1225. What will be presumed—Act of Parliament.] — A.-G. *v.* EWELME HOSPITAL (1853), 17 Beav. 366 ; 1 Eq. Rep. 563 ; 22 L. J. Ch. 846 ; 23 L. T. O. S. 4 ; 1 W. R. 523 ; 51 E. R. 1075.

Annotations :—**Mentd.** A.-G. *v.* Boucherett (1858), 25 Beav. 116 ; A.-G. *v.* Windsor (1860), 30 L. J. Ch. 529.

1226. —— **Enrolment of lost grant.**]—HAIGH *v.* WEST, No. 545, *ante*.

1227. Examples of usage—Exercise by free inhabitants of borough of right of oyster fishery.]—GOODMAN *v.* SALTASH CORPN. (1882), 7 App. Cas. 633 ; 52 L. J. Q. B. 193 ; 48 L. T. 239 ; 47 J. P. 276 ; 31 W. R. 293, H. L. ; *revsg.* S. C. *sub nom.* SALTASH CORPN. *v.* GOODMAN (1881), 7 Q. B. D. 106, C. A.

Annotations :—**Consd.** *Re* Free Fishermen of Faversham (1887), 36 Ch. D. 329 ; *Re* Christchurch Inclosure Act, (1888), 38 Ch. D. 520 ; *Re* St. Stephen, Coleman Street, *Re* St. Mary the Virgin, Aldermanbury, (1888), 39 Ch. D. 492. **Distd.** Tilbury *v.* Silva (1890), 45 Ch. D. 98. **Consd.** Smith *v.* Andrews, [1891] 2 Ch. 678. **Distd.** *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643. **Consd.** Fitzhardinge *v.* Purcell, [1908] 2 Ch. 139 ; Harris *v.* Chesterfield, [1911] A. C. 623 ; A.-G. *v.* Horner, [1913] 2 Ch. 140. **Refd.** A.-G. *v.* Wright, [1897] 2 Q. B. 318 ; A.-G. *v.* Simpson, [1901] 2 Ch. 671 ; A.-G. *v.* Tonkin (1902), 18 T. L. R. 29 ; Mercer *v.* Denne, [1904] 2 Ch. 534 ; A.-G. *v.* Antrobus, [1905] 2 Ch. 188 ; *Re* Allen, Hargreaves *v.* Taylor, [1905] 2 Ch. 400. **Mentd.** Neill *v.* Devonshire (1882), 8 App. Cas. 135 ; Pooley's Trustee *v.* Whetham (1886), 33 Ch. D. 76 ; Stanley *v.* Norwich Corpn. (1887), 3 T. L. R. 506 ; Blount *v.* Layard (1888), [1891] 2 Ch. 681, n. ; *Re* Norwich Town Close Estate Charity (1888), 40 Ch. D. 298 ; I. R. Comrs. *v.* Scott, *Re* Bootham, Ward Strays, York, [1892] 2 Q. B. 152 ; Haigh *v.* West, [1893] 2 Q. B. 19 ; Wheaton *v.* Maple, [1893] 3 Ch. 48 ; Eliot *v.* Bristol Corpn. (1895), 72 L. T. 752 ; Simpson *v.* Godmanchester Corpn. (1895), 65 L. J. Ch. 154 ; Tyne Improvement Comrs. *v.* Imrie, A.-G. *v.* Tyne Improvement Comrs. (1899), 81 L. T. 174 ; R. *v.* Income Tax Special Comrs., *Ex p.* University College of North Wales (1908), 98 L. T. 446 ; Foley's Charity Trustees *v.* Dudley Corpn., [1910] 1 K. B. 317 ; Johnston *v.* O'Neill, [1911] A. C. 552 ; Mitcham Common Conservators *v.* Banks (1912), 76 J. P. 413 ; *Re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113 ; Nesbitt *v.* Mablethorpe U. D. C., [1918] 2 K. B. 1.

1228. —— **Payment of rents in trust for freemen of city for long period.**]—STANLEY *v.* NORWICH CORPN. (1887), 3 T. L. R. 506.

Annotation :—**Mentd.** *Re* Norwich Town Close Estate (1889), 5 T. L. R. 197.

1229. —— **Letting of grazing on highway for one hundred & fifteen years.**]—HAIGH *v.* WEST, No. 545, *ante*.

1230. What period of usage sufficient—Three hundred years.] —A.-G. *v.* MERCERS' CO. (1870), 22 L. T. 222 ; 18 W. R. 448.

1231. —— **One hundred & five years.**]—BUNTING *v.* SARGENT (1879), 13 Ch. D. 330 ; 49 L. J. Ch. 109 ; 41 L. T. 643 ; 28 W. R. 123.

—— **Under Nonconformists Chapels Act, 1844 (c. 45).**]—*See* Sect. 4, sub-sect. 5, A., *ante*.

—— **To prove rentcharge.**]—*See* Part V., Sect. 1, sub-sect. 3, *post*.

See, also, Charitable Trusts (Recovery) Act, 1891 (c. 17), s. 5 (1) ; R. S. C. (Charitable Trusts Recovery) 1892, r. 4.

SECT. 8.—MODIFICATION OF CHARITABLE TRUSTS.

1232. By original donor—Power to dispose & order—Although created by royal charter.]—ANON. (1698), 12 Mod. Rep. 232 ; 88 E. R. 1284.

1233. —— **No power to increase number of members of corporation.**]—A.-G. *v.* DULWICH COLLEGE (1841), 4 Beav. 255 ; 5 Jur. 814 ; 49 E. R. 337.

Annotations :—**Mentd.** A.-G. *v.* Roose (1846), 7 L. T. O. S. 175 ; R. *v.* Dulwich College (1851), 17 Q. B. 600.

1234. —— —— **Power to give assistants right of voting.**] — R. *v.* DULWICH COLLEGE (1851), 7 Q. B. 600 ; 21 L. J. Q. B. 36 ; 18 L. T. O. S. 183 ; 16 J. P. 19 ; 16 Jur. 654 ; 117 E. R. 1411.

1235. —— **Endowment fund of church—Doubtful whether trusts of fund may be regulated by—After consecration.**]—*Re* HARTSHILL ENDOWMENT (1861), 30 Beav. 130 ; 54 E. R. 838.

1236. By heir of founder & donees—Not allowed.] —A.-G. *v.* PLATT (1675), Cas. *temp.* Finch. 221 ; 23 E. R. 122.

1237. —— ——.] —A.-G. *v.* CAMBRIDGE MARGARET & REGIUS PROFESSORS (1682), 1 Vern. 55 ; 1 Eq. Cas. Abr. 99, pl. 5 ; 23 E. R. 306, L. C.

1238. By governors of school—Power to alter founder's rules—If expressly authorised.]—A.-G. *v.* CLARENDON (EARL) (1810), 17 Ves. 491 ; 34 E. R. 190.

Annotation :—**Mentd.** A.-G. *v.* Stamford (1842), 1 Ph. 737.

1239. By patrons of school—No right to impose new conditions & terms on master.]—*Re* CHIPPING SODBURY FREE GRAMMAR SCHOOL (1829), 8 L. J. O. S. Ch. 13, L. C.

Annotation :—**Consd.** A.-G. *v.* Bristol Corpn., *Ex p.* Goodenough (1845), 14 Sim. 648.

Sect. 8.—*Modification of charitable trusts.* *Part IV. Sect.* 1: *Sub-sect.* 1, *A.*]

1240. By trustees—Not allowed—Subsequently acquired property—Subject to original trusts.]—A.-G. *v.* CLAPHAM (1853), 10 Hare, 540; 2 Eq. Rep. 91; 23 L. J. Ch. 70; 22 L. T. O. S. 156; 2 W. R. 28; 68 E. R. 1042; *revsd.* on another point (1855), 4 De G. M. & G. 591, L. C.

Annotation:—**Mentd.** G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414.

1241. By commission appointed by Crown—No power to alter trusts—Power to make bye-laws.]—BIRMINGHAM SCHOOL CASE (1726), Gilb. Ch. 178; 25 E. R. 125; *sub nom.* EDEN *v.* FOSTER, 2 P. Wms. 325; Cas. *temp.* King, 36, L. C.

Annotation:—**Refd.** A.-G. *v.* Middleton (1751), 2 Ves. Sen. 327.

1242. By donee—College accepting accession to foundation—Bound to adhere strictly to trust—If no arrangement for modification at acceptance.]—A.-G. *v.* CAIUS COLLEGE (1837), 2 Keen, 150; 6 L. J. Ch. 282; 48 E. R. 585.

Annotation:—**Mentd.** Solicitor-General *v.* Bath Corpn. A.-G. *v.* Blair (1849), 18 L. J. Ch. 275.

1243. —— Refusing to accept upon terms of will—Limits within which discretion of donee extended beyond that given by will.]—Testator by his will bequeathed £6,000, reduced by a codicil to £5,500, to the Royal College of Music & the Royal Academy of Music, to be applied according to or as near as might be in the discretion of the directors to a scheme for founding & endowing a musical scholarship to be competed for by British-born male students of the two institutions more particularly, though not exclusively, of the violin, with power at their option to throw open the scholarship to properly qualified students not educated at either of the institutions. The objects of the scholarship were to be to enable the holder to proceed abroad & continue his musical studies for a period of three years at such of the continental conservatoires or schools of music as might be selected by the directors, & the directors had power to impose rules & regulations attending the scholarship at their discretion. The Royal College of Music & the Royal Academy of Music objected to the provision in the scheme that the holder of the scholarship should study for three years at a continental conservatoire or school, & refused to accept the legacy upon those conditions:—*Held:* (1) the discretion of the directors extended beyond such modifications as were mentioned in the will, provided that the modifications made did not depart essentially from the scheme; (2) there was power to modify the length of time & place of study; (3) the purpose of the gift was to found a scholarship to assist British-born male students of music in completing their musical education, &, if thought fit, of acquiring experience on the Continent in such manner as the directors thought expedient, but so that the application of the legacy should be as nearly in accordance with the scheme in the will as the directors might think desirable.—*Re* HARRISON, HARRISON *v.* A.-G. (1915), 85 L. J. Ch. 77; 113 L. T. 308; 31 T. L. R. 398.

By schemes & application of cy-près doctrine.]—*See* Part IV., *post.*

Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

SECT. 1.—SCHEMES.

SUB-SECT. 1.—WHEN COURT WILL DIRECT.

A. In General.

1244. General rule.]—When the founder of a charity commits the administration of it to a man & his heirs, this ct. cannot interfere with their discretion, as long as they perform their trust properly (ROMILLY, M.R.).—A.-G. *v.* BOUCHERETT (1858), 25 Beav. 116; 23 J. P. 660; 53 E. R. 580.

1245. —— Not where intention of testator clear & definite—Discretion of court when general gift to charity.]—If testator has clearly pointed out his intentions, the ct. is bound to carry them into effect; but where the property is devoted to charity generally, or there are accretions of the charity funds not specially disposed of, or where the particular charity wholly fails, the ct. has a discretion.

A charity was founded for almshouses for poor men & women reduced by sickness, misfortune or infirmity: *Held:* this did not authorise the ct. in settling a scheme to sanction the building of a hospital or infirmary with accommodation for the almspeople.—PHILPOTT *v.* ST. GEORGE'S HOSPITAL, A.-G. *v.* PHILPOTT (1859), 27 Beav. 107; 28 L. J. Ch. 657; 33 L. T. O. S. 141; 23 J. P. 390; 5 Jur. N. S. 664; 7 W. R. 659; 54 E. R. 42.

Annotations:—**Folld.** *Re* Weir Hospital, [1910] 2 Ch. 124, C. A. **Refd.** *Re* Ashton's Charity (1859), 27 Beav. 115; *Re* Campden Charities (1881), 18 Ch. D. 310.

1246. —— Not if forfeiture occasioned.]—*Re* BACON'S CHARITY (1878), Tudor's Law of Charities & Mortmain, 4th ed. 187.

1247. Trust for certain & definite objects—Death of trustee before testatrix.]—MOGGRIDGE *v.* THACKWELL (1803), 7 Ves. 36; 32 E. R. 15, L. C.; *affd.* (1807), 13 Ves. 416, H. L.; *affg.* (1792), 1 Ves. 464, L. C.

Annotations:—**Apld.** Paice *v.* Canterbury (1807), 14 Ves. 264. **Consd.** Mills *v.* Farmer (1815), 1 Mer. 55; Ommanney *v.* Butcher (1823), Turn. & R. 260. **Apld.** A.-G. *v.* Ironmongers' Co. (1833), 3 L. J. Ch. 11. **Consd.** Reeve *v.* A.-G. (1843), 3 Hare, 191; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Apld.** *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 83. **Consd.** *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44. **Refd.** Corbyn *v.* French (1799), 4 Ves. 418; Cary *v.* Abbot (1802), 7 Ves. 490; Martin *v.* Maugham (1844), 14 Sim. 230; Nightingale *v.* Goulbourn (1848), 2 Ph. 594; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91; Pocock *v.* A.-G. (1876), 3 Ch. D. 342; Biscoe *v.* Jackson (1887), 56 L. T. 753; *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353. **Mentd.** Morice *v.* Durham (1804), 9 Ves. 399; Benyon *v.* Benyon (1810), 17 Ves. 34; Ellis *v.* Selby (1836), 5 L. J. Ch. 214; Lee *v.* Pain (1844), 4 Hare, 201; Marsh *v.* Means (1857), 30 L. T. O. S. 89; Tatham *v.* Drummond (1864), 3 New Rep. 706; Wilson *v.* O'Leary (1871), L. R. 12 Eq. 525; *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; Bourne *v.* Keane, [1919] A. C. 815.

PART IV. SECT. 1, SUB-SECT. 1.—A.

1244 i. *General rule.*]—Though the ct. cannot interfere with the statutory powers conferred upon the members of a temple committee so as to deprive them of their statutory functions, yet the ct. has jurisdiction to frame a scheme under sec. 92, Civil Procedure Code (Act V. of 1908), in respect of a temple subject to the control of a temple committee, & introduce changes in its administration which the committee is not legally competent to introduce & which are desirable & necessary to meet the altered circumstances of the time.—SITHARAMA CHETTY *v.* SUBRAMANIA IYER (1916), I. L. R. 39 Mad. 700.—**IND.**

1248. —— Disclaimer by trustees—Particular objects to be selected by trustees—Discretion of trustees not of essence of trust.]—REEVE *v.* A.-G. (1843), 3 Hare, 191; 1 L. T. O. S. 432; 7 Jur. 1168; 67 E. R. 351.

1249. —— —— ——.]—BARCLAY *v.* MASKELYNE (1858), 32 L. T. O. S. 205; 22 J. P. 786; 4 Jur. N. S. 1294; 7 W. R. 43.

Annotation :—**Mentd.** *Re* Sidney, Hingeston *v.* Sidney (1907), 77 L. J. Ch. 51.

1250. Where trust created.]—PAICE *v.* CANTERBURY (ARCHBP.) (1807), 14 Ves. 364; 33 E. R. 560, L. C.

Annotations :—**Apld.** *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 33. **Mentd.** Doe d. Crutchfield *v.* Pearce (1815), 1 Price, 353; Pocock *v.* Lincoln (1821), 3 Brod. & Bing. 27; Bridge *v.* Brown (1843), 2 Y. & C. Ch. Cas. 181; Mapp *v.* Elcock (1849), 2 Ph. 793.

1251. —— Trustees not beneficially entitled.]—COOK *v.* DUCKENFIELD (1743), 2 Atk. 562; 26 E. R. 737, L. C.

Annotations :—**Refd.** A.-G. *v.* Herrick (1772), Amb. 712; Moggridge *v.* Thackwell (1803), 7 Ves. 36.

1252. —— & trustees appointed.]—*Re* PINE, LILLEY *v.* A.-G. (1902), 47 Sol. Jo. 50.

1253. Gift to persons not incorporated—Permanent charitable purposes—Scheme necessary—Although such persons entrusted by testator with management of fund.]—WELLBELOVED *v.* JONES (1822), 1 Sim. & St. 40; 1 L. J. O. S. Ch. 11; 57 E. R. 16.

Annotation :—**Mentd.** Milligan *v.* Mitchell (1835), 4 L. J. Ch. 281.

1254. Income of charity increased.]—A.-G. *v.* HOLLAND (1837), 2 Y. & C. Ex. 683; 7 L. J. Ex. Eq. 51; 160 E. R. 568.

1255. —— Masters of hospital claiming remuneration.]—A.-G. *v.* CHESTER (1842), 6 J. P. 203.

1256. —— Change of circumstances.]—A.-G. *v.* PARK, BUSHELL'S CHARITY (1894), 38 Sol. Jo. 272.

Surplus income generally, *see* Part III., Sect. 6, sub-sect. 5, *ante*.

—— Of educational charity.]—*See* Sub-sect. 1, C., *post*.

1257. Loss of original deed of settlement—Doubt as to proper application of charity.]—*Re* HADLEIGH CHARITIES (1848), 10 L. T. O. S. 479.

1258. Failure of original objects of charity—Endowment subject to Endowed Schools Act, 1869 (c. 56)—Scheme already pending before commissioners under Act—No bar to exercise of jurisdiction of court.]—*Re* CHARITABLE GIFTS FOR PRISONERS, *Ex p.* CHRIST'S HOSPITAL (GOVERNORS) (1872), 8 Ch. App. 199; 42 L. J. Ch. 391; 28 L. T. 84; 21 W. R. 213, L. C. & L. JJ.

1259. For better regulation of charity—Notwithstanding unauthorised rules passed by trustees subsequently confirmed by statute.]—A.-G. *v.* WYGGESTON HOSPITAL (1849), 12 Beav. 113; 50 E. R. 1003.

Annotation :—**Mentd.** A.-G. *v.* Payne (1859), 27 Beav. 168.

1260. —— Home for nurses connected with hospital.]—*Re* WESTMINSTER TRAINING SCHOOL & HOME FOR NURSES (1904), 20 T. L. R. 694.

—— Educational charity.]—*See* Sub-sect. 1, C., *post*.

—— Appointment of new trustees.]—*See* Part VII., Sect. 2, *post*.

1261. Alteration of circumstances—In value of money—Increase in amount of loans.]—A.-G. *v.* MERCERS' CO. (1833), 2 My. & K. 654; 39 E. R. 1094.

1262. —— Funds for educating children from certain townships—Applied in support of national schools—Not confined to children exclusively from those towns.]—*Re* WHELER'S CHARITY (1850), 15 L. T. O. S. 43; 14 J. P. 158.

1263. —— Reversal of decree of inferior court—Jurisdiction of Court of Session.]—ABERDEEN UNIVERSITY *v.* IRVINE (1868), L. R. 1 Sc. & Div. 289, H. L.

Annotation :—**Mentd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

1248 i. *Trust for certain & definite objects—Disclaimer by trustees—Particular objects to be selected by trustees—Payment to commissioners of charitable donations.*]—DILLON v. REILLY (1873), I. R. 10 Eq. 152.—**IR.**

p. —— *Total prohibition of vivisection—Payment to society—For special purpose.*]—A. left a legacy to a Scottish society for the prevention of cruelty to animals, "to be devoted by them specially towards the total & absolute prohibition of vivisection." The Society, finding it impossible to administer the legacy themselves, petitioned for approval of a scheme whereby it was proposed that the trust funds should be paid over in equal shares to two anti-vivisection societies, one Scottish & the other English. The ct. approved a scheme for paying over the whole funds to the Scottish Society.—GLASGOW S. P. C. A. *v.* NATIONAL ANTI-VIVISECTION SOCIETY, [1915] S. C. 757.—**SCOT.**

q. *Where trust created—& trustees appointed.*]—BAIRD *v.* DUNDEE MAGISTRATES (1863), 1 Macph. (Ct. of Sess.) 6; 35 Sc. Jur. 305, H. L.—**SCOT.**

r. *For better regulation of charity—Where portion of gift was of land & failed.*]—*Re* BELVEDERE'S (LADY) CHARITY (1840), 2 I. Eq. R. 354.—**IR.**

s. *Where insufficient number of qualified beneficiaries.*]—A mortification founded in 1801 provided for the maintenance in a hospital erected by the founder of "five widows & five maiden daughters of" burgesses of Old A. not under 50 years of age, etc. In 1901, it being no longer possible to obtain a sufficient number of beneficiaries possessing prescribed qualifications, the ct. sanctioned a scheme extending the class of beneficiaries. — MITCHELL'S HOSPITAL (GOVERNORS) (1902), 4 F. (Ct. of Sess.) 532; 39 Sc. L. R. 440.—**SCOT.**

t. *Alteration of circumstances — Appointment of minister by particular persons—Sale of advowson.*]—A.-G. *v.* DAVIS (1870), 18 W. R. 1132.—**IR.**

w. —— *Where insufficient number of qualified beneficiaries.*]—Petition by directors of a Benevolent Fund for the benefit of female domestic servants in A. showed that in recent years the number of members of the fund had diminished so that for some years there had been only one member of the fund & no benefits distributed. A scheme was approved denuding the directors of the trust & transferring the funds & management thereof to the A. Association for Improving the Condition of the Poor.—ABERDEEN SERVANTS' BENEVOLENT FUND, [1914] S. C. 3.—**SCOT.**

a. —— *Trust for indoor relief—Applied for outdoor relief.*]—Where the benefits of a hospital founded for the indoor relief of deserving poor were being enjoyed by a lower class of persons than was contemplated by the founder, the ct. sanctioned a scheme whereby the trustees were empowered to sell the hospital & apply the income for the future in payment of pensions for outdoor relief.—JOHN WATT'S HOSPITAL, LEITH (GOVERNORS) (1893), 20 R. (Ct. of Sess.) 729; 30 Sc. L. R. 664.—**SCOT.**

b. *Church compulsorily purchased—Rebuilding—Surplus money—Scheme necessary.*]—CLEPHANE *v.* EDINBURGH MAGISTRATES (1864), 2 Macph. (Ct. of Sess.) 7; 4 Macq. 603; 36 Sc. Jur. 325, H. L.—**SCOT.**

c. *Discretion of trustees — Protection of estate.*]—A. left his residue to T., or the person for the time being Roman Catholic Bishop of F., S., Parish Priest of C., or the person for the time being Parish Priest of C., W. & H upon trust after the death of his daughter for life, & after her death to apply the trust estates for such charitable objects & purposes as his trustees should think proper. A. gave his trustees powers of investment & of appointing new trustees, with a declaration that the latter power should be vested in the trustees for the time being, or by the exors. or administrator of the last deceased trustee, subject to this direction, that so far as practicable the Bishop of F. and the Parish Priest of C. should at all times be trustees of his will, if willing to act. He died in 1870. The daughter died in 1897. All the trustees named in the will were then dead, & by orders of the ct. the Bishop of F., the Parish Priest of C., & two other Roman Catholic clergymen were appointed new trustees. They applied for payment of funds in ct. representing the testator's estate, & the application was supported by an affidavit stating the purposes to which they intended to apply the money:—*Held:* while the ct. possessed jurisdiction to settle a scheme, it would not, where intervention was unnecessary for the protection of the property, interfere with the discretionary power of the trustees, & the funds should be paid them.—WARREN *v.* CLANCY, [1898] 1 I. R. 127; 32 I. L. T. 85.—**IR.**

d. *Devise to corporation — Incapacity to take.*]—A. left his farm to the Church of Ireland Representative Body for the benefit of three parishes:—*Held:* the Representative Church Body were devisees in trust, & that

Sect. 1.—*Schemes: Sub-sect.* 1, *B. & C.* (*a*) *&* (*b*).]

B. Charities outside Jurisdiction.

1264. Not administered by English court.]—EDINBURGH CORPN. *v.* AUBERY (1753), Amb. 236; 27 E. R. 157.

Annotation:—**Refd.** Lyons Corpn. v. East India Co. (1836), 1 Moo. P. C. C. 175.

1265. ——.]—A.-G. *v.* LEPINE (1818), 2 Swan. 181; 1 Wils. Ch. 465; 36 E. R. 584, L. C.

Annotations:—**Refd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175; Forbes *v.* Forbes (1854), 18 Beav. 552.

1266. Inquiry directed as to whether charity could be validly carried into effect abroad.]—THOMPSON *v.* THOMPSON (1844), 1 Coll. 381; 8 Jur. 839; 63 E. R. 464.

Annotations:—**Mentd.** Myers *v.* Perigal (1849), 16 Sim. 533; Marsh *v.* Means (1857), 3 Jur. N. S. 790; *Re* Sandersons' Trust (1857), 3 K. & J. 497; Thomson *v.* Shakespeare (1859), John. 612; Sinnett *v.* Herbert (1872), 7 Ch. App. 232; Bowman *v.* Secular Soc., [1917] A. C. 406.

1267. Payment ordered to persons entitled.]—MINET *v.* VULLIAMY (1819), cited in 1 Russ. 113, n.; 38 E. R. 45.

Annotation:—**Refd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175.

1268. ——.]—MARTIN *v.* PAXTON (1824), cited in 1 Russ. 116; 38 E. R. 44, L. C.

Annotations:—**Apld.** Emery *v.* Hill (1826), 1 Russ. 112. **Refd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175.

1269. ——.]—EMERY *v.* HILL (1826), 1 Russ. 112; 38 E. R. 44.

Annotations:—**Refd.** Lyons Corpn. v. East India Co. (1836), 1 Moo. P. C. C. 175. *Re* Geck, Freund *v.* Steward (1893), 69 L. T. 819.

1270. ——.]—COLLYER *v.* BURNETT (1829), Taml. 79; 48 E. R. 32.

1271. —— Not when court deprived of control.]—LYONS CORPN. *v.* EAST INDIA CO. (1836), 1 Moo. P. C. C. 175; 1 Moo. Ind. App. 175; 3 State Tr. N. S. 647; 12 E. R. 782, P. C.

Annotations:—**Refd.** Whicker *v.* Hume (1851), 14 Beav. 509. **Mentd.** Mitford *v.* Reynolds (1842), 1 Ph. 185; A.-G. *v.* Brodie (1846), 6 Moo. P. C. C. 12; Maclean *v.* Cristall (1849), 7 Notes of Cases Supp. 17; Adv.-Gen. of Bengal *v.* Ranee Sur Dossee (1863), 2 Moo. P. C. C. N. S. 22; Yeap Cheah Neo *v.* Ong Cheng Neo (1875), L. R. 6 P. C. 381; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91; Ram Coomar Coondoo *v.* Chunder Canto Mookerjee (1876), 2 App. Cas. 186; *Re* Taylor, Martin *v.* Freeman (1888), 58 L. T. 538.

1272. —— But capital ordered to be transferred to Accountant-General.]—M'COLL *v.* ATHERTON (1848), 12 L. T. O. S. 25; 12 Jur. 1042.

1273. —— Object out of jurisdiction controlled by persons resident in England.]—By his will, dated Nov. 23, 1885, D. bequeathed £1,800 to R. for the purpose of building a synagogue & school at Jerusalem. R. disclaimed the trust. The money was insufficient to build a synagogue & school, & with the consent of the A.-G., the committee of a school called R.'s School, which stands just outside Jerusalem, presented a petition for payment of the money to them on the *cy-près* principle. There was no synagogue attached to the school, but the Jewish service was performed there. The committee consisted of English Jews living in England:—*Held:* though the money was to be expended in a foreign country, the committee being persons resident in England, the ct. had jurisdiction to order the money to be paid to them on their undertaking to apply it to the general purposes of R.'s School.—*Re* DAVIS' TRUSTS (1889), 61 L. T. 430.

1274. Payment into court ordered—Pending application to foreign court.]—FORBES *v.* FORBES (1854), 18 Beav. 552; 23 L. J. Ch. 422; 52 E. R. 216.

1275. —— Bequest to be distributed by named consular chaplain—Party named dead—Dividends to be paid to chaplain for time being.]—A.-G. *v.* STURGE (1854), 19 Beav. 597; 23 L. J. Ch. 495; 52 E. R. 482.

Annotation:—**Refd.** Forbes *v.* Forbes (1854), 18 Beav. 552.

1276. Bequest to school in America—School having ceased to exist—Payment ordered to another school in same parish.]—A.-G. *v.* FRAUNCES, [1866] W. N. 280.

1277. Disclaimer by trustees—Failure of object—Fund falls into residue.]—NEW *v.* BONAKER (1867), L. R. 4 Eq. 655; 36 L. J. Ch. 846; 17 L. T. 28; 32 J. P. 36; 15 W. R. 1131.

Annotations:—**Mentd.** *Re* Geck, Freund *v.* Steward (1893), 69 L. T. 819; *Re* Wilson, Twentyman *v.* Simpson, [1913] 1 Ch. 314.

1278. Fund to remain in England—Trustees resident in England—Scheme directed.]—The ct. has power to settle a scheme for the administration & application of a charitable bequest for objects out of the jurisdiction when the trustees, or some of them, are resident within the jurisdiction, especially when the fund is to remain in England.—*Re* VAGLIANO, VAGLIANO *v.* VAGLIANO (1905), 75 L. J. Ch. 119; 50 Sol. Jo. 110.

C. Educational Charities.

(a) In General.

1279. General rule—Where conflict between trustees—Voluntary charity.]—(1) The ct. will not interfere to regulate a voluntary charity supported by contributions where some of the trustees complain of the acts of the majority of them, as being adverse to the intention of the former & others of the contributors, where the conduct of the acting trustees is free from positive imputation.

(2) Where there is a trust deed in such cases, the ct. will not vary its terms on the application of persons suggesting that they are not such as all the contributors intended they should have been.—*Re* MACCLESFIELD SCHOOL, *Ex p.* PEARSON (1818), 6 Price, 214; 146 E. R. 789.

1280. For better regulation of school—Governors having exceeded powers.]—A.-G. *v.* St. OLAVE'S GRAMMAR SCHOOL (1837), Coop. Pr. Cas. 267; 47 E. R. 499.

1281. —— Although no misconduct alleged against governors—Private individual founder—Circumstances altered by progress of civilisation—Intention of founder carried into effect.]—A.-G. *v.* DEDHAM SCHOOL (1857), 23 Beav. 350; 26 L. J. Ch. 497; 29 L. T. O. S. 45; 21 J. P. 308; 3 Jur. N. S. 325; 5 W. R. 395; 53 E. R. 138.

1282. To settle period of enjoyment of exhibition left uncertain by testator.]—A.-G. *v.* HARROW SCHOOL (GOVERNORS) (1852), 19 L. T. O. S. 224, L. JJ.

1283. To enforce more complete attainment of founder's objects.]—A.-G. *v.* SHERBORNE GRAMMAR SCHOOL (GOVERNORS, ETC.) (1854), 18 Beav. 256; 2 Eq. Rep. 917; 24 L. J. Ch. 74; 23 L. T. O. S. 326; 18 J. P. 312; 18 Jur. 636; 2 W. R. 396; 52 E. R. 101.

Annotations:—**Consd.** *Re* Stafford Charities (1857), 25 Beav. 28. **Refd.** *Re* Chelmsford Grammar School (1855), their statutory incapacity to take under the devise did not defeat A.'s charitable intention, which would be carried out by means of a scheme.—*Re* MOTHERWELL, KEANE *v.* MOTHERWELL, [1910] 1 I. R. 249; 44 I. L. T. 148.—IR.

PART IV. SECT. 1, SUB-SECT. 1.—C. (a).

e. To establish school in accordance with testator's intention.]—A.-G. *v.* AVERY (1877), R. E. D. 253.—CAN.

1280 i. *For better regulation of school.*]—MORISON (1863), 1 Macph. (Ct. of Sess.) 1009; 35 Sc. Jur. 581.—SCOT.

1280 ii. —— *Where impossible to carry out whole purposes of founder.*]—BURNET'S TRUSTEES *v.* DRUMMOND (1876), 4 R. (Ct. of Sess.) 127; 14 Sc. L. R. 106.—SCOT.

1 K. & J. 543; *Re* Campden Charities (1881), 18 Ch. D. 310; *Re* Weir Hospital, [1910] 2 Ch. 124.

1284. Income of school increased—School established by royal charter—Court has no jurisdiction.]—A.-G. *v.* SMART (1748), 1 Ves. Sen. 72; 27 E. R. 898, L. C.

Annotations :—**Refd.** A.-G. *v.* Foundling Hospital (1793), 2 Ves. 42. *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 596.

1285. —— Not applied according to founder's directions—Although with no improper motives.]—A.-G. *v.* CLARENDON (EARL) (1810), 17 Ves. 491; 34 E. R. 190.

Annotations :—**Consd.** A.-G. *v.* Stamford (1842), 1 Ph. 737. **Refd.** A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

1286. School closed owing to lack of funds—Used as church institute.]—A.-G. *v.* PRICE (1908), 72 J. P. 208; 24 T. L. R. 761; 6 L. G. R. 1075; *subsequent proceedings* (1911), 75 J. P. 566; [1912] 1 Ch. 667, C. A.; *sub nom.* PRICE *v.* A.-G., [1914] A. C. 20, H. L.

Annotation :—**Mentd.** A.-G. *v.* Shadwell, [1910] 1 Ch. 92.

(b) What Provisions Sanctioned.

1287. Eligibility of boys for exhibitions—Boarders of headmaster excluded.]—SOLICITOR GENERAL *v.* BATH CORPN., A.-G. *v.* BLAIR (1849), 18 L. J. Ch. 275; 13 L. T. O. S. 64; 13 Jur. 866.

1288. Alteration of system of instruction—In grammar school—Not extended to include French, German, & commercial subjects.]—A.-G. *v.* WHITELEY (1805), 11 Ves. 241; 32 E. R. 1080, L. C.

Annotations :—**Consd.** A.-G. *v.* Christ Church (1822), Jac. 474; **Folld.** *Re* Highgate School (1838), 2 Jur. 774. **Refd.** A.-G. *v.* Hartley (1820), 2 Jac. & W. 353; *Re* Weir Hospital, [1910] 2 Ch. 124. **Mentd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1289. —— —— Extended to include writing & arithmetic.]—A.-G. *v.* DIXIE (1825), 3 Russ. 534, n.; 38 E. R. 676, L. C.

Annotation :—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395.

1290. —— —— ——.]—A.-G. *v.* HABERDASHERS' CO. (MASTER, ETC.) (1828), 3 Russ. 530; 38 E. R. 674, L. C.

Annotations :—**Folld.** A.-G. *v.* Gascoigne (1833), 2 My. & K. 647. **Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395.

1291. —— —— ——.]—A.-G. *v.* GASCOIGNE (1833), 2 My. & K. 647; 39 E. R. 1091.

Annotations :—**Mentd.** A.-G. *v.* Solly (1835), 5 L. J. Ch. 5; *Re* Herbage Rents, Greenwich, Charity Comrs. *v.* Green, [1896] 2 Ch. 811.

1292. —— —— —— & other learning fit to be taught in grammar school.]—A.-G. *v.* CAIUS COLLEGE (1837), 2 Keen, 150; 6 L. J. Ch. 282; 48 E. R. 585.

Annotation :—**Mentd.** Solicitor-General *v.* Bath Corpn., A.-G. *v.* Blair (1849), 18 L. J. Ch. 275.

1293. —— —— Not extended to English, writing, & arithmetic.]—A.-G. *v.* MANSFIELD (EARL) (1827), 2 RUSS. 501; 38 E. R. 423, L. C.

Annotations :—**Refd.** Clephane *v.* Edinburgh (1869), L. R. 1 Sc. & Div. 417; *Re* Weir Hospital, [1910] 2 Ch. 124.

1294. —— —— ——.]—*Re* CHIPPING SODBURY FREE GRAMMAR SCHOOL (1829), 8 L. J. O. S. Ch. 13, L. C.

Annotation :—**Mentd.** A.-G. *v.* Bristol Corpn. (1845), 14 Sim. 648.

1295. —— —— Extended to include history, geography, & mathematics—Notwithstanding opposition of headmaster.]—*Re* KIRKBY RAVENSWORTH GRAMMAR SCHOOL (1843), 1 L. T. O. S. 226.

1296. —— —— Not where funds only sufficient to carry out founder's object of teaching learned languages.]—*Re* MARLBOROUGH SCHOOL (1843), 13 L. J. Ch. 2; 2 L. T. O. S. 93; 7 J. P. 223; 7 Jur. 1047, L. C.

1297. —— —— Extended to include all branches of learning likely to be beneficial to scholars—Funds being ample.]—A.-G. *v.* STAMFORD (EARL) (1843), 1 Ph. 737; 12 L. J. Ch. 297; 7 Jur. 359; 41 E. R. 812, L. C.

Annotations :—**Refd.** A.-G. *v.* Devon (1846), 15 Sim. 193; A.-G. *v.* Ludlow Corpn. (1848), 2 Ph. 685; A.-G. *v.* Worcester (1851), 9 Hare, 328; *Re* Bristol Free Grammar School (1860), 28 Beav. 161; Manchester School Case (1867), 2 Ch. App. 497. **Mentd.** A.-G. *v.* Clifton (1863), 32 Beav. 596.

1298. Boarders—Headmaster permitted to take—Provided free scholars not prejudiced.]—A.-G. *v.* HARTLEY (1820), 2 Jac. & W. 353; 37 E. R. 663, L. C.

Annotations :—**Consd.** A.-G. *v.* Worcester (1851), 9 Hare, 328. **Mentd.** *Re* Storie's University Gift (1860), 2 De G. F. & J. 529; Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1299. —— Headmaster not permitted to take.]—A.-G. *v.* GLOUCESTER CORPN. (1860), 28 Beav. 438; 54 E. R. 434.

——.]—*See, also,* No. 1287, *ante*, Nos. 1349 *et seq.*, *post.*

1300. Disseverance of free school & parochial charity school—United for seventy years—Not permitted—No evidence that such union injurious.]—A.-G. *v.* GOODCHILD (1842), 6 J. P. 426.

1286 i. *School closed owing to lack of funds—Reference to Master to settle scheme.*]—INCORPORATED SOCIETY *v.* PRICE (1844), 1 Jo. & Lat. 498.—**IR.**

PART IV. SECT. 1, SUB-SECT. 1.—C. (b).

1288 i. *Alteration of system of instruction.*]—A. endowed a school at G. & directed that the Bible should be read daily in the school. Owing to modern educational requirements it was impossible to carry on the school, & it was sold under authority of the ct. The ct. approved of a scheme in so far as it proposed to devote the funds to providing technical instruction in manufactures, agriculture, dairy work & ambulance work, but refused to sanction their application to promoting instruction in Scripture knowledge & maintaining a Sunday school library & providing prizes for the Sunday school & to establishing evening classes in the Board School there.—SUTHERLAND (1905), 7 F. (Ct. of Sess.) 634; 42 Sc. L. R. 561.—**SCOT.**

l. Alteration of bursary qualification—Time of residence.]—*Re* "JOHN REID PRIZE" TRUSTEES (1893), 20 R. (Ct. of Sess.) 938.—**SCOT.**

g. —— ——.]—A. gave property on trust to provide bursaries for students in G. University who should attend the "arts course for 4 years taking at least 3 branches of study in each of the first 2 years & 2 in each of the remaining 2 years." Changes were made in the arts curriculum. On a petition to the ct. for its sanction to an alteration in the regulations concerning the qualification of bursaries:—*Held:* the trustees might frame regulations for the tenure of the bursaries & from time to time to alter such regulations subject to the proviso that the holders of bursaries should be bound to attend the arts curriculum for at least 3 years & to take such branches of study in each year as the trustees should approve.—*Re* STEWART'S TRUSTEES, [1909] S. C. 144.—**SCOT.**

h. —— *Benefit extended from males to females.*]—CLARK BURSARY FUND TRUSTEES (1903), 5 F. (Ct. of Sess.) 433.—**SCOT.**

k. —— ——.]—BLYTHE SCHOLARSHIP TRUSTEES *v.* ST. ANDREWS (1905), 7 F. (Ct. of Sess.) 855.—**SCOT.**

l. —— *Women students disqualified.*]—A. bequeathed money to found a bursary to be conferred on a young man of merit, being a native of the parishes of C. or T., & to be tenable for 3 years to enable him to attend the arts classes in a Scotch University with the view of his taking the degree of M.A. The arts classes & the degree of M.A. had been thrown open to women students prior to the date of the will. The ct. refused to extend the benefits of the trust to women students being natives of the parishes favoured.—DUART BURSARY FUND TRUSTEES, PETITIONERS, [1911] S. C. 9.—**SCOT.**

m. —— *Extension of limits.*]—A. gave a fund for founding a bursary to be granted to any deserving young man, being a native of D., attending college in the prospect of becoming a minister or a missionary. No application for it had ever been made. The ct. empowered the trustees in event of failure of application from natives of D., to grant the bursary to otherwise qualified appcts. born in D., or failing such appcts to otherwise qualified appcts. without conditions as to nativity.—DUNBAR KIRK SESSION PETITION, [1908] S. C. 852.—**SCOT.**

Sect. 1.—*Schemes: Sub-sect.* 1, *C.* (*b*); *sub-sects.* 2, 3, 4 & 5, *A.*]

1301. Religious instruction—In grammar school—Headmaster in holy orders—No specific directions given by court but details left to headmaster.]—*Re* KING'S GRAMMAR SCHOOL, WARWICK (1845), 1 Ph. 564; 14 L. J. Ch. 338; 4 L. T. O. S. 349; 9 J. P. 178; 41 E. R. 747, L. C.

Annotations:—**Folld.** A.-G. *v.* Worcester (1851), 9 Hare, 328. **Distd.** *Re* Chelmsford Grammar School (1855), 1 K. & J. 543.

1302. —— In Church of England school—Ordinances making use of certain prayers, attendance at divine service in parish church & religious instruction compulsory—Valid.]—A.-G. *v.* SHERBORNE GRAMMAR SCHOOL (GOVERNORS, ETC.) (1854), 18 Beav. 256; 2 Eq. Rep. 917; 24 L. J. Ch. 74; 23 L. T. O. S. 326; 18 J. P. 312; 18 Jur. 636; 2 W. R. 396; 52 E. R. 101.

Annotations:—**Distd.** *Re* Chelmsford Grammar School (1855), 1 K. & J. 543. **Folld.** *Re* Stafford Charities (1857), 25 Beav. 28. **Reid.** *Re* Campden Charities (1881), 18 Ch. D. 310. **Mentd.** *Re* Weir Hospital, [1910] 2 Ch. 124.

1303. —— —— Exemption of scholars whose parents objected thereto from receiving religious instruction — Not allowed.]—*Re* CHELMSFORD GRAMMAR SCHOOL (1855), 1 K. & J. 543; 3 Eq. Rep. 517; 24 L. J. Ch. 742; 25 L. T. O. S. 32; 19 J. P. 147; 3 W. R. 291; 69 E. R. 575.

Annotation:—**Consd.** Baker *v.* Lee (1860), 8 H. L. Cas. 495.

1304. —— —— No special directions given—Religious instruction to be in accordance with statutes & ordinances.]—*Re* STAFFORD CHARITIES (1857), 25 Beav. 28; 27 L. J. Ch. 381; 31 L. T. O. S. 20; 21 J. P. 821; 3 Jur. N. S. 1191; 53 E. R. 546.

See, also, No. 1410, *post.*

1305. —— In school held not to be Church of England school—Children not to be compelled to attend church or receive religious instruction.]—A.-G. *v.* HABERDASHERS' CO. (1854), 19 Beav. 385; 24 L. J. Ch. 329; 23 L. T. O. S. 328; 52 E. R. 399.

1306. Income of school increased—Salaries of masters increased—Provision for prizes made.]—A.-G. *v.* LADYMAN (1838), Coop. Pr. Cas. 180; 47 E. R. 456.

1307. Church of England school—To be open to pupils of every religious denomination.]—A.-G. *v.* CLIFTON (1863), 32 Beav. 596; 2 New Rep. 215; 9 L. T. 136; 27 J. P. 565; 9 Jur. N. S. 939; 55 E. R. 234.

Annotation:—**Consd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554.

See, also, No. 1332, *post.*

Appointment & removal of trustees.]—*See* Part VII., Sects. 2, 3, *post.*

Appointment & removal of masters.] — *See* EDUCATION.

Under Education Acts.]—*See* EDUCATION.

Alteration of schemes—Settled by court.]—*See* Sub-sect. 5, B., *post.*

—— **Settled by Charity Commissioners.**]—*See* Sub-sect. 5, C., *post.*

SUB-SECT. 2.—WHEN DISPENSED WITH.

1308. Gift to charitable corporation—Testator having reposed confidence in them.]—SOCIETY FOR PROPAGATION OF THE GOSPEL *v.* A.-G. (1826), 3 Russ. 142; 38 E. R. 530.

Annotation:—**Reid.** *Re* Geck, Freund *v.* Steward (1893), 69 L. T. 819.

1309. Gift to private or public charity—Absolute discretion of trustee.]—WALDO *v.* CALEY (1809), 16 Ves. 206; 33 E. R. 962, L. C.

Annotations:—**Folld.** Horde *v.* Suffolk (1833), 2 My. & K. 59. **Expld.** Ellis *v.* Selby (1836), 1 My. & Cr. 286. **Folld.** *Re* Lea, Lea *v.* Cooke (1887), 34 Ch. D. 528. **Mentd.** Willan *v.* Willan (1809), 16 Ves. 216; Walburne *v.* Ingilby (1833), 3 L. J. Ch. 21; Williams *v.* Kershaw (1835), 5 Cl. & Fin. 111; Suisse *v.* Lowther (1843), 7 Jur. 808.

1310. —— ——.]—HORDE *v.* SUFFOLK (EARL) (1833), 2 My. & K. 59; 39 E. R. 866.

Annotations:—**Consd.** Ellis *v.* Selby (1835), 7 Sim. 352; Williams *v.* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84. **Folld.** *Re* Lea, Lea *v.* Cooke (1887), 34 Ch. D. 528. **Reid.** Ellis *v.* Selby (1836), 1 My. & Cr. 286.

1311. Gift to object of permanent & respectable character—Payment to officer directed—President of Roman Catholic college.]—WALSH *v.* GLADSTONE (1843), 1 Ph. 290; 8 Jur. 25; 41 E. R. 642.

Annotations:—**Folld.** *Re* Lea, Lea *v.* Cooke (1887), 34 Ch. D. 528. **Consd.** *In the goods of* M'Auliffe, [1895] P. 290. **Mentd.** Read *v.* Hodgens (1844), 4 L. T. O. S. 235; Stewart *v.* Greene (1871), 19 W. R. 396.

1312. —— —— Head of Salvation Army—No intention to create permanent trust.]—*Re* LEA, LEA *v.* COOKE (1887), 34 Ch. D. 528; 56 L. J. Ch. 671; 56 L. T. 482; 35 W. R. 572; 3 T. L. R. 360.

1313. —— —— Head of convent.]—A residuary legacy was given by a will to C. to be disposed of as she should think fit at her discretion for the benefit of a certain convent, & the only exor. of the will & C. both died during testatrix's lifetime:—*Held:* (1) letters of administration with the will annexed ought to be granted to the head of the convent, the ct. being satisfied of the permanence of the institution & the fitness of the head, having regard to her powers, to receive & apply the legacy; (2) it was not necessary to require a scheme to be propounded.—*In the Goods of* M'AULIFFE, [1895] P. 290; 64 L. J. P. 126; 73 L. T. 193; 44 W. R. 304; 11 T. L. R. 528; 11 R. 610.

1314. —— —— Bishop of Roman Catholic diocese.]—Testator, by his will dated in 1880, left his books, a legacy, & his residuary estate to the Roman Catholic Bishop of S., naming the bishop, for the benefit of the library of the Diocesan Seminary of S. Since the date of the will there had been several bishops & the seminary library was vested in each one in succession, *ex officio.* The ct., on being satisfied as to the objects & constitution of the seminary:—*Held:* a *primâ facie* case for administration had been made out, & ought to be granted, with the will annexed, to the present Bishop of S., under Probate Act, 1857 (c. 77), s. 7.—*In the Goods of* LALOR (1901), 71 L. J. P. 17; 85 L. T. 643; 18 T. L. R. 15.

1315. Gift of too small amount—"To the London poor £50"—Ordered to be distributed among poor boxes at certain Metropolitan Police Courts.]—*Re* LOUSADA, BACON *v.* BACON (1887), 82 L. T. Jo. 358.

SUB-SECT. 3.—CONSTRUCTION AND EFFECT OF.

1316. Whether school intended to be carried on as Church of England school.]—A.-G. *v.* HABERDASHERS' CO. (1854), 19 Beav. 385; 24 L. J. Ch. 329; 23 L. T. O. S. 328; 52 E. R. 390.

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n. —— *Extension to members of different church.*]—MAILLER'S TRUSTEES *v.* ALLAN (1904), 7 F. (Ct. of Sess.) 326.—SCOT.

1302 i. *Religious instruction — In Church of England school—Religion of child not test of eligibility.*]—A.-G. *v.* LIMERICK (BP.) (1870), I. R. 5 Eq. 403.—IR.

PART IV. SECT. 1, SUB-SECT. 2.

1311 i. *Gift to object of permanent & respectable character—For scholarship—Preference to candidates of particular name—Payment to college.*]—WHITE *v.* ST. ANDREW'S COLLEGE (1886), 7 N. S. W. Eq. 40.—AUS.

o. *Trust of a temporary nature — Gift to charity during minority of son.*]—POWERSCOURT *v.* POWERSCOURT (1824), 1 Mol 616.—IR.

1317. ——.]—*Re* STAFFORD CHARITIES (1857), 25 Beav. 28 ; 27 L. J. Ch. 381 ; 31 L. T. O. S. 20 ; 21 J. P. 821 ; 3 Jur. N. S. 1191 ; 53 E. R. 546.

1318. ——.]—Under a scheme confirmed by the Ct. of Ch. in 1845, provision was made for the maintenance of a day school at B. out of certain charitable funds. The scheme gave a preference to the vicar & churchwardens in the appointment of trustees, & provided that the master & mistress of the school should teach certain specified subjects & such other things as the trustees should direct, & that there should be read in the school a portion of the scriptures & suitable prayers every morning & evening. It also provided for the children going to church & Sunday school, but gave relief in this respect to the children of dissenters ; & it placed the school under the superintendence of the clergyman of B. who was empowered to visit the school & instruct & examine the children. Since its foundation the school had been conducted as a Church of England school. Since 1871, except for a short interval, the school had been conducted as a public elementary school in receipt of a parliamentary grant :—*Held :* (1) the school was intended to be carried on as a school at which religious instruction in accordance with the doctrine of the Church of England should be given ; (2) having regard to Education Act, 1902 (c. 42), s. 7 (6), the managers were entitled to authorise religious instruction of that character to be given by the regular teachers on weekdays during school hours.—*Re* WREXHAM PAROCHIAL EDUCATIONAL FOUNDATION, A.-G. *v.* DENBIGHSHIRE COUNTY COUNCIL (1910), 74 J. P. 198 ; 8 L. G. R. 526.

1319. Almshouse for poor not restricted to any religious denomination—Master to be priest of Church of England—Not necessary that trustees should belong to Church of England.]—A.-G. *v.* ST. JOHN'S HOSPITAL, BATH (1876), 2 Ch. D. 554 ; 45 L. J. Ch. 420 ; 34 L. T. 563 ; 24 W. R. 913.

Annotation :—**Refd.** *Re* Ross' Charity, [1897] 2 Ch. 397.

1320. For benefit of particular hospital in England —"Or such other medical charities" as trustees might determine—Not applicable to Scotland.]—A scheme sanctioned by the ct. for the administration of a charity provided that the income of the charity should be applied for the benefit of a particular hospital in England "or such other medical charity or charities" of any kind, school, or teaching whatsoever, & partly or exclusively to one or other of such objects as the trustees might in their uncontrolled discretion from time to time determine. The trustees desired to apply the income to medical charities in Scotland :—*Held :* the charity must be administered & the trusts of the scheme carried into effect within the jurisdiction of the ct., & the income could not be applied to a "medical charity or charities" in Scotland.—*Re* MIRRLEES' CHARITY, MITCHELL *v.* A.-G., [1910] 1 Ch. 163 ; 79 L. J. Ch. 73 ; 101 L. T. 549 ; 26 T. L. R. 77.

1321. Orphanage school for daughters of clergymen—Girls not orphans admitted to certain benefits—Part of instruction continued at other schools.]—Testatrix, by a will in French form, gave the residue of her property for the purpose of founding & maintaining an orphanage school for the daughters of clergymen. A scheme was prepared which provided (*inter alia*) that girls who were not orphans could be admitted to some of the benefits of the school :—*Held :* the scheme was one for the foundation of an orphanage school, & was not the less so because girls who were not orphans could be admitted, or because part of the instruction was to be given or continued at other schools or institutions.—*Re* DE NOAILLES, CLOUSTON *v.* TUFNELL (1916), 85 L. J. Ch. 807 ; 114 L. T. 1089.

1322. Scheme of Charity Commissioners—Cannot destroy existing endowed charity.]—*Re* FARAKER, FARAKER *v.* DURELL, No. 921, *ante*.

SUB-SECT. 4.—ADMINISTRATION OF.

1323. Court does not administer charity—Duty of trustees to do so.]—A.-G. *v.* HABERDASHERS' CO. (1791), 1 Ves. 295 ; 30 E. R. 351, L. C. ; *subsequent proceedings* (1792), 4 Bro. C. C. 103.

Annotations :—**Consd.** *Re* Newport, Salop, Free Grammar School, *Re* William Jones, Monmouth, Free Grammar School, A.-G. *v.* Haberdashers' Co. (1852), 16 Jur. 717. **Refd.** *Re* Weir Hospital, [1910] 2 Ch. 124.

1324. —— ——.]—A.-G. *v.* SOLLY (1835), 5 L. J. Ch. 5.

Management of trust property.]—*See* Parts IV., VII., *post*.

SUB-SECT. 5.—ALTERATION OF.

A. Schemes established by Statute.

1325. Jurisdiction of court—Under Charities Procedure Act, 1812 (c. 101)—Inquiry ordered as to necessity for further Act of Parliament.]—*Re* SHREWSBURY GRAMMAR SCHOOL (1849), 1 Mac. & G. 324 ; 1 H. & Tw. 401 ; 19 L. J. Ch. 287 ; 14 Jur. 259 ; 41 E. R. 1290, L. C.

Annotation :—**Follo.** *Re* Hall's Charity (1851), 14 Beav. 115.

1326. —— —— **Court will interfere only when change beneficial to charity.**]—*Re* ETWALL HOSPITAL & REPTON FREE SCHOOL (1852), 18 L. T. O. S. 251 ; *sub nom. Re* PORT'S (SIR JOHN) HOSPITAL & FREE SCHOOL, 16 J. P. 196.

—— **Under Grammar Schools Act, 1840 (c. 77).**]—*See* EDUCATION.

1327. —— **Opposition by governors—Charity founded by royal charter—No breach of trust.**]—In 1890 a scheme was approved of under Endowed Schools Act 1869 (c. 56), dealing with certain of the endowments of C. Hospital. Among the endowments excluded from the scheme were educational & non-educational endowments which were of less than fifty years' standing on Aug. 2, 1869, the time limited for the commencement of that Act. By the scheme the endowments dealt with by it were to be administered by the governing bodies thereby constituted, namely, the governors & the council of almoners, in accordance with the scheme under the name of C. Hospital, the result being that with regard to the endowments comprised in the scheme the charity was reconstituted, but with regard to the excepted endowments the old governing body was left intact & its powers & duties as constituted & existing at the date of the scheme were wholly exempted from the operation of the scheme. A new scheme proposed that all the excepted educational endowments should be made over to the governing body constituted by the old scheme, in augmentation of the endowments already comprised therein, & should be dealt with & administered according to that scheme. The new scheme was opposed by the existing governing body of the excepted endowments :—*Held :* it was beyond the jurisdiction of the ct. to sanction the new scheme in the face of the opposition of the existing

1319 i. *Almshouse for poor not restricted to any religious denomination—Ministrations of Protestant clergyman for inmates—No compulsion to receive.*] —A.-G. *v.* LIMERICK (BP.) (1870) I. R. 5 Eq. 403.—IR.

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governing body, their title being founded on royal charter & established by Act of Parliament, & no breach of trust being charged.—A.-G. *v.* CHRIST'S HOSPITAL (GOVERNORS), [1896] 1 Ch. 879; 65 L. J. Ch. 646; 74 L. T. 96; 60 J. P. 246; 44 W. R. 379; 12 T. L. R. 242; 40 Sol. Jo. 353.

B. Schemes settled by Court.

1328. How application may be made—By petition under Charities Procedure Act, 1812 (c. 101).]—A.-G. *v.* WORCESTER (BP.) (1851), 9 Hare, 328; 21 L. J. Ch. 25; 18 L. T. O. S. 86; 15 J. P. 831; 16 Jur. 3; 68 E. R. 530.

Annotations :—**Consd.** *Re* Manchester New College (1853), 16 Beav. 610; A.-G. *v.* Stewart (1872), L. R. 14 Eq. 17. **Refd.** *Re* Port's Hospital & Free School (1852), 16 J. P. 196; *Re* Chelmsford Grammar School (1855), 3 Eq. Rep. 517; A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92; *Re* Browne's Hospital *v.* Stamford (1889), 60 L. T. 288. **Mentd.** *Re* Bristol Free Grammar School (1860), 28 Beav. 161; Manchester School Case (1867), 2 Ch. App. 497; *Re* Betton's Charity, [1908] 1 Ch. 205.

1329. By whom application made—By or with consent of Attorney-General.]—A.-G. *v.* STEWART (1872), L. R. 14 Eq. 17; 26 L. T. 419; 20 W. R. 570.

1330. —— ——.]—A.-G. *v.* HALL (1875), Seton's Judgments & Orders, 7th ed. 1259.

1331. Power of court to vary—Not dependent on character in which decree made by Lord Chancellor.]—A.-G. *v.* WORCESTER (BP.) (1851), 9 Hare, 328; 21 L. J. Ch. 25; 18 L. T. O. S. 86; 15 J. P. 831; 16 Jur. 3; 68 E. R. 530.

Annotations :—**Consd.** *Re* Manchester New College (1853), 16 Beav. 610; A.-G. *v.* Stewart (1872), L. R. 14 Eq. 17; *Re* Browne's Hospital *v.* Stamford (1889), 60 L. T. 288. **Refd.** *Re* Port's Hospital & Free School (1852), 16 J. P. 196; *Re* Chelmsford Grammar School (1855), 3 Eq. Rep. 517; A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92; Manchester School Case (1867), 2 Ch. App. 497; *Re* Betton's Charity, [1908] 1 Ch. 205. **Mentd.** *Re* Bristol Free Grammar School (1860), 28 Beav. 161.

1332. —— **Not when alteration fundamental—Admission of dissenters to Church of England school—Act of Parliament necessary.**]—A.-G. *v.* MARKET BOSWORTH SCHOOL (1865), 35 Beav. 305; 55 E. R. 913.

See, also, No. 1307, *ante*.

1333. —— **Scheme directed by House of Lords to be framed by court below—Scheme involving discretion—No appeal to House of Lords as to exercise of such discretion.**]—CLEPHANE *v.* EDINBURGH CORPN., No. 1373, *post*.

1334. When court will vary—Scheme not in conformity with original trust.]—A.-G. *v.* BULLER (1822), Jac. 407; 37 E. R. 904, L. C.

Annotation :—**Consd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395.

1335. —— ——.]—A.-G. *v.* BOVILL (1840), 1 Ph. 762; 4 Jur. 548; 41 E. R. 822, L. C.

Annotations :—**Foll.** A.-G. *v.* Worcester (1851), 9 Hare, 328. **Refd.** A.-G. *v.* Stewart (1872), L. R. 14 Eq. 17; *Re* Campden Charities (1881), 18 Ch. D. 310.

1336. —— **Change beneficial to charity—Gift for relief of persons imprisoned for debts under £5—Scheme extending relief to persons imprisoned for debts under £30 further extended to relief of persons whose liberation could be obtained by payment of £30.**]—*Re* MERCHANT TAYLORS' TRUST (1850), 16 L. T. O. S. 210.

1337. —— —— **Substantial grounds for variance necessary.**]—A.-G. *v.* WORCESTER (BP.) (1851), 9 Hare, 328; 21 L. J. Ch. 25; 18 L. T. O. S. 86; 15 J. P. 831; 16 Jur. 3; 68 E. R. 530.

Annotations :—**Consd.** *Re* Manchester New College (1853), 16 Beav. 610; A.-G. *v.* Stewart (1872), L. R. 14 Eq. 17; *Re* Browne's Hospital *v.* Stamford (1889), 60 L. T. 288. **Refd.** *Re* Port's Hospital & Free School (1852), 16 J. P. 196; *Re* Chelmsford Grammar School (1855), 3 Eq. Rep. 517; A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92; Manchester School Case (1867), 2 Ch. App. 497; *Re* Betton's Charity, [1908] 1 Ch. 205. **Mentd.** A.-G. *v.* Bristol Corpn. Grammar School (1860), 24 J. P. 195.

1338. —— —— **Proposed application though identical with original object must be as beneficial as the existing one.**]—A.-G. *v.* STEWART (1872), L. R. 14 Eq. 17; 26 L. T. 419; 20 W. R. 570.

—— —— **Educational charities.**]—*See* Nos. 1344 *et seq.*, *post*.

1339. ——**Changed circumstances—Lapse of time—Making alteration beneficial.**]—A.-G. *v.* ST. JOHN'S HOSPITAL, BATH (1865), 1 Ch. App. 92; 35 L. J. Ch. 207; 13 L. T. 616; 30 J. P. 72; 12 Jur. N. S. 127; 14 W. R. 237, L. JJ.

1340. —— —— **Procuring discharge of prisoners.**]—A.-G. *v.* HANKEY (1867), L. R. 16 Eq. 140, n.

1341. —— —— **Growth of population—Fresh apportionment.**]—*Re* CAMPDEN CHARITIES (NO. 2) (1883), 24 Ch. D. 213; 52 L. J. Ch. 780; 48 L. T. 521; 31 W. R. 741.

—— —— **Educational charities.**]—*See* Nos. 1344 *et seq.*, *post*.

1342. —— **Rectification of slip in original scheme—Unnecessary clause as to renewable leases—Charitable Trusts Act, 1853 (c. 137).**]—*Re* SMITH'S (HENRY) CHARITY, HARTLEPOOL (1882), 20 Ch. D. 516; 30 W. R. 929, C. A.

1343. —— **Depreciation of property—Reduction of confrater's salary—Number of governors increased.**]—The founder of a religious & eleemosynary hospital had instituted officers, consisting of a warden & a confrater, *i.e.* assistant or subwarden; & the almspeople were to be ten poor men & two poor women. In 1873 a scheme was sanctioned whereby £1,500 *per annum* of the surplus income of the hospital was devoted to the endowment of certain schools in the locality. Owing to the depreciation of the hospital property no more than £900 of the £1,500 was, in 1888, available for those schools. A scheme was presented by the A.-G., one of the terms of which was, that the office of confrater should be abolished as being a sinecure office, or that the stipend of any future confrater should, at any rate, be reduced. It was also suggested that the number of the trustees or governors, then consisting of three only, should be augmented. The hospital governors submitted that, for the purpose of aiding the schools, the ct. had no more jurisdiction to deprive the confrater of his rights under the founder's provision than it had to abolish his office altogether, or to reduce the number of almspeople in the hospital for a similar purpose :—*Held* : (1) although the confrater was an integral portion of the original constitution of the hospital, & just as much, for the purpose of law & the administration of charitable trusts, an object of the charity as the almspeople themselves were, yet the effect of the scheme of 1873 was to place the schools amongst the objects of the charity, & although it was not competent for the ct. to abolish the office of confrater & thus to get rid of his stipend, yet it was within its jurisdiction to remodel the scheme by diminishing the stipend of any future confrater; (2) the number of the governors ought to be augmented, three being too small a number.—*Re* BROWNE'S HOSPITAL *v.* STAMFORD (1889), 60 L. T. 288; 5 T. L. R. 225.

1344. —— **Educational charity—Not where proposed alteration inconsistent with earlier scheme establishing rights of school—Proposal to include**

by the ct. may be liable to variation for good cause shown.—PRAYAG DOSS JI VARU MAHANT *v.* TIRUMALA SRIRANGACHARLAVARU (1905), I. L. R. 28 Mad. 319.—IND.

teaching of mathematics set aside.]—*Re* HIGHGATE SCHOOL (1838), 2 Jur. 774.

1345. —— —— —— **Proposal to interfere with rights of non-foundationers to exhibitions set aside—Eligible classes of boys extended.**]—*Re* RUGBY SCHOOL (1839), 1 Beav. 457; 48 E. R. 1017.

1346. —— —— —— —— **.**]—GLASGOW COLLEGE *v.* A.-G. (1848), 1 H. L. Cas. 800; 9 E. R. 978, H. L.; *revsg.* S. C. *sub nom.* A.-G. *v.* GLASGOW COLLEGE (1846), 2 Coll. 665.

Annotation:—**Refd.** Bourne *v.* Keane, [1919] A. C. 815.

1347. —— —— —— **Proposal involving no instruction in learned languages set aside—Proposal to enlarge number of scholars set aside—Alteration in capitation fees for foundation boys sanctioned.**]—BERKHAMPSTEAD SCHOOL CASE (1865), L. R. 1 Eq. 102.

Annotations:—**Refd.** Manchester School Case (1865), L. R. 1 Eq. 55; *Re* Berkhampsted Grammar School, [1908] 2 Ch. 25.

1348. —— —— **Distribution of exhibitions to university—Boys of residents to have preference.**]—*Re* TONBRIDGE SCHOOL (1844), 3 L. T. O. S. 258, L. C.

Exhibitions & scholarships at universities generally, *see* Part VI., Sect. 1, sub-sect. 3, *post*.

1349. —— —— **Boarders—Reference directed to inquire on what conditions & subject to what restrictions masters to be allowed to take.**]—A.-G. *v.* STAMFORD (EARL) (1843), 1 Ph. 737; 12 L. J. Ch. 297; 7 Jur. 359; 41 E. R. 812, L. C.; *subsequent proceedings* (1849), 16 Sim. 453.

Annotations:—**Expld.** A.-G. *v.* Devon (1846), 15 Sim. 193. **Consd.** A.-G. *v.* Worcester (1851), 9 Hare, 328; Manchester School Case (1867), 2 Ch. App. 497. **Mentd.** A.-G. *v.* Ludlow Corpn. (1848), 2 Ph. 685; *Re* Bristol Free Grammar School (1860), 28 Beav. 161; A.-G. *v.* Clifton (1863), 32 Beav. 596.

1350. —— —— —— **Headmaster & masters not permitted to take—Education extended to other matters than grammar.**]—A.-G. *v.* DEVON (EARL) (1846), 15 Sim. 193; 16 L. J. Ch. 34; 10 Jur. 1067; 60 E. R. 591.

Annotations:—**Consd.** A.-G. *v.* Stamford (1849), 16 Sim. 453; A.-G. *v.* Worcester (1851), 9 Hare, 328.

1351. —— —— —— —— **.**]—A.-G. *v.* STAMFORD (EARL) (1849), 16 Sim. 453; 12 L. T. O. S. 395; 13 Jur. 438; 60 E. R. 950.

Annotations:—**Expld.** A.-G. *v.* Worcester (1851), 9 Hare, 328. **Mentd.** Manchester School Case (1867), 2 Ch. App. 497.

1352. —— —— —— —— **Unless eligibility of boarders taking scholarships restricted.**]—A.-G. *v.* CORPUS CHRISTI COLLEGE, OXFORD (1849), 14 L. T. O. S. 198.

1353. —— —— —— —— **No necessity for their admission.**]—*Re* BRISTOL FREE GRAMMAR SCHOOL (1860), 28 Beav. 161; 29 L. J. Ch. 514; 2 L. T. 74; 6 Jur. N. S. 285; 54 E. R. 327.

Annotation:—**Refd.** Manchester School Case (1865), L. R. 1 Eq. 55.

1354. —— —— —— **Headmaster permitted to take.**]—BERKHAMPSTEAD SCHOOL CASE (1865), L. R. 1 Eq. 102.

Annotations:—**Refd.** Manchester School Case (1865), L. R. 1 Eq. 55. **Mentd.** *Re* Berkhampsted Grammar School, [1908] 2 Ch. 25.

1355. —— —— —— **Their admission not to affect admission of free boys.**]—A.-G. *v.* WORCESTER (BP.) (1851), 9 Hare, 328; 21 L. J. Ch. 25; 18 L. T. O. S. 86; 15 J.P. 831; 16 Jur. 3; 68 E. R. 530.

Annotations:—**Consd.** *Re* Bristol Free Grammar School (1860), 28 Beav. 161. **Refd.** A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92; A.-G. *v.* Stewart (1872), L. R. 14 Eq. 17. **Mentd.** *Re* Port's Hospital & Free School (1852), 16 J. P. 196; *Re* Manchester New College (1853), 16 Beav. 610; *Re* Chelmsford Grammar School (1855), 3 Eq. Rep. 517; Manchester School Case (1867), 2 Ch. App. 497; *Re* Browne's Hospital *v.* Stamford (1889), 60 L. T. 288; *Re* Betton's Charity, [1908] 1 Ch. 205.

See, also, Nos. 1287, 1298, 1299, *ante*.

1356. —— —— **Income of school decreased—Paying scholars introduced in addition to free scholars.**]—MANCHESTER SCHOOL CASE (1867), 2 Ch. App. 497; 36 L. J. Ch. 544; 16 L. T. 505; 15 W. R. 805, L. JJ.

—— **Appointment of new trustees.**]—*See* Part VII., Sect. 2, *post*.

C. Schemes settled by Charity Commissioners.

1357. When court will interfere—Not where scheme approved by Attorney-General.] — *Re* SEKEFORD'S CHARITY (1861), 5 L. T. 488.

1358. —— **Not where forfeiture occasioned.**]—*Re* BACON'S CHARITY (1878), Tudor's Law of Charities & Mortmain. 4th ed. 187.

1359. —— **Not unless scheme unlawful—Or grossly unjust.**]—*Re* CAMPDEN CHARITIES (1881), 18 Ch. D. 310; 50 L. J. Ch. 646; 45 L. T. 152; 30 W. R. 496, C. A.

Annotations:—**Consd.** *Re* Berkhampsted Grammar School, [1908] 2 Ch. 25. **Refd.** *Re* Poor's Lands Charity, Bethnal-Green (1891), 7 T. L. R. 705; *Re* Weir Hospital, [1910] 2 Ch. 124. **Mentd.** *Re* Campden Charities (1883), 24 Ch. D. 213.

1360. —— **Alteration of circumstances—Divided parish — Fresh apportionment necessary.**] — *Re* CAMPDEN CHARITIES (No. 2) (1883), 24 Ch. D. 213; 52 L. J. Ch. 780; 48 L. T. 521; 31 W. R. 741.

Apportionment, generally, on formation of new parishes, *see* Part III., Sect. 3, sub-sect. 2, C, *ante*.

1361. —— **Objects of society not altered—Scheme not final.**]—Testator who died in 1724 gave his residue to trustees on trust to pay half the income for the redemption of Barbary slaves, one fourth for certain educational charities, & one fourth for certain non-educational charities. In 1846, for want of Barbary slaves, the slave fund income was applied by a ct. scheme to assisting charity schools. In 1907 the Charity Comrs. made a scheme under Charitable Trusts Acts, 1853 to 1894 determining (*inter alia*) that the slave fund income was held for & ought to be applied to educational purposes. The trustees appealed contending that the effect of the determination scheme would be to devote the income permanently & in all events to educational purposes. At present notwithstanding free education there were managers' purposes to which the income was & could be applied under the scheme of 1846 without relieving the rates but when these expenses also were thrown on the rates there would be no proper objects left under the scheme of 1846. On that event the income ought to be applied *cy-près* as a non-educational charity:—*Held*: the determination scheme merely determined the controlling body for the time being & did not in any way restrict, alter or affect the objects of the charity or prevent the income being applied by a future scheme to non-educational purposes.—*Re* BETTON'S CHARITY, [1908] 1 Ch. 205; 77 L. J. Ch. 193; 98 L. T. 35; 72 J. P. 105; 24 T. L. R. 143; 6 L. G. R. 638.

See, also, Nos. 1416, 1417, *post*.

1362. —— **Scheme ultra vires—Not on matters of detail.**]—(1) Funds given by a testator for a particular charitable purpose cannot be applied *cy-près* by the Charity Comrs. or the ct. unless it is shown to be impossible to carry out testator's intention. They cannot be so applied because the Comrs. think some other scheme will be more beneficial than testator's.

(2) The ct. will not overrule the Comrs. on matters of detail, but will restrain them from carrying out a scheme which is *ultra vires*.

Testator who died in 1902 devised to his trustees two houses upon trust to use house A. as a dispensary, cottage hospital, or convalescent home or

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other medical charity, to be called the W. Hospital, for the benefit of the inhabitants of the parish of S. & the neighbourhood until a restrictive covenant which prevented the house B., in which he resided, from being so used had expired, & then to use house B. in conjunction or not with house A. for the same purpose; & he gave his residuary personal estate to the same trustees for the maintenance of the hospital. The trustees established a dispensary at the house A. & maintained it until the covenant expired in 1907. The funds then applicable for the maintenance of the charity were about £100,000. The Charity Comrs. approved a scheme whereby the dispensary was to be maintained, house B. was to be turned into a home for nurses, a very small proportion of whom were to give their services gratuitously, & the bulk of the fund was to be applied in enlarging & maintaining a general hospital, called the B. Hospital, outside & half a mile from the boundary of the parish of S. This hospital was to be renamed the W. & B. Hospital, & a certain number of beds were to be appropriated so as to give a preference to inhabitants of S.:—*Held:* the scheme was *ultra vires*, & the order of the Comrs. must be discharged & the matter remitted to the Comrs. for reconsideration.—*Re* WEIR HOSPITAL, [1910] 2 Ch. 124; 79 L. J. Ch. 723; 102 L. T. 882; 26 T. L. R. 519; 54 Sol. Jo. 600, C. A.

Annotations:—*As to* (1) **Refd.** *Re* De Noailles, Clouston *v.* Tufnell (1916), 114 L. T. 1089. *As to* (2) **Refd.** Dyson *v.* A.-G., [1911] 1 K. B. 410.

1363. —— Modification necessary to effectuate primary object.]—Where the primary object for which a secondary school was originally founded cannot be given effect to under its existing constitution without the aid of grants from the Board of Education, the ct. will modify the scheme of the Charity Comrs. under which the school was being administered, so far as necessary to comply with the regulations of the Board of Education & enable the school to secure the grants.—*Re* QUEEN'S SCHOOL, CHESTER, [1910] 1 Ch. 796; 79 L. J. Ch. 270; 102 L. T. 485; 26 T. L. R. 297; 54 Sol. Jo. 309.

1364. —— —— Consolidation of charities for benefit of, inter alios, widows—No mention of widows in scheme.]—*Re* FARAKER, FARAKER *v.* DURELL, No. 921, *ante*

Under Endowed Schools Acts, 1869 (c. 56) & 1873 (c. 87).]—*See* EDUCATION.

SECT. 2.—THE CY-PRÈS DOCTRINE AND ITS APPLICATION.

SUB-SECT. 1.—MODE OF APPLICATION.

1365. Testator's intention must be observed—No objects specified—Court may dispose to such charitable uses as court thinks fit.]—ANON. (1702), Freem. Ch. 261; 22 E. R. 1197.

1366. —— Application of income extended to objects not specified—Connected with intention.]—A.-G. *v.* DIXIE (1833), 2 My. & K. 342; 39 E. R. 974.

1367. —— Funds of educational charity—Not applicable to poor rates.]—A.-G. *v.* GAINS (1843), 1 L. T. O. S. 335.

1368. —— Legacy for relief of poor of parish—Not applicable for educational purposes.]—*Re* STANES' WILL, *Re* TRUSTEE RELIEF ACT (1853), 21 L. T. O. S. 261.

See, also, No. 1380, *post.*

1369. —— Charity for reformation of vagrants by compulsory labour—Scheme made affording instruction to young of same class—Scheme merely providing nightly refuge for destitute rejected.]—*Re* BRIDEWELL HOSPITAL (1860), 30 L. J. Ch. 99; 2 L. T. 760; 24 J. P. 627; 6 Jur. N. S. 1134; 8 W. R. 718.

1370. —— Charity for relief of poor prisoners—Industrial school for children of criminals not cy-près.]—*Re* PRISON CHARITIES (1873), L. R. 16 Eq. 129; 42 L. J. Ch. 748; 37 J. P. 420.

1371. —— Charity religious in objects—Income not applicable to non-religious objects.]—By a deed of 1580 land was assured to trustees to the intent that the rents should be employed for or towards the charges of a sermon once every year to be made in the parish church of W. The rents had largely increased, & by an order made in 1912 it was declared that such part of the income as was not required for payment for the sermon ought to be applied *cy-près* the objects of the gift for the sermon. The old parish of W. was conterminous with the present borough, containing some 300,000 inhabitants. This area was now divided into nineteen ecclesiastical parishes, of which the parish served by the old parish church, containing some 25,000 inhabitants, was one:—*Held:* (1) the charity was religious in its object & no part of the income ought to be applied for a non-religious purpose, such as lectures in the town-hall for the moral or intellectual improvement of the inhabitants or in aid of a public library, but the whole income might properly be applied in or towards payment of the stipends of one or more assistant curates to serve in the church & parish, & subject thereto, in or towards the expenses incurred by the vicar in providing for the services of the church, the visitation of the poor, or the religious instruction of the inhabitants, including children & young persons; (2) the scheme ought to be confined to the parish served by the old parish church of W.; (3) the vicar & churchwardens & persons to be appointed by them & by the bishop of the diocese were proper persons to be appointed trustees, but the mayor of W. or the overseers or persons to be appointed by the borough council ought not to be appointed; (4) there was no objection to the vicar of the parish himself preaching the annual sermon & receiving a proposed fee of ten guineas therefor.—*Re* AVENON'S CHARITY, A.-G. *v.* PELLY, [1913] 2 Ch. 261; 82 L. J. Ch. 398; 109 L. T. 98; 57 Sol. Jo. 626.

SUB-SECT. 2.—WHERE APPLICABLE.

A. In General.

1372. General rule.]—The ct. will not execute a trust of a charity in a manner different from that intended, unless it cannot be executed literally, but may in substance by another mode consistent with the general intent.—A.-G. *v.* BOULTBEE (1794),

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PART IV. SECT. 2, SUB-SECT. 2.—A.

1372 i. *General rule.*]—When, under altered circumstances, it appears that the charity provided by the donor could not be carried out literally in terms of his directions with any benefit whatever to the objects of his benefaction, the ct. ought not to hesitate to give its sanction to a scheme, which will carry out the charitable intentions of the donor to be gathered from the instrument establishing the charity, as nearly as possible to the original intentions of such donor. Each case in which an application is made to divert charity funds into other channels *cy-près* must necessarily depend upon its own facts & circumstances.—*Re* HORMUSJI FRAMJI WARDEN (1907), I. L. R. 32 Bom. 214.—IND.

1372 ii. ——.]—Where the testator has indicated a general charitable intention in the bequest made by him, if those bequests fail, the ct. can devote the property to religious or

2 Ves. 380; 30 E. R. 683; *affd.* (1796), 3 Ves. 220, L. C.

Annotations :—**Consd.** Cherry *v.* Mott (1836), 1 My. & Cr. 123; Biscoe *v.* Jackson (1887), 35 Ch. D. 460. **Refd.** A.-G. *v.* Whitchurch (1796), 3 Ves. 141; Chapman *v.* Brown (1801), 6 Ves. 404.

1373. ——.]—(1) In Scotland, as in England, there is an enlarged administration of charitable trusts, distinguishing between the charity itself & the mode prescribed for its accomplishment. One charity will not be substituted for another charity; nor will a charity intended for one purpose be applied to a purpose altogether different; but in the progress of society a change of mode may become desirable, & the cts. have sanctioned such change of mode, to secure more effectually the benefits intended.

(2) Where the House has directed that a scheme shall be framed for the administration of a charity, leaving it open to the exercise of discretion whether a certain specified operation shall, or shall not, be performed; & where in the exercise of the discretion so devolved it is determined that the specified operation is unnecessary & inexpedient the decision is final, & the House itself is precluded from reviewing it.—CLEPHANE *v.* EDINBURGH CORPN. (1869), L. R. 1 Sc. & Div. 417, H. L.

Annotations :—*As to* (1) **Consd.** *Re* Campden Charities (1880), 18 Ch. D. 310; Andrews *v.* M'Guffog (1886), 11 App. Cas. 313. **Refd.** *Re* White, White *v.* White, [1893] 2 Ch. 41. *Generally*, **Refd.** Income Tax Comrs. for Special Purposes *v.* Pemsel, [1891] A. C. 531.

1374. Failure of subsidiary purpose—General charitable intention—Executed—Distribution of bread to poor persons chanting testator's unauthorised version of psalms.]—BRANTHAM *v.* EAST BURGOLD (*circa* 1790), cited in 2 Ves. 388; 30 E. R. 687.

Annotation :—**Apld.** A.-G. *v.* Boultbee (1794), 2 Ves. 380.

1375. —— —— —— **Fund for vicars presented at recommendation of trustees—Failure of trustees to recommend.**]—A.-G. *v.* BOULTBEE (1794), 2 Ves. 380; 30 E. R. 683; *affd.* (1796), 3 Ves. 220, L. C.

Annotations :—**Consd.** Cherry *v.* Mott (1836), 1 My. & Cr. 123; Biscoe *v.* Jackson (1887), 35 Ch. D. 460. **Refd.** A.-G. *v.* Whitchurch (1796), 3 Ves. 141; Chapman *v.* Brown (1801), 6 Ves. 404.

1376. —— —— ——.]—A.-G. *v.* BOWYER (1798), 3 Ves. 714; 30 E. R. 1235, L. C.; *subsequent proceedings* (1800), 5 Ves. 300, L. C.

Annotations :—**Consd.** Abbott *v.* Fraser (1874), L. R. 6 P. C. 96. **Refd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36; Henshaw *v.* Atkinson (1818), 3 Madd. 306.

1377. On failure of objects.]—A.-G. *v.* LAWES (1849), 8 Hare, 32; 14 Jur. 77; 68 E. R. 261.

Annotations :—**Mentd.** Fraser *v.* Murdoch (1881), 6 App. Cas. 855; *Re* Hall-Dare, Le Marchant *v.* Lee Warner, [1916] 1 Ch. 272.

Initial failure of purpose.]—*See* Sub-sect. 2, B., *post*.

Subsequent failure of purpose.]—*See* Sub-sect. 2, C., *post*.

1378. Conditional gift—Condition impracticable—Tubular lifeboat unnecessary at town named—Placed at town where required.]—*Re* RICHARDSON'S WILL (1887), 58 L. T. 45; 4 T. L. R. 153.

1379. —— **Condition uncertain—Bequest of annual doles on attending church to hear sermon preached—No obligation on rector to preach sermon.**]—*Re* REED (DECEASED) (1893), 10 T. L. R. 87.

1380. No particular purpose named—Large bequest to poor—Application extended for educational purposes.]—HEREFORD (BP.) *v.* ADAMS (1802), 7 Ves. 324; 32 E. R. 132, L. C.

Annotation :—**Mentd.** Harrison *v.* Carter (1876), 2 C. P. D. 26.

See, also, No. 1368, *ante*.

1381. —— **General gift to charity — Applied to hospital.**]—LEGGE *v.* ASGILL (1818), 3 Hare, 194 n.; 67 E. R. 352; *affd.* on other grounds, TURN. & R. 265, n., L. C.

Annotation :—**Refd.** Ommanney *v.* Butcher (1823), Turn. & R. 260.

1382. Gift over to second charity—Apprentice fees for boys of named parishes—Accumulations applied for benefit of parishes.]—*Re* UPTON WARREN (PARISH) (1833), 1 My. & K. 410; 39 E. R. 736, L. C.

1383. Cy-près doctrine not invariably displaced when residuary bequest also to charity.]—LYONS CORPN. *v.* ADVOCATE-GENERAL OF BENGAL (1876), 1 App. Cas. 91; 45 L. J. P. C. 17; 34 L. T. 77; 24 W. R. 679, P. C.

Annotations :—**Consd.** *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427. **Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236. **Mentd.** *Re* Geck, Freund *v.* Steward (1893), 69 L. T. 819.

1384. Not unless testator's directions incapable of being executed.]—*Re* WEIR HOSPITAL, No 1362, *ante*.

B. Initial Failure of Particular Purpose.

1385. Mistaken religious purpose—Preacher to be chosen by majority of best inhabitants—Applied to maintenance of catechist approved by bishop.]—A.-G. *v.* COMBE (1679), 2 Cas. in Ch. 18; 22 E. R. 825; *sub nom.* ANON., Freem. Ch. 40, L. C.

Annotations :—**Refd.** A.-G. *v.* Guise (1692), 2 Vern. 266; De Costa *v.* De Paz (1754), 2 Swan. 487, n.; Moggridge *v.* Thackwell (1803), 7 Ves. 36.

1386. Object illegal—Gifts to maintain popish priests.]—GATES *v.* JONES (1690), cited in 7 Ves. 496; 2 Vern. 266; 23 E. R. 773; *sub nom.* JONES' CASE (1690), [1893] 2 Ch. 49, n., H. L.

Annotations :—**Consd.** Cary *v.* Abbot (1802), 7 Ves. 490; Bourne *v.* Keane, [1919] A. C. 815. **Refd.** A.-G. *v.* Guise (1692), 2 Vern. 266; Anon. (1702), Freem. Ch. 261; Mills *v.* Farmer (1815), 1 Mer. 55.

1387. —— **Illegal or superstitious use.**]—A.-G. *v.* GUISE (1692), 2 Vern. 266; 23 E. R. 772.

Annotations :—**Refd.** De Costa *v.* De Paz (1754), 2 Swan. 487, n; Cary *v.* Abbot (1802), 7 Ves. 490; Moggridge *v.* Thackwell (1803), 7 Ves. 36; Glasgow College *v.* A.-G. (1848), 1 H. L. Cas. 800; Bourne *v.* Keane, [1919] A. C. 815.

1388. —— ——.]—DE GARCIN *v.* LAWSON (1798), 4 Ves. 433, n.; 31 E. R. 222, L. C.

Annotations :—**Consd.** Cary *v.* Abbot (1802), 7 Ves. 490. **Refd.** West *v.* Shuttleworth (1835), 2 My. & K. 684; Bourne *v.* Keane, [1919] A. C. 815.

1389. —— **Establishment of Jesuba—Applied to hospital.**]—DA COSTA *v.* DE PAS (1754), Amb. 228; Dick. 258; 3 Hare, 195, n.; 27 E. R. 150; *sub nom.* DE COSTA *v.* DE PAZ, 2 Swan. 487, n., L. C.

Annotations :—**Consd.** A.-G. *v.* Downing (1767), Wilm. 1. **Foll.** A.-G. *v.* Herrick (1772), Amb. 712. **Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Distd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Consd.** Bowman *v.* Secular Soc., [1917] A. C. 406; Bourne *v.* Keane, [1919]

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charitable purposes according to the *cy-près* doctrine.—SALEBHAI ABDUL KADER *v.* BAI SAFIABU (1911), I. L. R. 36 Bom. 111.—**IND.**

1372 iii. ——.]—If a charitable bequest be void by express enactment, it cannot be carried out *cy-près*; but a bequest void, as being contrary to the policy of the law, will in general be carried out *cy-près*.—SIMS *v.* QUINLAN (1864), 16 I. Ch. R. 191; 16 Ir. Jur. 404.—**IR.**

1372 iv. ——.]—The doctrine of *cy-près* stated shortly is that where there is a general charitable intention in making a bequest it is not defeated because the particular mode in which it was to be accomplished fails, but the charitable intention will be carried out in some other way.—*Re* BLOOMFIELD'S BEQUEST (1920), 54 I. L. T. 213.—**IR.**

1372 v. ——.]—The *cy-près* doctrine of the English law, by which funds raised for one charitable purpose may upon the accomplishment or failure of that purpose be devoted to analogous objects, is also portion of the Roman-Dutch law, & the ct. has jurisdiction to apply such doctrine on the motion of interested parties.—*Ex p.* BOSMAN (1916), T. P. D. 399.—**S. AF.**

Sect. 2.—The cy-près doctrine and its application: Sub-sect. 2, B. & C. (a) & (b).]

A. C. 815. **Refd.** Cary *v.* Abbot (1802), 7 Ves. 490; Hereford *v.* Adams (1802), 7 Ves. 324; *Re* Bedford Charity (1819), 2 Swan. 470. **Mentd.** A.-G. *v.* Cock (1751), 2 Ves. Sen. 273.

1390. —— Two modes of execution—One legal but the other illegal—Legal mode given effect to.]—A.-G. *v.* WHITCHURCH (1796), 3 Ves. 141; 30 E. R. 937.

Annotations :—**Distd.** A.-G. *v.* Craven (1856), 21 Beav. 392. **Folld.** Thomson *v.* Shakespear (1860), 1 De G. F. & J. 399. **Apld.** Hoare *v.* Hoare (1886), 56 L. T. 147. **Consd.** *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427. **Refd.** Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338; Warren *v.* Rudall (1858), 4 K. & J. 603. **Mentd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173; Edwards *v.* Hall (1855), 6 De G. M. & G. 74.

1391. —— Bequest for benefit of Roman Catholics—General charitable intention.]—A.-G. *v.* TODD (1837), 1 Keen, 803; 6 L. J. Ch. 205; 48 E. R. 516.

Annotations :—**Refd.** *Re* Blundell's Trusts (1861), 30 Beav. 360; Bourne *v.* Keane, [1919] A. C. 815.

1392. —— Accumulation beyond legal period—General charitable intention.]—MARTIN *v.* MARGHAM (1844), 14 Sim. 230; 13 L. J. Ch. 392; 3 L. T. O. S. 433; 8 J. P. 532; 8 Jur. 609; 60 E. R. 346.

Annotations :—**Consd.** *Re* Swain, Monckton *v.* Hands, [1905] 1 Ch. 669. **Mentd.** Rochford *v.* Hackman (1852), 9 Hare, 475; Adams *v.* Adams, [1892] 1 Ch. 369; *Re* Porter, Coulson *v.* Capper, [1892] 3 Ch. 481.

1393. —— Introduction of fermented liquor in workhouse—Fund applied in purchase of tea, sugar, etc.]—A.-G. *v.* VINT (1850), 3 De G. & Sm. 704; 19 L. J. Ch. 150; 15 L. T. O. S. 83; 14 Jur. 824; 64 E. R. 669.

1394. —— Establishment of soup kitchens & cottage-hospital—Violating Mortmain Acts—General charitable intention.] — BISCOE *v.* JACKSON (1887), 35 Ch. D. 460; 56 L. J. Ch. 540; 56 L. T. 753; 35 W. R. 554; 3 T. L. R. 577, C. A.

Annotations :—**Consd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Distd.** *Re* Wilson, Twentyman *v.* Simpson, [1913] 1 Ch. 314. **Refd.** *Re* Willis, Shaw *v.* Willis (1920), 37 T. L. R. 43.

1395. Charity with no objects.]—A.-G. *v.* OGLANDER (1790), 3 Bro. C. C. 166; 1 Ves. 246; 29 E. R. 468, L. C.

C. Subsequent Failure of Particular Purpose.

(a) Charity Deprived of Objects.

1396. Advancement of Christianity among infidels—No infidels within limits intended—Administrators becoming subject to foreign power.]—A.-G. *v.* LONDON CORPN. (1790), 3 Bro. C. C. 171; 29 E. R. 472, L. C.

Annotation :—**Consd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175.

1397. Charity for benefit of lepers—Lepers having died out.]—A.-G. *v.* HICKS (1810), 3 Bro. C. C. 166, n.; Highmore's Mortmain, 2nd ed. 336; 29 E. R. 468.

1398. Redemption of slaves — Abolition of slavery—Applied to education in British Colonies.]—A.-G. *v.* GIBSON (1835), 2 Beav. 317, n.; 48 E. R. 1208.

Annotations :—**Refd.** Philpott *v.* St. George's Hospital (1859), 27 Beav. 107; *Re* Weir Hospital, [1910] 2 Ch. 124. **Mentd.** A.-G. *v.* Ironmongers' Co. (1841), Cr. & Ph. 208; *Re* Geck, Freund *v.* Steward (1893), 69 L. T. 819.

1399. Charity for French Protestant refugees in London—No persons answering description—Applied to French Protestant population in London generally.]—A.-G. *v.* DAUGARS (1864), 33 Beav. 621; 28 J. P. 726; 10 Jur. N. S. 966; 12 W. R. 363; 55 E. R. 509.

(b) Institution Ceasing to Exist.

1400. After death of testator—Before administration of assets.]—HAYTER *v.* TREGO (1830), 5 Russ. 113; 38 E. R. 970.

Annotation :—**Consd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

1401. —— During lifetime of tenant for life.]—*Re* THOMPSON, THOMPSON *v.* PHILLIPS (1889), *Times* Mar. 22.

1402. —— —— School ceasing to exist.]—Testator by his will bequeathed a sum of money to trustees to pay the income thereof to a person for life, & after his death the money was to be given to the D. Co. for the benefit of their school at T. After the death of testator & during the lifetime of the tenant for life the school ceased to exist :—*Held :* there had been no lapse of the bequest, & the fund should be applied *cy-près* for charitable purposes in accordance with a scheme to be settled.—*Re* SOLEY, GROVER *v.* DRAPERS' Co. (1900), 17 T. L. R. 118.

Annotation :—**Consd.** *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427.

See, also, Nos. 1408 *et seq., post.*

1403. —— ——.]—*Re* BRIGHTWEN, SHELLY *v.* SHELLY (1907), *Times* Feb. 7.

1404. —— Before legacy paid.]—A charitable bequest to an institution which comes to an end after the death of testator, but before the legacy

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PART IV. SECT. 2, SUB-SECT. 2.—B.

1392 i. *Object impracticable—Accumulation beyond legal period—General charitable intention.]*—A. directed his trustees to carry on his estate until they considered they had sufficient cash in hand to establish & maintain a private hospital. It was estimated that it would take 31 years to accumulate sufficient money to erect & maintain the hospital :—*Held :* the will showed a general charitable intention to benefit the sick poor, & that although the particular purpose of the bequest was impracticable, the ct. would execute the trust *cy-près.*—MORTON *v.* A.-G. (1911), 11 S. R. N. S. W. 473.—AUS.

q. ——.]—A. gave a portion of the income of his residue for the introduction & support of Jesuit Fathers in H. :—*Held :* the gift was inexpedient & impracticable & could not be accomplished, & ordered the revenue with accumulations to be applied to charitable purposes having regard to the will.—POWER *v.* A.-G. FOR NOVA SCOTIA (1904), 35 S. C. R. 182.—CAN.

r. ——.]—A. gave £5,000, upon trust, to expend the same within five years after his death in the erection of a building or additions to any building in L. in England, on land at the time of such expenditure devoted to charitable uses, such building to be called by his name, & to be used, in such manner as his trustees might think fit, for the relief of indigent blind Jews. He declared that if not so applied for three years after his death the £5,000 should bear interest until applied, & such interest should be invested, & the interest added to the principal. There were no buildings in L. devoted solely to the relief of indigent blind Jews, but there was a society devoted to that purpose whose mode of relieving the objects of its charity was to provide for their housing with relatives & friends. There were two institutions in London called respectively "The Jewish Hospital & Orphan Asylum" & "The Home for Aged Jews," in both of which the Jewish indigent blind occasionally found relief, but neither was devoted solely to their relief. There was in New Zealand an institution for the relief of the indigent blind generally, called "The Jubilee Institute" :—*Held :* the bequest did not lapse, but should be administered *cy-près.*—*Re* JOSEPH'S WILL TRUSTS (1907), 26 N. Z. L. R. 504.—N.Z.

s. *Object uncertain—General charitable intention.]*—DOE d. ANDERSON *v.* TODD (1845), 2 U. C. R. 82.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—C. (a).

t. *Charity for benefit of schoolmaster of Established Church in particular parish—No schoolmaster answering description.]*—GRANT *v.* MACQUEEN (1877), 4 R. (Ct. of Sess.) 734; 14 Sc. L. R. 478.—SCOT.

a. *Fund for relief of members of volunteer force—Applied to relief of members of defence forces.]*—Where the objects of a trust fund were to afford relief & sustenance to members of the volunteer or irregular forces, & such forces ceased to exist, & were replaced by the defence forces, & the trust deed empowered the trustees to apply to the ct., in case the objects of the trust became impossible of execution, for leave to vary or alter the same for some other beneficial public object, the ct., under the *cy-près* doctrine, added to the objects the power to afford similar relief to members of the defence forces.—*Ex p.* TRANSVAAL VOLUNTEERS SUSTENTATION FUND, TRUSTEES (1914), W. L. D. 105.—S. AF.

is paid, does not fall into residue, but falls to be administered by the Crown, & will ordinarily be applied for charitable purposes.

Among testator's "charitable" legacies was a gift to a private orphanage. Before the assets could be distributed the orphanage had ceased to exist:—*Held:* the property in the legacy became applicable by the Crown for charitable purposes.—*Re* SLEVIN, SLEVIN *v.* HEPBURN, [1891] 2 Ch. 236; 60 L. J. Ch. 439; 64 L. T. 311; 39 W. R. 578; 7 T. L. R. 394, C. A.

Annotations:—**Follo.** *Re* Soley, Grover *v.* Drapers' Co. (1900), 17 T. L. R. 118. **Apld.** *Re* Geikie, Robson *v.* Paterson (1911), 27 T. L. R. 484. **Consd.** *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427. **Refd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Mentd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

1405. —— ——.]—Where a gift is left by will to trustees to apply the income for charitable purposes which are in existence at the death of testator, but the specific purposes cease to exist before it is paid over, the gift is applicable to charitable purposes *cy-près*.—*Re* GEIKIE, ROBSON *v.* PATERSON (1911), 27 T. L. R. 484.

1406. —— **Friendly society.**]—*Re* BUCK, BRUTY *v.* MACKEY, No. 246, *ante*.

1407. —— **Gift of house for home—Sale under 1891 Act.**]—*Re* CUNNINGHAM, DULCKEN *v.* CUNNINGHAM, No. 1056, *ante*.

Before death of testator.]—*See* Part III., Sect. 4, sub-sect. 3, H., *ante*.

1408. School ceasing to exist—Conversion of district into dock by statute.]—A.-G. *v.* GLYN (1841), 12 Sim. 84; 59 E. R. 1062.

Annotations:—**Mentd.** Ashton *v.* Jones (1860), 28 Beav. 460; Magdalen Hospital Governors *v.* Knotts (1879), 4 App. Cas. 324.

1409. —— **For lack of funds—Local education authority for school.**]—In 1871 land was conveyed by deed to the vicar & churchwardens of a parish in trust for a school for the education of the poorer classes & as a residence for the teacher or teachers & for no other purpose, the school to be conducted in furtherance of the ends of the N. Society & to be open to inspection, & the religious instruction to be vested in the vicar. School buildings & a teacher's house were erected thereon, & in 1874 a parliamentary grant was obtained towards the cost on condition that until repayment, which had not taken place, the school should be carried on as a public elementary school under Elementary Education Act, 1870 (c. 75). The school was so carried on until 1878, when it was closed. Negotiations for its transfer to a school board failed. It was re-opened as a voluntary school in 1881; but, the school board having erected on an adjoining site a school which attracted all the scholars, it was again closed in 1883 & had not since been re-opened. In 1905 the trustees applied to the Board of Education for a scheme under Charitable Trusts Acts, but their suggested scheme for a club was opposed by the county council, who had become the education authority & desired to use the school buildings as an infant school to relieve the board school, where the accommodation had become insufficient. There was no evidence that the vicar & churchwardens could obtain the means to carry on the school as a voluntary school. The Board of Education certified the case to the A.-G., who applied to the ct. for the administration of the trusts of the deed, & the settlement of a scheme:—*Held:* the trusts of the deed should be administered under the direction of the ct., & an inquiry should be made whether the trust property could now be used for a Church of England school, & if, by reason of want of funds or want of scholars or otherwise, it could not be so used, a scheme should be settled with an intimation that probably the best course would be for the property to be leased to the education authority for a school, reserving to the vicar the right to use the buildings on Sundays & in the evenings.—A.-G. *v.* EDALJI (1907), 97 L. T. 292; 71 J. P. 549; 5 L. G. R. 1085.

Annotation:—**Mentd.** A.-G. *v.* Shadwell, [1910] 1 Ch. 92.

1410. —— **School to be conducted on principles of Church of England—Use for undenominational education.**]—Land was conveyed by a charitable donor under Schools Sites Act, 1841 (c. 38), upon trust to permit the buildings to be erected thereon to be for ever used for a school for the education of children & adults or children only of the labouring, manufacturing, & other poorer classes in a certain district. The school was to be in union with & conducted according to the principles of the N. Society. The trust deed provided that the school might be used for Sunday school purposes under the control of the clergyman of the parish, & in other respects the management was vested in the clergyman & four members of the Church of England. The school erected on the land was used in accordance with the trusts until 1905, when, in consequence of the inability of the trustees to satisfy the requirements of the education authorities under Education Act, 1902 (c. 42), it was closed:—*Held:* the special trusts for carrying on a national school in connection with the

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PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

1408 i. *School ceasing to exist—General charitable intention—Application to charity.*]—*Re* TEMPLEMOYLE AGRICULTURAL SCHOOL (1869), I. R. 4 Eq. 295.—**IR.**

1408 ii. —— *School superseded by State schools—General intention to benefit poor deaf & dumb—Division of fund between societies for education of deaf, dumb, & blind.*]—A.-G. *v.* BULLOCK (1877), R. E. D. 249.—**CAN.**

1408 iii. —— *Allowances to officials & servants.*]—A. gave a fund for the benefit of ragged & industrial schools. The trustees made a grant to an industrial school established & maintained by public subscription. Subsequently the school trustees found it impracticable to continue the school. The ct. authorised the trustees to apply part of the proceeds of the trust property in paying gratuities to the officials & servants of the school which had been discontinued.—FALKIRK INDUSTRIAL SCHOOL *v.* FERGUSON BEQUEST FUND (1899), 1 F. (Ct. of Sess.) 1175.—**SCOT.**

1408 iv. —— *Allowance to teacher.*]—The ct. sanctioned a scheme under which part of the income of a trust fund was applied in paying a retiring allowance to a teacher in a school previously carried on by the trustees but which it was proposed to discontinue.—PORTOBELLO FEMALE SCHOOL TRUSTEES (1900), 2 F. (Ct. of Sess.) 418; 37 Sc. L. R. 311.—**SCOT.**

b. *Institution ceasing to exist—Fund for undenominational women's home—Charitable Trusts Extension Act, 1886.*]—A women's home having been established by means chiefly of subscriptions & donations from members of the Anglican Church, & conducted for some time under Anglican control, was closed, & a balance remained in the hands of the committee. An undenominational women's home was subsequently established, & the money was paid over to the committee of management of the new institution, which, after a short existence, was also closed, leaving a reduced balance in the committee's hands. This sum was handed over to trustees in trust for an undenominational women's home in the event of such an institution being subsequently established. By judicious investment, etc., this sum was considerably increased. The trustees then proposed to hand over the fund to an undenominational home established for the promotion of the "moral, social, & spiritual welfare" of fallen women. This institution was registered under "The Unclassified Societies Registration Act, 1895," & was controlled by a committee elected annually by the subscribers:—*Held:* that the scheme should be approved, subject to certain restrictions, which would prevent the fund from subsequently being diverted to other purposes.—*Re* DOOR OF HOPE, ETC. (1905), 26 N. Z. L. R. 96.—**N.Z.**

c. —— *Home for fever patients—Application to Dorcas Society in connection with fever & small-pox patients.*]—GLASGOW ROYAL INFIRMARY *v.* GLASGOW MAGISTRATES (1888), 15 R. (Ct. of Sess.) 264; 25 Sc. L. R. 216.—**SCOT.**

Sect. 2.—The cy-près doctrine and its application: Sub-sect. 2, C. (b), (c) & (d), D & E.

Church of England having failed, the premises ought, according to the doctrine of *cy-près*, to be appropriated & used generally for the education, apart from denominational religious instruction, of the class intended to be benefited.—A.-G. *v.* PRICE, [1912] 1 Ch. 667; 81 L. J. Ch. 317; 106 L. T. 694; 76 J. P. 209; 28 T. L. R. 283; 10 L. G. R. 416, C. A.; *revsg.* S. C. (1911), 75 J. P. 566; order of C. A. discharged by consent, S. C. *sub nom.* PRICE *v.* A.-G., [1914] A. C. 20, H. L.; *earlier proceedings* (1908), 72 J. P. 208.

See, also, Nos. 1302 *et seq., ante.*

——.]—*See, also,* No. 1402, *ante.*

1411. Educational institution ceasing to exist—Application to charity.]—The N. Union having ceased to exist the ct. directed a scheme to be drawn up for the application of the funds to charitable purposes.—DALE *v.* POWELL (1897), 13 T. L. R. 466.

1412. Theatrical charity ceasing to exist—Fund dedicated to charitable purposes—Applied to institution with similar objects.]—SPILLER *v.* MAUDE (1881), 32 Ch. D. 158, n.

Annotations :—**Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; *Re* Buck, Bruty *v.* Mackey (1896), 65 L. J. Ch. 881; Cunnack *v.* Edwards, [1896] 2 Ch. 679; *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149; Braithwaite *v.* A. G., [1909] 1 Ch. 510.

(c) Failure of One of Several Objects.

1413. Gift partly for redemption of British captives in Turkey or Barbary—Partly for educational purposes—No captives—Fund set apart for future captives—Residue applied to educational purposes.]—A.-G. *v.* LLANDAFF (BP.) (1819), cited in 2 My. & K. 586; 39 E. R. 1068.

Annotations :—**Consd.** A.-G. *v.* Ironmongers' Co. (1834), 2 My. & K. 576; A.-G. *v.* Ironmongers' Co. (1841), Cr. & Ph. 208. **Refd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175; Sinnett *v.* Herbert (1872), 20 W. R. 270; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91.

1414. —— —— —— —— ——.]—IRONMONGERS' CO. *v.* A.-G. (1844), 10 Cl. & Fin. 908; 8 E. R. 983, H. L.; *affg.* S. C. *sub nom.* A.-G. *v.* IRONMONGERS' CO. (1841), Cr. & Ph. 208, L. C.

Annotations :—**Apld.** *Re* Ashton's Charity (1859), 27 Beav. 115. **Consd.** *Re* Prison Charities (1873), L. R. 16 Eq. 129; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91. **Refd.** *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236; *Re* Weir Hospital, [1910] 2 Ch. 124. **Mentd.** Biscoe *v.* Jackson (1887), 56 L. J. Ch. 540; *Re* Betton's Charity (1907), 77 L. J. Ch. 193.

See, also, No. 1361, *ante.*

(d) Other Cases.

1415. Object rendered illegal—Purchase of advowsons by college—In excess of those permitted by Mortmain Acts—Performance decreed by exchange or otherwise cy-près.]—A.-G. *v.* GREEN (1789), 2 Bro. C. C. 492; 29 E. R. 270, L. C.

Annotations :—**Apprvd.** A.-G. *v.* Minshull (1798), 4 Ves. 11. **Refd.** Whittaker *v.* Whittaker (1792), 4 Bro. C. C. 31.

1416. Actual objects becoming impossible—Revenue applied cy-près—Court cannot vary original foundation in applying revenue—Although it would be more beneficial to public.]—The ct. has power, where the actual objects become impossible, to direct the application of the revenues *cy-près*; but it has no authority to vary the original foundation, & apply the revenues in a manner, apparently, more beneficial to the public, or as it may surmise the founder would have done, had he foreseen the changes which had taken place by the lapse of time.—A.-G. *v.* SHERBORNE GRAMMAR SCHOOL (GOVERNORS, ETC.) (1854), 18 Beav. 256; 2 Eq. Rep. 917; 24 L. J. Ch. 74; 23 L. T. O. S. 326; 18 J. P. 312; 18 Jur. 636; 2 W. R. 396; 52 E. R. 101.

Annotations :—**Distd.** *Re* Chelmsford Grammar School (1855), 1 K. & J. 543. **Expld.** *Re* Stafford Charities (1857), 25 Beav. 28. **Refd.** *Re* Campden Charities (1881), 18 Ch. D. 310; *Re* Weir Hospital, [1910] 2 Ch. 124.

1417. Object not carried out—Erection of English Protestant church in Paris & benefit of English poor—Fund not sufficient—Permanent church erected—Service in English once on each Sunday.]—RODWELL *v.* A.-G., GOURRIER FUND (1886), 2 T. L. R. 712.

1418. Application of immediate gift postponed—Site for building becoming unsuitable—Accumulation of rents.]—WALLIS *v.* SOLICITOR-GENERAL FOR NEW ZEALAND, No. 90, *ante.*

D. Failure of Machinery for Effectuating Charitable Intention.

1419. Omission by testator to name objects—Imperfect execution of intention.]—A.-G. *v.* SYDERFEN (1683), 1 Vern. 224; cited in 7 Ves. 43, n.; 23 E. R. 430.

Annotations :—**Folld.** Anon. (1702), 2 Freem. Ch. 261. **Consd.** White *v.* White (1773), 1 Bro. C. C. 12; Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Expld. & Folld.** Mills *v.* Farmer (1815), 1 Mer. 55. **Expld.** *Re* Willis, Shaw *v.* Willis (1920), 37 T. L. R. 43. **Refd.** *Re* White, White *v.* White, [1893] 2 Ch. 41.

1420. —— —— **Discretion of court.]**—ANON. (1702), Freem. Ch. 261; 22 E. R. 1197.

1421. —— —— **Blanks for names of charities.]**—PIESCHEL *v.* PARIS (1825), 2 Sim. & St. 384; 4 L. J. O. S. Ch. 77; 57 E. R. 392.

Annotation :—**Refd.** *Re* White, White *v.* White, [1893] 2 Ch. 41.

1422. —— —— ——.]—*Re* WHITE, WHITE *v.* WHITE, No. 89, *ante.*

1423. —— —— **Disposition of residue in favour of charity—Applied to objects particularly mentioned.]**—MILLS *v.* FARMER (1815), 1 Mer. 55; 19 Ves. 483; 35 E. R. 597, L. C.

Annotations :—**Folld.** Pieschel *v.* Paris (1825), 2 Sim. & St. 384. **Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19; *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353; *Re* Willis, Shaw *v.* Willis (1920), 37 T. L. R. 43. **Refd.** Cherry *v.* Mott (1836), 1 My. & Cr. 123; A.-G. *v.* Ironmongers' Co. (1841), Cr. & Ph. 208; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91; Pocock *v.* A.-G. (1876), 3 Ch. D. 342; Biscoe *v.* Jackson (1887), 35 Ch. D. 460; *Re* White, White *v.* White, [1893] 2 Ch. 41; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Mentd.** Aria *v.* Emanuel (1861), 9 W. R. 366; Willoughby *v.* Storer (1870), 22 L. T. 896; *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; *Re* Huxtable, Huxtable *v.* Crawfurd (1902), 71 L. J. Ch. 876.

1424. —— —— —— **Good gift to charity.]**—POCOCK *v.* A.-G. (1876), 3 Ch. D. 342; 46 L. J. Ch. 495; 35 L. T. 575; 25 W. R. 277, C. A.

Annotations :—**Refd.** *Re* Hunter, Hood *v.* A.-G., [1897] 2 Ch. 105. **Mentd.** *Re* White, White *v.* White (1893), 41 W. R. 683.

1425. Objects to be chosen by legatee—With advice of A. & B.—Death of legatee, A. & B. before testator.]—A.-G. *v.* HICKMAN (1732), Kel. W. 34; 2 Eq. Cas. Abr. 193, pl. 14; 25 E. R. 482, L. C.

Annotations :—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Refd.** A.-G. *v.* Downing (1767), Wilm. 1; White *v.* White (1778), 1 Bro. C. C. 12; West *v.* Shuttleworth (1835), 2 My. & K. 684.

1426. Objects to be chosen by executor—Death of testator before executor appointed—Appointment by court.]—WHITE *v.* WHITE (1778), 1 Bro. C. C. 12; 28 E. R. 955, L. C.

Annotations :—**Consd.** A.-G. *v.* Painter-Stainers' Co. (1788), 2 Cox, Eq. Cas. 51; Moggridge *v.* Thackwell (1803), 7 Ves.

36. **Refd.** Mills *v.* Farmer (1815), 1 Mer. 55; Keir *v.* Robins (1838), 2 Jur. 773.

1427. —— Executor renouncing probate.]—A.-G. *v.* FLETCHER (1835), 5 L. J. Ch. 75.
Annotation :—**Consd.** Crawford *v.* Forshaw, [1891] 2 Ch. 261.

1428. —— Executor declining to act—Application to charities in unequal proportions.]—*Re* DICKASON (1837), 3 Hare, 195, n.; 67 E. R. 353.

1429. Objects to be chosen by trustee—Death of trustee—Before choice made.]—A.-G. *v.* BERRYMAN (1755), Dick. 168; 21 E. R. 234, L. C.
Annotation :—**Refd.** Alexander *v.* Alexander (1755), 2 Ves. Sen. 640.

1430. —— —— Before testatrix—Trust for definite objects.] — MOGGRIDGE *v* THACKWELL (1803), 7 Ves. 36; 32 E. R. 15, L. C.; *affd.* (1807), 13 Ves. 416, H. L.; *affg.* (1792), 1 Ves. 464, L. C.
Annotations :—**Expld.** Mills *v.* Farmer (1815), 1 Mer. 55. **Consd.** Ommanney *v.* Butcher (1823), Turn. & R. 260. **Folld.** Reeve *v.* A.-G. (1843), 3 Hare, 191. **Expld.** Pocock *v.* A.-G. (1876), 3 Ch. D. 342; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Consd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Apld.** *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 83; *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44. **Refd.** A.-G. *v.* Ironmongers' Co. (1833), 3 L. J. Ch. 11; Martin *v.* Margham (1844), 14 Sim. 230; Nightingale *v.* Goulbourn (1848), 2 Ph. 594; Marsh *v.* Means (1857), 30 L. T. O. S. 89; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91; *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353. **Mentd.** Cary *v.* Abbot (1802), 7 Ves. 490; Morice *v.* Durham (1804), 9 Ves. 399; Paice *v.* Canterbury (1807), 14 Ves. 364; Ellis *v.* Selby (1836), 5 L. J. Ch. 214; Biscoe *v.* Jackson (1887), 56 L. T. 753; Bourne *v.* Keane, [1919] A. C. 815.

1431. Objects to be chosen by third party—Death of third party before testatrix.]—Testatrix, after appointing an exor. & trustee, gave her personal estate in England subject to payment of her testamentary expenses & debts & a legacy to her sister for life. She then directed that on the death of her sister certain legacies should be raised & paid, & subject thereto gave the rest & residue of her personal estate in England, to such charitable institution or society in England, Russia or elsewhere as might be selected by W. within three calendar months from the time of the decease of her sister. Both the sister & W. predeceased testatrix :—*Held :* (1) testatrix had by her residuary gift shown a general charitable intention, notwithstanding the discretion conferred by her on W. & the limit of time imposed for its exercise; (2) & the charitable intention was not affected by the fact that W. was neither a trustee nor an exor.; (3) the gift of residue in favour of charity was valid.—*Re* WILLIS, SHAW *v.* WILLIS, [1921] 1 Ch. 44; 90 L. J. Ch. 94; 124 L. T. 290; 37 T. L. R. 43; 65 Sol. Jo. 43, C. A.

1432. Disclaimer by trustee—College refusing to accept devise.]—A.-G. *v.* ANDREW (1798), 3 Ves. 633; 30 E. R. 1194, L. C.; *affd.* (1800), Feb. 20, H. L. (*see* 7 Ves. 223).
Annotations :—**Consd.** Sinnett *v.* Herbert (1872), 7 Ch. App. 232. **Refd.** Corbyn *v.* French (1799), 4 Ves. 418; Cherry *v.* Mott (1836), 1 My. & Cr. 123. **Mentd.** A.-G. *v.* Catherine Hall, Cambridge (1820), Jac. 381; A.-G. *v.* Christ's Hospital (1830), 1 Russ. & M. 626.

1433. —— Appointment of new trustees ordered.]—DENYER *v.* DRUCE (1829), Taml. 32; 3 Hare, 194, n.; 48 E. R. 14.

1434. —— Administration of legacy according to terms of gift—Or cy-près.]—REEVE *v.* A.-G. (1843), 3 Hare, 191; 1 L. T. O. S. 432; 7 Jur. 1168; 67 E. R. 351.

1435. —— Master's scheme cy-près.]—A.-G. *v.* CHRIST'S HOSPITAL (GOVERNORS) (1843), 2 L. T. O. S. 16.

E. Surplus Remaining after Satisfying Prescribed Objects.

Surplus income.]—*See, generally,* Part III., Sect. 6, sub-sect. 5, *ante.*

1436. Trust in favour of particular class in certain district—Extension to members of class resident elsewhere.]—A.-G. *v.* WANSAY (1808), 15 Ves. 231; 33 E. R. 742, L. C.

1437. —— —— Payment of capitation & other fees—Allowance for clothing to selected boys.]—*Re* LATYMER'S CHARITY (1869), L. R. 7 Eq. 353; 20 L. T. 425; 33 J. P. 357; 17 W. R. 525.

1438. Foundation of charity school—Surplus applied to same uses.]—A.-G. *v.* COOPERS' CO. (1812), 19 Ves. 187; 34 E. R. 488, L. C.
Annotation :—**Refd.** A.-G. *v.* Stamford (1842), 1 Ph. 737.

1439. Gift for scholarships—Amount increased.]—A.-G. *v.* LLANDAFF (BP.) (1841), 10 L. J. Ch. 361.
Annotations :—**Refd.** A.-G. *v.* Ironmongers' Co. (1833), 2 My. & K. 576; A.-G. *v.* Ironmongers' Co. (1841), Cr. & Ph. 208. **Mentd.** Lyons *v.* East India Co. (1836), 1 Moo. P. C. C. 175; Sinnett *v.* Herbert (1872), 20 W. R. 270; Lyons *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91.

1440. Erection of almshouses—Surplus applied to additional almshouses—On surrender of benefits by trustees.]—A.-G. *v.* ROMNEY (EARL) (1848), 11 L. T. O. S. 431.

1441. Relief of poor & apprentice fees—Surplus applied for educational purposes—Increase of population—Change of circumstances & habits.]—*Re* CAMPDEN CHARITIES (1881), 18 Ch. D. 310; 50 L. J. Ch. 646; 45 L. T. 152; 30 W. R. 496, C. A.
Annotations :—**Consd.** *Re* Weir Hospital, [1910] 2 Ch. 124. **Refd.** *Re* Campden Charities (1883), 24 Ch. D. 213. **Mentd.** *Re* Poor's Lands Charity, Bethnal Green (1891), 7 T. L. R. 705; *Re* Berkhamsted Grammar School, [1908] 2 Ch. 25.

1442. Relief of poor & sick kindred—General intent to benefit poor & sick—Surplus for hospital purposes & in aid of founder's kindred.]—A.-G. *v.* NORTHUMBERLAND (DUKE) (1889), 5 T. L. R. 719, C. A.

1443. Fund for relief of miners suffering from particular accident—Surplus for relief of miners generally—No resulting trust for persons constituting charity.]—*Re* HARTLEY COLLIERY ACCIDENT RELIEF FUND, PLUMMER *v.* JORDAN (1908), 102 L. T. 165, n.

1444. Hospital for sick & wounded Welsh soldiers — Hospital closed — General charitable

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1429 i. *Objects to be chosen by trustee—Death of trustee—Before choice made.*]—A bequest of a sum of money to a person to be divided by him between such charitable institutions & in such proportions as he in his absolute discretion may think fit will be executed *cy-près* in the event of the death of such person before he has exercised his discretion.—*Re* CHILDS, [1917] V. L. R. 112.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—E.

d. *Gift to pay off debt on church—Debt paid—Purpose of charity ceasing—Cy-près not applicable.*]—*Re* HARDING (1904), 4 O. W. R. 316.—**CAN.**

1439 i. *Gift for scholarships—Amount increased—Increase of number only justified if consistent with main design of founder.*]—ABERDEEN UNIVERSITY *v.* IRVINE (1869), 7 Macph. (Ct. of Sess.) 1087; 41 Sc. Jur. 609.—**SCOT.**

e. *Fund for maintenance of choir & choral service in cathedral—Surplus applied for new organ.*]—*Re* TRUSTS OF THE RECTORY OF ST. JOHN IN COUNTY OF CORK (1869), I. R. 3 Eq. 335.—**IR.**

f. *Fund for relief of families of shipwrecked persons—Failure of particular objects—Applied for relief of persons of D. suffering from shipwreck generally.*]—In 1873 the S.S. "O." of D. was lost with her entire crew, most of whom were natives of D. A fund was raised to relieve the families & dependants of those who were lost with powers to the trustees to administer the fund according to their own discretion, & in the event of a surplus to apply it to any similar object. The fund was administered until the families & dependants of the crew had failed. On a petition for settlement of a scheme for the administration of the surplus funds :—*Held :* any surplus should be applied in the relief of persons belonging to D. who might thereafter suffer loss by shipwreck or other perils of the sea.—GIBSON (1900), 2 F. (Ct. of Sess.) 1195.—**SCOT.**

g. *Surplus applied to adding to number of beneficiaries—Increasing payments—Supplying deficiencies in future years.*]—MCLEISH'S (MCCLIESH) TRUSTEES *v.* MCLEISH (MCCLIESH) (1841), 3 Dunl. (Ct. of Sess.) 914; 37 Fac. Coll. 1169.—**SCOT.**

Sect. 2.—The cy-près doctrine and its application: Sub-sect. 2, E.; sub-sect. 3. Part V. Sect. 1: Sub-sects. 1 & 2.]

intention for sick Welsh soldiers.]—On the outbreak of the war a hospital was erected at Netley, & equipped & run during the war, for the benefit of sick & wounded Welsh soldiers by means of large voluntary subscriptions raised in Wales. In 1919 the hospital was closed, the staff disbanded, & the property sold to the War Office, & after winding up the affairs of the hospital there was a surplus of some £9,000 :—*Held:* there was not a resulting trust of the surplus for the subscribers to the hospital, but a general charitable intention for sick & wounded Welsh soldiers which enabled the ct. to apply the fund *cy-près*.—*Re* WELSH HOSPITAL (NETLEY) FUND, THOMAS *v.* A.-G., [1921] 1 Ch. 655; 90 L. J. Ch. 276; 124 L. T. 787; 65 Sol. Jo. 417.

Contrary intention expressed—Doctrine not applicable.]—*See* Sub-sect. 3, *post.*

SUB-SECT. 3.—WHERE NOT APPLICABLE.

1445. Gift to build church—Objection of bishop.]—A.-G. *v.* OXFORD (BP.) (1786), 1 Bro. C. C. 444, n.; cited 4 Ves. 431; 28 E. R. 1231.

Annotations :—**Consd.** A.-G. *v.* Minshull (1798), 4 Ves. 11. **Expld.** Corbyn *v.* French (1799), 4 Ves. 418. **Folld.** *Re* Packe, Sanders *v.* A.-G., [1918] 1 Ch. 437. **Refd.** A.-G. *v.* Winchelsea (1791), 3 Bro. C. C. 373; A.-G. *v.* Boultbee (1794), 2 Ves. 380; Moggridge *v.* Thackwell (1803), 7 Ves. 36; Cherry *v.* Mott (1836), 1 My. & Cr. 123; Sinnett *v.* Herbert (1872), 7 Ch. App. 232.

1446. Gift to endow church—Subject to limited right of presentation—Refusal of bishop to relinquish patronage.]—*Re* WELSTEAD (1858), 25 Beav. 612; 53 E. R. 770.

1447. As to disposition of surplus—Contrary intention expressed.]—A.-G. *v.* LIDDELL (1870), 23 L. T. 690; 19 W. R. 297.

1448. —— No proof of surplus.]—Subscriptions having been asked for by the mayor of B. & the vicar of F. to funds for the relief of the widows, orphans & dependants of fishermen drowned during a gale off F., & the response to the appeals by the public being more generous than anticipated, the relief committee, which had appointed a sub-committee, proposed on their recommendation, after making provision for a capital payment & certain weekly payments to the widows & families of the fishermen, to invest the surplus as a permanent fund for the relief of sufferers by similar catastrophes in the locality. The widows alleging that the provision for themselves & their families was inadequate :—*Held:* as it could not properly be said by the trustees that any surplus of the fund subscribed existed, the trustees, at the present stage, would be acting outside their powers in diverting any portion of the fund to purposes, however excellent, other than those of the trust constituted by the founders of the particular charity, but if & when a surplus was proved to exist the ct. had & would exercise jurisdiction to entertain a proposal for its application *cy-près*.—CROSS *v.* LLOYD-GREAME (1909), 102 L. T. 163; 26 T. L. R. 171; 54 Sol. Jo. 152.

When surplus applicable cy-près.]—*See* Sub-sect. 2, E., *ante.*

Surplus income.]—*See, generally,* Part III., Sect. 6, sub-sect. 5, *ante.*

1449. Omission by testator to name objects—Next-of-kin entitled—Though contrary intention expressed.]—WHEELER *v.* SHEER (1730), Mos. 288, 301; 25 E. R. 399, 406, L. C.

Annotations :—**Consd.** White *v.* White (1778), 1 Bro. C. C. 12. **Refd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36; Mills *v.* Farmer (1815), 19 Ves. 483; *Re* Ford, Ford *v.* Ford, [1902] 1 Ch. 218. **Mentd.** Cowper *v.* Scott (1731), 3 P. Wms. 119; Chapman *v.* Blisset (1738), West *temp.* Hard. 328; Fitzgerald *v.* Field (1826), 1 Russ. 416; Pickford *v.* Brown (1856), 2 K. & J. 426; Chappell *v.* Haynes (1858), 27 L. J. Ch. 336; *Re* Roby, Howlett *v.* Newington, [1908] 1 Ch. 71.

See, also, cases in Sub-sect. 2, D., *ante.*

1450. Objects particularly defined—Charitable legacy.]—RUSSELL *v.* KELLETT (1855), 3 Sm. & G. 264; 26 L. T. O. S. 193; 20 J. P. 131; 2 Jur. N. S. 132; 65 E. R. 653.

Annotations :—**Refd.** Fisk *v.* A.-G. (1867), L. R. 4 Eq. 521; *Re* Maguire (1870), L. R. 9 Eq. 632; *Re* Ovey, Broadbent *v.* Barrow (1885), 29 Ch. D. 560; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876. **Mentd.** *Re* Clark's Trust (1875), 1 Ch. D. 497; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19.

1451. Objects to be selected by trustees—Discretion given by statute.]—An Act of Parliament directed that the income of a society whose objects had failed was to be applied to such charities as the society, with the consent of four fifths of the governors, should select, subject to the sanction of the ct. :—*Held:* the application was not to be *cy-près*, & the ct. had no power to direct a scheme nor to control the discretion of the trustees so long as it was properly exercised.—*Re* IMPRISONED DEBTORS DISCHARGE SOCIETY'S ACT, 1856, *Re* SOCIETY FOR DISCHARGE & RELIEF OF PERSONS IMPRISONED FOR SMALL DEBTS THROUGHOUT ENGLAND & WALES (1912), 28 T. L. R. 477; 56 Sol. Jo. 596, C. A.

1452. No paramount charitable intention—Failure of particular purpose—Refusal of rector for many years to allow erection of monument.]—MELLICK *v.* ASYLUM PRESIDENT, ETC. (1821), Jac. 180; 37 E. R. 818.

Annotation :—**Refd.** Trimmer *v.* Danby (1856), 25 L. J. Ch. 424.

1453. —— —— Failure to obtain sites for almshouses—No income available for endowment.]—*Re* WHITE'S TRUSTS (1886), 33 Ch. D. 449; 55 L. J. Ch. 701; 55 L. T. 162; 50 J. P. 695; 34 W. R. 771; 2 T. L. R. 830.

1454. —— ——.]—*Re* UNIVERSITY OF LONDON MEDICAL SCIENCES INSTITUTE FUND, FOWLER *v.* A.-G., No. 690, *ante.*

1455. —— ——.]—*Re* WILSON, TWENTYMAN *v.* SIMPSON, No. 948, *ante.*

1456. —— Failure of prior conditional gift.]—*Re* RANDELL, RANDELL *v.* DIXON, No. 1054, *ante.*

PART IV. SECT. 2, SUB-SECT. 3.

1450 i. *Objects particularly defined—Charitable legacy.]*—SIMS *v.* QUINLAN (1864), 17 I. Ch. R. 43.—IR.

1454 i. *No paramount charitable intention—Failure of particular purpose.]*—A testator devised the residue of his real estate to & for the benefit of the Presbyterian Church at —, to be, by the trustees of the church, used for its benefit :—*Held:* the devise showed not a general charitable intention, but an intention to benefit a particular charity, & therefore could not be construed *cy-près*.—A.-G. *v.* POWELL (1890), 11 N. S. W. Eq. 263.—AUS.

1454 ii. —— —— *Lapse.]*—A. directed his trustees, in a certain event, to apply his residuary estate "in founding, erecting, & endowing in P. an industrial school for females." At the date of A.'s death it was open to a private individual to found or to contribute to an industrial school, but when the residue became available the effect of supervening legislation had made such individual foundation or contribution impossible :—*Held:* as the terms of the bequest did not disclose any general charitable intention, but only the favouring of the particular object that had failed, there was no room for the application of the doctrine of *cy-près*; & the bequest lapsed.—BURGESS' TRUSTEES *v.* CRAWFORD, [1912] S. C. 387.—SCOT.

1454 iii. —— —— ——.]—Where a testator has a charitable trust in contemplation & has expended money on the purchase of land for the purpose, but there is no definite statement in writing to indicate the terms of the proposed trust & no evidence of a general charitable intention, the ct. cannot order it to be administered as nearly as may be in conformity with his wishes according to the *cy-près* doctrine, & the trust fails.—SADLIER *v.* GIBBS & A.-G., [1919] N. Z. L. R. 49.—N.Z.

1457. —— Disclaimer by trustees.]—*Re* PACKE, SANDERS *v.* A.-G., No. 1189, *ante*.

1458. No failure of purpose—Trust to establish bishopric—Particular scheme given up.]—Testatrix by codicil bequeathed a legacy to a committee for establishing a bishopric in satisfaction of a promise to subscribe a like sum. After her death the particular scheme of establishment was given up, but the committee still existed, & the intention of establishing a bishopric had not been abandoned: —*Held:* this was a good charitable legacy for a purpose which had not yet failed, & the money must be paid over to approved members of the committee with an undertaking to apply it to the proper purposes, &, in case the purposes failed, to return it for application *cy-près*.—*Re* VILLERS-WILKES, BOWER *v.* GOODMAN (1895), 72 L. T. 323; 11 T. L. R. 250; 39 Sol. Jo. 298.

1459. —— Trust for repair of roads — Roads taken over by local authority.]—Testator in 1709 devised real estate to trustees after the death of his aunt & certain annuitants, & bequeathed the sum of £3,000 upon trust to build galleries at C. & construct a causeway & to set aside £40 a year for the repair of the galleries & causeway, &, after directing the foundation of two travelling fellowships gave the overplus to the C. University library. By an order of the ct. made on the petition of the trustees in 1742 a further sum of £40 a year was ordered to be expended on the causeway. Under the Local Government Act, 1888 (c. 41) the causeway was declared a main road, & was now controlled by the C. County Council & a District Council. C. University applied that so much of the £40 a year bequeathed by testator as was not required for repair & the whole of the £40 a year payable under the order of 1742 might be applied for the purposes of the library: —*Held:* the trusts for the repair of the road were still subsisting.—A.-G. *v.* DAY, [1900] 1 Ch. 31; 69 L. J. Ch. 8; 81 L. T. 806; 64 J. P. 88.

Annotation:—**Followed.** *Re* Hall's Charity, Severn Comrs. *v.* Charity Trustees & Worcestershire County Council (1911), 76 J. P. 9.

1460. —— Trust for repair of bridge—Part of bridge converted into swing bridge—& vested in public body.]—By a deed of feoffment of Mar. 4, 1576, H. conveyed certain land to feoffees to the use & behoof of the reparation of, among other things, U. bridge, & by an order of May 7, 1851, it was declared that the trustees were bound to set apart a third of the annual rents & profits of the charity estate for this purpose, any surplus to be accumulated. As the result of two private Acts of Parliament of 1846 & 1881, & an agreement between the justices & the S. Comrs., part of the existing U. bridge was a swing bridge, constructed to open to allow traffic on the river to pass to & fro. By virtue of the Acts and the agreement the comrs. were bound to keep in repair the opening portion of the bridge. Having spent a sum of over £200 in 1909 on these repairs the comrs. claimed to be reimbursed by the trustees of the charity out of the funds accumulated in their hands. The county council objected to the fund being applied for the benefit of the comrs. on the ground that the swing bridge was on a different footing to the rest of the bridge:—*Held:* (1) the repairs done by the comrs. were reparations of the bridge & the fund was by the terms of the feoffment applicable to such reparations, though the burden of repair had been cast by the legislature on a public body; (2) the opening portion of the bridge was part of a bridge of special construction & the trustees were bound to keep the whole bridge in repair so far as the charity funds applicable for the purpose sufficed.—*Re* HALL'S CHARITY, SEVERN COMRS. *v.* CHARITY TRUSTEES & WORCESTERSHIRE COUNTY COUNCIL (1911), 76 J. P. 9; 28 T. L. R. 32; 10 L. G. R. 11.

Part V.—Trust Property after Trust created.

SECT. 1.—RECOVERY OF TRUST PROPERTY.

SUB-SECT. 1.—IN GENERAL.

1461. Accumulation of income—Unapplied bequest accumulating for thirty years—Applicable with original bequest.]—FORBES *v.* FORBES (1854), 18 Beav. 552; 23 L. J. Ch. 422; 23 L. T. O. S. 108; 52 E. R. 216.

1462. —— Beneficiary entitled absolutely—Right to immediate payment.]—WHARTON *v.* MASTERMAN, No. 1115, *ante*.

1463. Interest on charitable legacy—Payable from testator's death.]—A.-G. *v.* HAYES (1736), 1 Atk. 356; West *temp.* Hard. 10; 26 E. R. 227, L. C.

1464. —— Payable from year after testator's death—Legacies for erection of church—Great delay in carrying legacies into effect.]—FISHER *v.* BRIERLEY (No. 3) (1861), 30 Beav. 268; 54 E. R. 892; *subsequent proceedings*, FISHER *v.* BRIERLEY (No. 4) (1863), 32 Beav. 602.

1465. Boundaries of charity lands—Lands intermixed—Commission to ascertain ordered.]—RESBY *v.* FARRER (1700), 2 Vern. 414; 1 Eq. Cas. Abr. 100, pl. 7; 23 E. R. 866.

1466. —— —— ——.]—A.-G. *v.* BOWYER (1800), 5 Ves. 300; Taml. 236; 31 E. R. 598, L. C.

1467. —— —— —— Duty of tenant to preserve.]—A.-G. *v.* FULLERTON (1813), 2 Ves. & B. 263; 35 E. R. 319, L. C.

Annotation:—**Consd.** Spike *v.* Harding (1878), 7 Ch. D. 871.

1468. —— —— Commission to ascertain not ordered—Successive changes of ownership—No proof that lands in question in possession of party against whom relief claimed.]—A.-G. *v.* STEPHENS (1855), 6 De G. M. & G. 111; 25 L. J. Ch. 888; 26 L. T. O. S. 189; 20 J. P. 70; 2 Jur. N. S. 51; 4 W. R. 191; 43 E. R. 1172, L. C.

Annotations:—**Refd.** Brown *v.* Wales (1872), L. R. 15 Eq. 142; Searle *v.* Cooke (1890), 43 Ch. D. 519.

See, further, BOUNDARIES, FENCES & PARTY-WALLS, Vol. VII., pp. 272 *et seq.*

SUB-SECT. 2.—FOLLOWING TRUST PROPERTY.

1469. Purchaser for value without notice—Land subject to rentcharge—Purchaser bound.]—HIDE'S CASE (1628), Duke, 76.

1470. —— —— —— Subsequent purchaser for

r. *Interest on charitable legacy—Payable from year after testator's death—Notwithstanding intervening life estate.*]—TOOMEY *v.* TRACEY (1883), 4 O. R. 708.—**CAN.**

Sect. 1.—*Recovery of trust property: Sub-sects.* 2, 3 & 4.]

value without notice not bound.]—EAST-GREENSTED'S CASE (1633), Duke, 64.

1471. —— —— ——.]—PEACOCK *v.* THEWER (1638), Duke, 82.

1472. —— —— ——.]—WHARTON *v.* CHARLES (1673), Cas. *temp.* Finch, 81 ; 23 E. R. 43, L. C.

1473. —— —— **Good defence in equity against legal right.**]—A.-G. *v.* WILKINS (1853), 17 Beav. 285 ; 1 Eq. Rep. 514 ; 22 L. J. Ch. 830 ; 21 L. T. O. S. 260 ; 17 Jur. 885 ; 1 W. R. 472 ; 51 E. R. 1043.

Annotations :—**Expld.** Finch *v.* Shaw (1854), 19 Beav. 500. **Consd.** Phillips *v.* Phillips (1861), 4 De G. F. & J. 208. **Reld.** Gomm *v.* Parrott (1857), 3 C. B. N. S. 47.

Recovery of rentcharges generally, *see* Sub-sect. 3, *post.*

1474. —— **Land subject to charitable use—Subsequent purchaser not bound—Though with notice.**]—SUTTON COLEFIELD CASE (1635), Duke, 68.

Annotations :—**Mentd.** A.-G. *v.* Coventry Corpn. (1700), 3 Madd. 353 ; A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

1475. —— —— **Not bound.**]—PEACOCK *v.* THEWER (1638), Duke, 82.

1476. —— **Sale of charity lands to—Unimpeachable.**]—WILLOUGHBY *v.* GLOUCESTER WEAVERS (1653), Duke, 51.

1477. —— —— ——.] — A.-G. *v.* GOWER (LORD) (1736), 2 Eq. Cas. Abr. 195 ; 22 E. R. 168, L. C.

See, also, Nos. 1573, 1754, *post.*

1478. Purchaser for value with notice—Land subject to rentcharge—Liable only for arrears during his own time—If rent concealed liable for all time of concealment.]—HIDE'S CASE (1628), Duke, 76.

1479. —— —— **Purchaser bound—Sufficiency of notice.**]—WOODFORD (INHABITANTS) *v.* PARKHURST (1639), Duke, 70.

Annotation :—**Consd.** *Re* Herbage Rents, Greenwich, Charity Comrs. *v.* Green, [1896] 2 Ch. 811.

1480. —— —— —— **Mortgagee with notice.**]—(1) In 1881 deft. purchased from the Ecclesiastical Comrs. certain lands which, in 1834, had been allotted to their predecessors in title under a private Inclosure Act, in lieu of the great tithes of the parish of H. There was evidence that from time immemorial an annual payment of a certain quantity of corn had been made out of the tithes for the benefit of the poor of the parish, & from 1834 to 1881 the same payment had been made by the owners or occupiers of the lands in question. The conveyance to deft. was expressed to be made free from incumbrances, but was also expressly subject to the unredeemed land tax, tithe commutation rentcharge, both rectorial & vicarial, & to all other payments & outgoings, ecclesiastical or civil, charged upon or payable out of the lands conveyed :—*Held :* the payment of corn constituted a valid charge to which the lands allotted in lieu of the tithes became subject by s. 66 of the Act, & deft. by the terms of his conveyance took the lands subject to the charge.

(2) Deft. had mortgaged the lands by a deed which expressly stated in terms similar to those used in the conveyance that the mtge. was subject to all payments & outgoings, ecclesiastical or civil, charged upon or payable out of the mortgaged property. The mtgee. had made no inquiry as to the existence of any charges upon the property :—*Held :* having regard to Conveyancing & Law of Property Act, 1882 (c. 41), s. 3 (1) (ii), the mtgee. must be taken to have had notice of the charge in question, & the mortgaged property was subject thereto.—*Re* ALMS CORN CHARITY, CHARITY COMRS. *v.* BODE, [1901] 2 Ch. 750 ; 71 L. J. Ch. 76 ; 85 L. T. 533 ; 45 Sol. Jo. 163, 723.

Recovery of rentcharges generally, *see* Sub-sect. 3, *post.*

1481. —— **Land subject to charitable use—Sale to other purchasers without notice—Subsequent purchasers bound.**]—SUTTON COLEFIELD CASE (1635), Duke, 68.

Annotations :—**Mentd.** A.-G. *v.* Coventry Corpn. (1700), 3 Madd. 353 ; A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

1482. —— **Property subject to charitable trust—Purchaser bound.**]—HARDING *v.* EDGE (1682), 2 Cas. in Ch. 94 ; 22 E. R. 863.

1483. —— —— ——.]—A.-G. *v.* FLINT (1844), 4 Hare, 147 ; 67 E. R. 597 ; *subsequent proceedings* (1845), 9 J. P. 836.

See, also, No. 1572, *post.*

1484. Improper alienation—Proceeds of sale of pest house lent to paving & lighting commissioners—Repayment out of rates ordered.]—A.-G. *v.* KELL (1840), 2 Beav. 575 ; 9 L. J. Ch. 389 ; 48 E. R. 1305.

1485. —— **Breach of trust—Private chapel conveyed to church building commissioners—Reconveyance decreed.**]—A.-G. *v.* MANCHESTER (BP.) (1867), L. R. 3 Eq. 436 ; 15 L. T. 646 ; 31 J. P. 516 ; 15 W. R. 673.

Annotations :—**Mentd.** The Parlement Belge (1879), 4 P. D. 129 ; Sutton *v.* Bowden, [1913] 1 Ch. 518.

1486. —— —— **Application of fund for relief of poor to payment of bill of costs incurred by officer of guardians—Restitution compelled by information.**] — A.-G. *v.* COMPTON (1842), 1 Y. & C. Ch. Cas. 417 ; 6 J. P. 183 ; 62 E. R. 951.

Annotations :—**Consd.** A.-G. *v.* Pearson (1846), 2 Coll. 581. **Reld.** Turner *v.* Collins (1871), L. R. 12 Eq. 438 ; A.-G. *v.* Bermondsey Vestry (1883), 23 Ch. D. 60.

1487. —— **Purchase of land partly with charity funds—Claim of charity to proportional part barred by acquiescence—Subject to right of Attorney-General to protect charity.**]—NEWCASTLE-UPON-TYNE CORPN. *v.* A.-G. (1845), 12 Cl. & Fin. 402 ; 8 E. R. 1464, H. L. ; *varying* S. C. *sub nom.* A.-G. *v.* NEWCASTLE CORPN. (1842), 5 Beav. 307.

Annotations :—**Mentd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; *Re* Patten & Edmonton Union Grdns. (1883), 52 L. J. Ch. 787.

—— **Sales.**]—*See* Sect. 3, sub-sect. 1, *post.*

—— **Leases.**]—*See* Sect. 3, sub-sect. 2, *post.*

—— **Limitation of actions.**]—*See* Sub-sect. 4, *post.*

SUB-SECT. 3.—RECOVERY OF RENTCHARGES.

See, generally, Charitable Trusts (Recovery) Act, 1891 (c. 17) ; R. S. C. (Charitable Trusts Recovery), 1892.

1488. Who is liable—Terre tenant—Distress by legal owners—Terre tenant entitled to contribution by former owners on account of arrears.]—WOODFORD (INHABITANTS) *v.* PARKHURST (1639), Duke, 70.

Annotation :—**Consd.** *Re* Herbage Rents, Greenwich, Charity Comrs. *v.* Green, [1896] 2 Ch. 811.

1489. —— **Tenant for years—Not personally liable—Action by Charity Commissioners.**]—A tenant for years is not liable in an action of debt for non-payment of rentcharge issuing out of the land of which he is in occupation, nor in the case of a rentcharge created for charitable purposes is he liable in an action in the Ch. Div. at the instance of the A.-G. or the Charity Comrs.—*Re* HERBAGE RENTS, GREENWICH, CHARITY COMRS. *v.* GREEN, [1896] 2 Ch. 811 ; 65 L. J. Ch. 871 ; 75 L. T. 148 ; 45 W. R. 74 ; 40 Sol. Jo. 716 ; *sub nom. Re* GREENWICH HERBAGE RENTS CHARITY, CHARITY COMRS. *v.* GREEN, 12 T. L. R. 621.

Annotations :—**Reld.** Foley's Charity Trustees *v.* Dudley

Corpn., [1910] 1 K. B. 317 ; Cundiff *v.* Fitzsimmons, [1911] 1 K. B. 513.

Jurisdiction of Charity Commissioners generally, *see* Part IX., Sect. 4, *post.*

1490. —— Rentcharge issuing out of land belonging to several owners—All owners need not be made parties—But owners sued may seek contribution from other owners.]—A.-G. *v.* SHELLY (1712), 1 Salk. 163 ; 91 E. R. 151.

Annotations :—**Consd.** A.-G. *v.* Jackson (1805), 11 Ves. 365. **Refd.** A.-G. *v.* Naylor (1863), 1 Hem. & M. 809.

1491. —— —— —— ——.]—A.-G. *v.* WYBURGH (1719), 2 Eq. Cas. Abr. 192 ; 1 P. Wms. 599 ; 22 E. R. 164, L. C.

Annotations :—**Consd.** A.-G. *v.* Jackson (1805), 11 Ves. 365. **Refd.** A.-G. *v.* Naylor (1863), 10 L. T. 406.

1492. —— —— —— Inquiry directed by court to ascertain who liable to contribute.]—A.-G. *v.* JACKSON (1805), 11 Ves. 365 ; 32 E. R. 1128, L. C.

Annotations :—**Consd.** A.-G. *v.* Naylor (1863), 1 Hem. & M. 809. **Refd.** *Re* Herbage Rents, Greenwich, Charity Comrs. *v.* Green, [1896] 2 Ch. 811. **Mentd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1493. —— —— —— ——.]—A.-G. *v.* NAYLOR (1863), 1 Hem. & M. 809 ; 3 New Rep. 191 ; 33 L. J. Ch. 151 ; 10 L. T. 406 ; 10 Jur. N. S. 231 ; 12 W. R. 192 ; 71 E. R. 354.

Annotation :—**Refd.** *Re* Herbage Rents, Greenwich, Charity Comrs. *v.* Green, [1896] 2 Ch. 811.

1494. Proof of rentcharge—Presumption from long continued payment—Payment for thirty years.]—A.-G. *v.* WEST (1858), 27 L. J. Ch. 789 ; 31 L. T. O. S. 309 ; 22 J. P. 815 ; 5 Jur. N. S. 77, L. JJ.

1495. —— —— Payment for more than hundred years — Incumbent's stipend.]—The owner of landed estate in a parish by his will, made in 1769, gave £2,000 to two persons, one of whom succeeded to the estate, to be invested upon trust to pay the income thereof to the vicar of the parish for the time being in augmentation of his stipend. Testator died in 1771, but the £2,000 was never set apart. The owners of the estate, however, continued to pay £60 a year to the vicar for the time being of the parish, & though a question was suggested on certain occasions that the gift was void under Charitable Uses Act, 1735 (9 Geo. 2, c. 36), & that the payment of the £60 a year was a voluntary payment, the vicars of the parish claimed it as of right, & the owners of the estate in their succession duty accounts treated it as a charge on the land, & a deduction in respect of the £60 a year was claimed by them & was allowed :—*Held :* the true inference was that the £60 a year was a charge upon the estate to which the vicar of the parish for the time being was entitled.—ROBINSON *v.* SMITH (1908), 24 T. L. R. 573.

1496. —— —— —— Corporation liable as terre tenants.]—In or about the year 1802 a strip of land was acquired by turnpike trustees under statutory powers from certain charity trustees for the purpose of widening a turnpike road, & was thrown into the road. No conveyance of the land was forthcoming, but a fee farm rent was paid from that time in respect of such land to the charity trustees by the turnpike trustees until 1871, when the turnpike trust was extinguished by Annual Turnpike Acts Continuance Act, 1870 (c. 73). The road thereupon became vested in D. Corpn. as the highway authority, under Public Health Act, 1848 (c. 63), s. 68, & they continued to pay the rent down to 1904, when they refused to make any more payments. The charity trustees sued them in the county ct. for the arrears of rent :—*Held :* the ct. ought to presume a lost grant to the turnpike trustees at a fee farm rent, & the estate of the corpn. in such portion of the soil as vested in them was either a determinable statutory fee simple or fee simple conditional, or a statutory freehold, & the corpn. were terre tenants & were liable to pay the rentcharge.—FOLEY'S CHARITY TRUSTEES *v.* DUDLEY CORPN., [1910] 1 K. B. 317 ; 79 L. J. K. B. 410 ; 102 L. T. 1 ; 74 J. P. 41 ; 8 L. G. R. 320, C. A.

See, now, Charitable Trusts (Recovery) Act, 1891, s. 5 (2).

Usage generally, *see* Part III., Sect. 7, *ante.*

1497. —— Admission of possession of title deeds making out defendant's title but not title of claiming charity—Defendant not bound to produce deeds.]—A.-G. *v.* STRUTT (1840), 3 Beav. 396 ; 10 L. J. Ch. 24 ; 49 E. R. 155.

See, generally, RENTCHARGES & ANNUITIES.

Suit barred by lapse of time.]—*See* Sub-sect. 4, *post.*

SUB-SECT. 4.—APPLICATION OF STATUTES OF LIMITATION TO CHARITIES.

See, generally, LIMITATION OF ACTIONS.

1498. Mere lapse of time—Not evidence of acquiescence or release—Personalty secured on mortgage bequeathed to charity—Decreed to next of kin.]—PICKERING *v.* STAMFORD (LORD) (1795), 2 Ves. 581 ; 30 E. R. 787 ; *subsequent proceedings* (1797), 3 Ves. 332, 492, L. C.

Annotations :—**Refd.** Waring *v.* Ward (1800), 5 Ves. 670 ; Cholmondeley *v.* Clinton (1820), 2 Jac. & W. 1 ; Kohler *v.* Reynolds (1857), 26 L. J. Ch. 415. **Mentd.** Garthshore *v.* Chalie (1804), 10 Ves. 1 ; Leake *v.* Robinson (1817), 2 Mer. 363 ; Campbell *v.* Graham (1831), 1 Russ & M. 453 ; Lett *v.* Randall (1855), 3 Sm. & G. 83 ; Harcourt *v.* White (1860), 28 Beav. 303 ; *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423.

1499. —— Title to charity lands not acquired by—Purchaser with notice.]—A.-G. *v.* CHRIST'S HOSPITAL (1834), 3 My. & K. 344 ; 40 E. R. 131.

1500. —— —— Party in possession paying inadequate rent.]—A.-G. *v.* KEMP (1844), 8 J. P. 243.

1501. —— —— Trustees cannot appropriate.]—A.-G. *v.* FISHMONGERS' CO. (1841), 5 My. & Cr. 16 ; 5 Jur. 693 , 41 E. R. 278, L. C.

Annotations :—**Distd.** A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933. **Refd.** A.-G. *v.* Hospital of St. John, Bedford (1865), 34 L. J. Ch. 441 ; Bourne *v.* Keane, [1919] A. C. 815.

Usage generally, *see further*, Part III., Sect. 7, *ante.*

1502. Charities are within Real Property Limitation Act, 1833 (c. 27)—"Person"—Poor of parish included.]—ST. MARY MAGDALEN, OXFORD *v.* A.-G. (1857), 6 H. L. Cas. 189 ; 26 L. J. Ch. 620 ; 29 L. T. O. S. 238 ; 21 J. P. 531 ; 3 Jur. N. S. 675 ; 10 E. R. 1267 ; *sub nom.* A.-G. *v.* MAGDALEN COLLEGE, OXFORD, 5 W. R. 716, H. L.

Annotations :—**Folld.** A.-G. *v.* Davey (1859), 4 De G. & J. 136 ; A.-G. *v.* Payne (1859), 27 Beav. 168. **Consd.** Magdalen Hospital *v.* Knotts (1878), 8 Ch. D. 709. **Refd.** Bobbett *v.* S. E. Ry. (1882), 9 Q. B. D. 424.

1503. —— —— ——.]—A.-G. *v.* DAVEY (1859), 4 De G. & J. 136 ; 33 L. T. O. S. 158 ; 23 J. P. 405 ; 7 W. R. 429 ; 45 E. R. 53, L. C. & L. JJ.

Annotations :—**Consd.** Magdalen Hospital *v.* Knotts (1878), 8 Ch. D. 709. **Mentd.** Scarborough Corpn. *v.* Cooper, [1910] 1 Ch. 68.

1504. Improvident leases—Suit to set aside barred after twenty years.]—ST. MARY MAGDALEN, OXFORD *v.* A.-G. (1857), 6 H. L. Cas. 189 ; 26 L. J. Ch. 620 ; 29 L. T. O. S. 238 ; 21 J. P. 531 ;

PART V. SECT. 1, SUB-SECT. 4.

1502 i. *Charities not within Real Property Limitation Act,* 1833.]—INCORPORATED SOCIETY *v.* RICHARDS (1841), 1 Dr. & War. 258 ; 1 Con. & Law. 58 ; 4 I. Eq. R. 177.—**IR.**

1502 ii. *Charities are within Real Property Limitation Act,* 1833—*Express trust—Recovery of annuities.*]—CHARITABLE DONATIONS & BEQUESTS COMRS. *v.* WYBRANTS (1845), 2 Jo. & Lat. 182.—**IR.**

Sect. 1.—*Recovery of trust property: Sub-sect.* 4. *Sect.* 2: *Sub-sects.* 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10. *Sect.* 3: *Sub-sects.* 1 & 2, *A.*]

3 Jur. N. S. 675; 10 E. R. 1267; *sub nom.* A.-G. *v.* MAGDALEN COLLEGE, OXFORD, 5 W. R. 716, H. L.
Annotations:—**Foll.** A.-G. *v.* Davey (1859), 4 De G. & J. 136; A.-G. *v.* Payne (1859), 27 Beav. 168. **Consd.** Magdalen Hospital *v.* Knotts (1878), 8 Ch. D. 709. **Refd.** Bobbett *v.* S. E. Ry. (1882), 9 Q. B. D. 424.

1505. —— ——.]—A.-G. *v.* PAYNE (1859), 27 Beav. 168; 7 W. R. 604; 54 E. R. 65.
Annotation:—**Consd.** Magdalen Hospital *v.* Knotts (1878), 8 Ch. D. 709.

1506. Void lease—Title acquired under by lapse of time—Lease at peppercorn rent—No tenancy created.]—MAGDALEN HOSPITAL (PRESIDENT & GOVERNORS) *v.* KNOTTS (1879), 4 App. Cas. 324; 48 L. J. Ch. 579; 40 L. T. 466; 43 J. P. 460; 27 W. R. 602, H. L.
Annotations:—**Consd.** Bangor *v.* Parry, [1891] 2 Q. B. 277. **Distd** Canterbury Corpn. *v.* Cooper (1908), 99 L. T. 612. **Refd** Webster *v.* Southey (1887), 36 Ch. D. 9; Churcher *v.* Martin (1889), 42 Ch. D. 312; *Re* Devon's S. E., White *v.* Devon, *Re* Steer, Steer *v.* Dobell, [1896] 2 Ch. 562; Mid. Ry. *v.* Wright (1901), 70 L. J. Ch. 411; Rickard *v.* Graham, [1910] 1 Ch. 722. **Mentd.** Kingston Race Stand *v.* Kingston Corpn., [1897] A. C. 509; *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176.

1507. —— —— **Non-payment of rent—Time begins to run from date of.**]—WEBSTER *v.* SOUTHEY (1887), 36 Ch. D. 9; 56 L. J. Ch. 785; 56 L. T. 879; 52 J. P. 36; 35 W. R. 622; 3 T. L. R. 628.
Annotations:—**Mentd.** Haigh & Baxter *v.* West (1893), 68 L. T. 531; *Re* Verrall, National Trust for Places of Historic Interest or Natural Beauty *v.* A.-G., [1916] 1 Ch. 100.

1508. —— **Non-payment of rent for twenty years—Arrears paid subsequently—Right to recover possession.**]—BUNTING *v.* SARGENT (1879), 13 Ch. D. 330; 49 L. J. Ch. 109; 41 L. T. 643; 28 W. R. 123.

Mismanagement of trust property.] — *See, generally*, Sect. 3, *post.*

1509. Void conveyance—"Express trust"—Information filed within twenty years—Suit not barred.]—A.-G. *v.* FLINT (1844), 4 Hare, 147; 67 E. R. 597; *subsequent proceedings* (1845), 9 J. P. 836.

1510. —— **Prescriptive title by possession for more than twelve years—One trustee general devisee and legatee of grantor immaterial.**]—In 1868 trustees entered into possession of land under a charitable trust deed which did not fulfil the requirements of Charitable Uses Act, 1735 (9 Geo. 2, c. 36). The trustees continued in possession for more than twelve years, applying the rents according to the trusts of the deed. C., who was one of the trustees was beneficially entitled to the property, subject to the deed. In 1888 the exors. & trustees of C.'s will brought an action against the trustees of the deed claiming the property & a conveyance of the legal estate from the trustees:—*Held:* the deed was wholly inoperative & passed no estate whatever, & the trustees of the deed had acquired a good prescriptive title by virtue of Real Property Limitation Acts, 1833 (c. 27) & 1874 (c. 57).—CHURCHER *v.* MARTIN (1889), 42 Ch. D. 312; 58 L. J. Ch. 586; 61 L. T. 113; 37 W. R. 682.
Annotations:—**Distd.** Patrick *v.* Simpson (1889), 24 Q. B. D. 128. **Foll.** *Re* Lacy, Royal General Theatrical Fund Assocn. *v.* Kydd, [1899] 2 Ch. 149.

1511. —— —— **Executor not express trustee.**]—Testator gave all his property, including freeholds & leaseholds, which gift, the requirements of Charitable Uses Act, 1735 (9 Geo. 2, c. 36) not having been complied with, was void, subject to the payment of certain legacies & annuities, to a charity & appointed an exor. Testator died in 1873 leaving a son. The son had been but was not then of unsound mind, & died lunatic in 1895 leaving a widow, but without issue & without making any claim to the fund. The exor. having proved the will entered into possession of the freeholds & leaseholds, & granted leases & paid the income to the trustees of the charity. He died in 1892:—*Held:* (1) as to the freeholds, the exor. having taken no estate in them by virtue of the will, & having been in possession for more than twenty years, the claim of the heir-at-law & next of kin was barred by Real Property Limitation Act, 1833 (c. 27); (2) as to the leaseholds, they vested in the exor., &, he having done no act assenting to the bequest to the trustees of the charity, having regard to Executors Act, 1830 (c. 40), could not be regarded as an express trustee for the next of kin, & the claim of the next of kin to the leaseholds was barred.—*Re* LACY, ROYAL GENERAL THEATRICAL FUND ASSOCN. *v.* KYDD, [1899] 2 Ch. 149; 68 L. J. Ch. 488; 80 L. T. 706; 47 W. R. 664.
Annotations:—**Refd.** *Re* Blow, St. Bartholomew's Hospital *v.* Cambden, [1914] 1 Ch. 233; *Re* Richardson, Pole *v.* Pattenden, [1919] 2 Ch. 50.

1512. Claim to charity legacy—Barred by lapse of twenty years.]—CADBURY *v.* SMITH (1869), L. R. 9 Eq. 37; 24 L. T. 52; 18 W. R. 105.
Annotations:—**Consd.** *Re* Stephens, Warburton *v.* Stephens (1889), 43 Ch. D. 39. **Refd.** Payne *v.* Tanner (1886), 55 L. J. Ch. 611.

1513. Claim to benefit of gift over—No adverse possession—Suit not barred.]—CHRIST'S HOSPITAL *v.* GRAINGER (1849), 1 Mac. & G. 460; 1 H. & Tw. 533; 19 L. J. Ch. 33; 15 L. T. O. S. 497; 13 J. P. 778; 14 Jur. 339; 41 E. R. 1343, L. C.; *affg.* (1848), 16 Sim. 83.
Annotations:—**Mentd.** R. *v.* East Mark Tithing (1848), 12 Jur. 332; A.-G. *v.* Grainger (1859), 7 W. R. 684; Braund *v.* Devon (1868), 16 W. R. 1180; Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252; *Re* Bowen, Lloyd Phillips *v.* Davis, [1893] 2 Ch. 491; Worthing Corpn. *v.* Heather, [1906] 2 Ch. 532; *Re* Da Costa, Clarke *v.* Church of England Collegiate School of St. Peter, [1912] 1 Ch. 337.

1514. —— **Barred by lapse of time.**] — *Re* ORCHARD STREET SCHOOL (TRUSTEES), [1878] W. N. 211.

1515. Recovery of rentcharges—"Express trust"—Claim by Charity Commissioners—Not barred.]—*Re* GWYNNE'S CHARITY, CHARITY COMRS. *v.* MOULDEN (1894), 10 T. L. R. 428.

—— **In general.**]—*See* Sub-sect. 3, *ante.*

1516. Exchange not made by deed—Prescriptive title acquired by trustees.]—BROWN *v.* PATTERSON (1899), 43 Sol. Jo. 298.

1517. Liability of trustees to account—No fixed limit—Statute of Limitations not the rule.]—A.-G. *v.* EXETER CORPN. (1822), Jac. 443; 37 E. R. 918.
Annotation:—**Consd.** A.-G. *v.* Newbury Corpn. (1838), Coop. Pr. Cas. 72.

1518. Suit by Attorney-General—With no independent rights—Barred if persons entitled barred.]—ST. MARY MAGDALEN, OXFORD *v.* A.-G. (1857),

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s. *Devise of rentcharge as salary for schoolmaster—No schoolmaster appointed—Statute does not run until appointment.*]—A.-G. *v.* PERSSE (1842), 2 Dr. & War. 67.—IR.

t. *Annuity — Non-payment for 40 years—Express trust—Arrears not recoverable.*]—A. devised real estate to trustees, upon trust, to convey the same to the use of his brother for life, & directed his trustees to charge D. estate, with the perpetual payment to the poor of five specified parishes of an annual sum, of an amount to be ascertained as in his will directed, but not less than £22, "such annual sum to be annually distributed by the possessor of D. estate for the time being for the benefit of the poor of the said parishes in such manner as such possessor should think fit." The trustees of the trust duly conveyed the lands to the uses directed by the will, subject, as to the mansion-house of D. & the park & demesne lands, to the perpetual payment of the said annuity. No payment had been made in respect of this annuity for over 40 years:—*Held:* the annuity was secured by an express trust, within 3 & 4 Wm. 4, c. 27, s. 25, & was not barred.—*Re* MONTALT'S (EARL) ESTATE, [1909] 1 I. R. 390.—IR.

6 H. L. Cas. 189; 26 L. J. Ch. 620; 29 L. T. O. S. 238; 21 J. P. 531; 3 Jur. N. S. 675; 10 E. R. 1267; *sub nom.* A.-G. *v.* MAGDALEN COLLEGE, OXFORD, 5 W. R. 716, H. L.

Annotations :—**Consd.** Bobbett *v.* S. E. Ry. (1882), 9 Q. B. D. 424. **Refd.** A.-G. *v.* Davey (1859), 4 De G. & J. 136; A.-G. *v.* Payne (1859), 27 Beav. 168; Magdalen Hospital *v.* Knotts (1878), 8 Ch. D. 709.

1519. —— For vindication of endowed public charity—Not barred.]—CAIRNCROSS *v.* LORIMER (1860), 3 L. T. 130; 7 Jur. N. S. 149; 3 Macq. 827, H. L.

Annotations :—**Refd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389. **Mentd.** Sarat Chunder Dey *v.* Gopal Chunder Lala (1892), 8 T. L. R. 732.

SECT. 2.—LIABILITIES AFFECTING TRUST PROPERTY.

SUB-SECT. 1.—ESTATE DUTY.

See ESTATE AND OTHER DEATH DUTIES.

SUB-SECT. 2.—LEGACY DUTY.

See, generally, ESTATE & OTHER DEATH DUTIES; *see, also,* No. 97, *ante.*

SUB-SECT. 3.—SUCCESSION DUTY.

See ESTATE AND OTHER DEATH DUTIES.

SUB-SECT. 4.—DUTIES ON PROPERTY OF BODIES CORPORATE AND UNINCORPORATE.

See, generally, COMPANIES; CORPORATIONS; ESTATE & OTHER DEATH DUTIES; FRIENDLY SOCIETIES; LITERARY & SCIENTIFIC INSTITUTIONS; REVENUE; *see, also,* Nos. 247, 265, *ante.*

SUB-SECT. 5.—INCOME TAX.

See, generally, INCOME TAX; *see, also,* Nos. 1, 66, *ante.*

SUB-SECT. 6.—RATES.

See LITERARY AND SCIENTIFIC INSTITUTIONS; RATES AND RATING.

SUB-SECT. 7.—INHABITED HOUSE DUTY.

See, generally, INHABITED HOUSE DUTY; *see, also,* No. 65, *ante.*

SUB-SECT. 8.—LAND TAX.

See LAND TAX.

SUB-SECT. 9.—STAMP DUTY.

See REVENUE.

SUB-SECT. 10.—MISCELLANEOUS DUTIES AND LIABILITIES.

See HIGHWAYS, STREETS, AND BRIDGES; PUBLIC HEALTH AND LOCAL ADMINISTRATION; REVENUE.

SECT. 3.—MANAGEMENT OF TRUST PROPERTY.

SUB-SECT. 1.—IN GENERAL.

1520. Applications to court—Partial decree not granted—Directions where scheme of founder cannot be carried out—Commingling of different funds.]—(1) Pursuers in an *actio popularis in re* a public trust have no right to demand a partial decree, which will leave unsettled matters seriously affecting the future administration of the charity. (2) If trustees of a public charitable trust cannot carry out the main purpose of the trust in the mode the truster has expressed, it is their duty to apply to the ct. for directions. (3) When capital of one trust fund is *bonâ fide* intermixed by the same trustees with capital of another trust fund, both funds being bequeathed for the same public charity, & an *actio popularis* is brought, the duty of the ct. is to consider what course is best, looking at all the circumstances, for the interest of the charity, & the ct. ought to refuse to give any decision until all the circumstances necessary to form such final decision are before them, it being within the power of the ct. to order either an independent inquiry or the production of further evidence by the parties.—ANDREWS *v.* M'GUFFOG (1886), 11 App. Cas. 313, H. L.

Annotation :—**Mentd.** Income Tax Comrs. for Special Purposes *v.* Pemsel, [1891] A. C. 531.

1521. Capital expenditure—Recoupment out of income—Required as general rule—Not where only object of charity was support of incumbent & income ample.]—Although as a general rule the ct., in ordering capital funds of a charity to be applied for a special purpose, requires that they shall be recouped out of income, its object being to enlarge the benefits of the charity, yet in a case where the only object of a charity was, subject to small charges for repairs, etc., the support of an incumbent, the ct., upon the petition of the incumbent & trustees of the chapel funds, ordered £1,000 to be applied out of the capital towards repairing & enlarging the chapel, without requiring it to be recouped out of income.—*Re* WILLENHALL CHAPEL ESTATES (1865), 2 Drew. & Sm. 467; 13 L. T. 354; 62 E. R. 698.

SUB-SECT. 2.—SALES.

A. In General.

See 1853 Act, ss. 24–26; 1855 Act, ss. 29, 37.

1522. Power of court to set aside—Notwithstanding claims by purchasers for value or by patentees from Crown—Compensation for improvements by claimants.]—BLACKSTON *v.* HEMSWORTH HOSPITAL (1636), Duke, 49.

Annotations :—**Consd.** A.-G. *v.* Warren (1818), 1 Wils. Ch. 387. **Refd.** Watson *v.* Hemsworth Hospital (1807), 14 Ves. 324.

See, also, Nos. 1476, 1477, *ante.*

1523. Presumption against power of sale—Lands presumed to be devoted in perpetuity—

PART V. SECT. 3, SUB-SECT. 2.—A.

a. *Sale by trustees — Without sanction of court—If for benefit of charity—Execution by attorney.*]—The trustees of an English public charity may, without the sanction of the V. ct., sell & give title to lands in V. devised to & invested in the trustees, if such sale is made in conformity with the laws of the charity, & is beneficial thereto. The conveyance on such sale may be executed by a duly authorised & constituted attorney authorised generally.—*Re* ST. MARY'S HOSPITAL, LONDON, TRUSTEES, & BALD, [1915] V. L. R. 218.—AUS.

Sect. 3.—Management of trust property: Sub-sect. 2, A., B. & C.]

Sale of lands long ago & acquiescence therein—May give rise to presumption of power of sale & sale thereunder.]—ST. MARY MAGDALEN, OXFORD *v.* A.-G. (1857), 6 H. L. Cas. 189; 26 L. J. Ch. 620; 29 L. T. O. S. 238; 21 J. P. 531; 3 Jur. N. S. 675; 10 E. R. 1267; *sub nom.* A.-G. *v.* MAGDALEN COLLEGE, OXFORD, 5 W. R. 716, H. L.

Annotations :—**Apld.** A.-G. *v.* Davey (1859), 4 De G. & J. 136; A.-G. *v.* Payne (1859), 27 Beav. 168. **Consd.** Magdalen Hospital Governors *v.* Knotts (1876), 46 L. J. Ch. 149; Magdalen Hospital Governors *v.* Knotts (1878), 8 Ch. D. 709. **Expld.** Bobbett *v.* S. E. Ry. (1882), 9 Q. B. D. 424.

1524. Must be for benefit of charity—Purchase of trust property by trustees for own benefit—Set aside.]—A.-G. *v.* DUDLEY (LORD) (1815), Coop. G. 146; 35 E. R. 510.

Annotation :—**Consd.** Baker *v.* Peck (1860), 3 L. T. 656.

1525. —— Onus of proof—On party claiming benefit of alienation.]—A.-G. *v.* BRETTINGHAM (1840), 3 Beav. 91; 49 E. R. 35.

Annotation :—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395.

1526. —— Alienation set aside after fifty years.]—A.-G. *v.* KERR (1840), 2 Beav. 420; 9 L. J. Ch. 190; 4 Jur. 406; 48 E. R. 1244.

Annotations :—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395; A.-G. *v.* Newcastle Corpn. (1842), 5 Beav. 307; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54; Capital & Counties Bank *v.* Rhodes, [1903] 1 Ch. 631. **Mentd.** A.-G. *v.* Pilgrim (1849), 12 Beav. 57; *Re* Fletcher, Reading *v.* Fletcher (1916), 86 L. J. Ch. 139.

1527. When Act of Parliament necessary—Hospital founded under 39 Eliz. c. 5—Lands voluntarily purchased by corporation vested in hospital.] — NEWCASTLE-UPON-TYNE CORPN. *v.* A.-G. (1845), 12 Cl. & Fin. 402; 8 E. R. 1464, H. L.; *affg.* S. C. *sub nom.* A.-G. *v.* NEWCASTLE CORPN. (1842), 5 Beav. 307.

Annotations :—**Distd.** *Re* Patten & Edmonton Union Grdns. (1883), 52 L. J. Ch. 787. **Mentd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173.

1528. Sale by corporation—Alienee regarded as trustee.]—COLCHESTER CORPN. *v.* LOWTEN (1813), 1 Ves. & B. 226; 35 E. R. 89, L. C.

Annotations :—**Consd.** Davis *v.* Leicester Corpn., [1894] 2 Ch. 208. **Refd.** A.-G. *v.* Wilson (1840), Cr. & Ph. 1. **Mentd.** Clifton Dartmouth Hardness Corpn. *v.* Holdsworth (1844), 13 L. J. Ch. 178; Luke *v.* South Kensington Hotel Co. (1877), 7 Ch. D. 789.

1529. —— By charitable corporation to municipal corporation—Former corporation dependent on latter—Sale set aside.]—A.-G. *v.* PLYMOUTH CORPN. (1845), 9 Beav. 67; 15 L. J. Ch. 109; 8 L. T. O. S. 34; 50 E. R. 268.

Annotation :—**Mentd.** Christ's Hospital *v.* Grainger (1846), 6 L. T. O. S. 361.

1530. —— By municipal corporation—Charity within Municipal Corporations Act, 1835 (c. 76)—No power to sell or dispose of advowson.] —A.-G. *v.* ST. JOHN'S HOSPITAL, BEDFORD (1864), 10 L. T. 805; 28 J. P. 676; 10 Jur. N. S. 897; 12 W. R. 1015; *subsequent proceedings* (1865), 2 De G. J. & Sm. 621, L. JJ.

1531. —— By hospital—Of old site—Donation governors & not city corporation entitled to sell—Construction of private Act.]—*Re* ST. THOMAS'S HOSPITAL ACT, 1862, *Ex p.* ST. THOMAS'S HOSPITAL (GOVERNORS), ST. THOMAS'S HOSPITAL (GOVERNORS) *v.* CITY OF LONDON CORPN. (1864), 11 L. T. 520, L. C.

See, generally, CORPORATIONS.

1532. Sale by trustees—Form of order—Refusal of court to limit order to certain trustees—Although remainder old & infirm.]—*Re* CONGREGATIONAL CHURCH, SMETHWICK, [1866] W. N. 196.

See, further, Part VII., *post.*

Sale to purchaser for value without notice—Unimpeachable.]—*See* Sect. 1, sub-sect. 2, *ante.*

1533. Compensation for improvements—Doubtful whether purchaser with notice entitled to.]—A.-G. *v.* LLOYD (1821), 6 Madd. 92; 56 E. R. 1026.

—— **Right of lessee to.**]—*See* Sub-sect. 2, G., *post.*

B. When Court will order.

1534. When beneficial to charity—General jurisdiction to order.]—*Re* NORTH SHIELDS OLD MEETING HOUSE (1859), 7 W. R. 541.

—— **Under Charities Procedure Act, 1812 (c. 101).**]—*See* Part X., Sect. 2, sub-sect. 1, *post.*

1535. —— Dilapidated house.]—ANON. (*circa* 1811), cited in 2 Swan. 300; 36 E. R. 630.

Annotation :—**Consd.** A.-G. *v.* Warren (1818), 2 Swan. 291.

1536. —— Without special case being made out.]—A.-G. *v.* NETHERCOAT (1840), cited in 1 Hare, 400; 66 E. R. 1088; *sub nom.* A.-G. *v.* SOUTH MOLTON, cited in 6 Jur. 387.

Annotation :—**Refd.** A.-G. *v.* Newark Corpn. (1842), 11 L. J. Ch. 270.

1537. —— Special case must be made out.]—A.-G. *v.* NEWARK-UPON-TRENT CORPN. (1842), 1 Hare, 395; 11 L. J. Ch. 270; 6 Jur. 387; 66 E. R. 1086; *subsequent proceedings* (1843), 1 L. T. O. S. 227.

Annotations :—**Consd.** *Re* Clergy Orphan Corpn. (1894), 64 L. J. Ch. 66. **Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1538. —— Advowson producing no income.]—A.-G. *v.* YORK (ARCHBP.) (1853), 17 Beav. 495; 2 W. R. 7; 51 E. R. 1126.

1539. —— Alteration of site.]—A.-G. *v.* HUNTINGDON CORPN. (1843), 1 L. T. O. S. 107.

1540. —— ——.]—*Re* MANCHESTER NEW COLLEGE (1853), 16 Beav. 610; 22 L. J. Ch. 571; 21 L. T. O. S. 285; 17 Jur. 540; 1 W. R. 269; 51 E. R. 916.

Annotation :—**Mentd.** *Re* Norwich Town Close Estate Charity (1888), 40 Ch. D. 298.

1541. —— ——.]—*Re* COLSTON'S HOSPITAL (1859), 27 Beav. 16; 54 E. R. 6.

C. With Approval of Charity Commissioners or Board of Education.

1542. Jurisdiction under 1853 & 1855 Acts—Not affected by Allotments Extension Act, 1882 (c. 80).]—SUTTON PARISH TO CHURCH (1884), 26 Ch. D. 173; 53 L. J. Ch. 599; 50 L. T. 387; 32 W. R. 485.

1543. When consent necessary—No "scheme legally established"—Within 1855 Act, s. 29—Foundation deed.]—A deed founding a charity & duly enrolled under Charitable Uses Act, 1735 (9 Geo. 2, c. 36), is not a "scheme legally established" within Charitable Trusts Amendment Act, 1855, s. 29, & the trustees in whom the lands of the charity are vested cannot sell such lands under a power of sale contained in the deed, otherwise than with the authority of Parliament, or of the ct., or with the approval of the Charity Comrs.—*Re* MASON'S ORPHANAGE & LONDON & NORTH WESTERN RY. CO., [1896] 1 Ch. 596; 65 L. J. Ch. 439; 74 L. T. 161; 44 W. R. 339; 12 T. L. R. 230; 40 Sol. Jo. 352, C. A.

Annotations :—**Consd.** A.-G. *v.* National Hospital for Relief & Cure of the Paralysed & Epileptic, [1901] 2 Ch. 252; A.-G. *v.* Foundling Hospital, [1914] 2 Ch. 154. **Refd.** Ogilvie *v.* Littleboy (1897), 13 T. L. R. 399; Power *v.* Banks (1901), 70 L. J. Ch. 700; *Re* Howard Street Congregational Chapel, Sheffield, [1913] 2 Ch. 690.

PART V. SECT. 3, SUB-SECT. 2.—B.

b. *Where land has become unsuitable.*] —A sale of land settled on charitable trusts may be ordered where the land has become unsuitable for the specified purposes of the trust. —*Re* POWLETT'S TRUSTS, [1915] V. L. R. 115.—**AUS.**

1544. —— —— —— **Royal charter.**]—A hospital, incorporated under Royal charter & possessing thereunder full powers of management & an express power of sale, is not formed under a "scheme legally established" within Charitable Trusts Amendment Act, 1855, s. 29, & must be entered in the Land Register with the restriction that no disposition of the estate of the hospital is to be registered without the consent of the Charity Comrs., or an order of the Registrar.—A.-G. *v.* NATIONAL HOSPITAL FOR RELIEF & CURE OF THE PARALYSED & EPILEPTIC, [1904] 2 Ch. 252; 73 L. J. Ch. 677; 91 L. T. 63; 20 T. L. R. 592.

Annotation:—**Refd.** A.-G. *v.* Foundling Hospital, [1914] 2 Ch. 154.

1545. —— **"Endowment"—Not "wholly maintained by voluntary contributions."**]—A freehold house was in 1884 purchased by the founder of a mission to the Jews out of money given to him in that year without any direction as to the particular charitable application of the money. The house was conveyed to him in fee simple absolutely, & was used by him as a home for Jewish children. The mission was supported by voluntary subscriptions, & had no endowment. In 1885 the founder conveyed the freehold house, together with the other property of the mission, to trustees upon trust that same should be occupied & used for the purposes of the mission, the general or fundamental objects or purposes of which were described in a schedule to the trust deed. A power of sale was by the deed given to the trustees, & they were directed to invest the net proceeds of sale as capital. They were desirous of selling the freehold house:—*Held:* (1) the freehold house was an "endowment" within Charitable Trusts Act, 1853 (c. 137), s. 66, & the charity was not within the exemption in s. 62 as a charity wholly maintained by voluntary contributions, because it had under the trust deed property used for the purposes of the charity, although not actually producing income; (2) even if it were a mixed charity it was not within the exemption, for by the terms of the deed the property could no longer be legally applied as income, & the trustees could not sell the freehold land without the approval of the Charity Comrs. under Charitable Trusts (Amendment) Act, 1855 (c. 124), s. 29.—A.-G. *v.* MATHIESON, *Re* WILKINSON & FELL'S CONTRACT, [1907] 2 Ch. 383; 76 L. J. Ch. 682; 97 L. T. 450; 23 T. L. R. 754, C. A.

Annotation:—*As to* (2) **Distd.** *Re* Orphan Working School & Alexandra Orphanage's Contract, [1912] 2 Ch. 167.

What amounts to an "endowment."]—*See* Part IX., Sect. 4, sub-sect. 2, C. (a), *post.*

1546. When consent not necessary—Sale of land purchased by charity out of gifts & voluntary subscriptions for general purposes.] — CHARITY FOR THE RELIEF OF POOR WIDOWS, ETC., OF CLERGYMEN (GOVERNORS) *v.* SUTTON (1860), 27 Beav. 651; 54 E. R. 258; *sub nom.* SONS OF THE CLERGY CORPN. *v.* SUTTON, 29 L. J. Ch. 393; 1 L. T. 386; *sub nom.* SONS OF THE CLERGY CORPN. *v.* STOCK EXCHANGE (TRUSTEES), 24 J. P. 180; 6 Jur. N. S. 84; 8 W. R. 167.

Annotations:—**Consd.** Royal Soc. of London & Thompson (1881), 17 Ch. D. 407; *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618; *Re* Clergy Orphan Corpn., [1894] 3 Ch. 145. **Mentd.** *Re* Charity for the Relief of Poor Widows, etc., of Clergymen & Skinner, [1893] 1 Ch. 178; *Re* Church Army & *Re* Premises at Edgware Road (1905), 93 L. T. 230.

1547. —— ——.]—ROYAL SOCIETY OF LONDON & THOMPSON (1881), 17 Ch. D. 407; 50 L. J. Ch. 341; 44 L. T. 274; 29 W. R. 338.

Annotations:—**Refd.** *Re* Charity for Poor Widows, etc., & Skinner (1892), 62 L. J. Ch. 148; *Re* Clergy Orphan Corpn. (1894), 64 L. J. Ch. 66. **Mentd.** *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618; A.-G. *v.* Foundling Hospital, Governors, etc. (1914), 110 L. T. 894.

1548. —— —— .] — FINNIS & YOUNG TO FORBES & POCHIN (No. 1) (1883), 24 Ch. D. 587; 53 L. J. Ch. 140; 48 L. T. 813; 32 W. R. 55.

1549. —— ——.]—A charitable corpn., which was partly supported by voluntary subscriptions & partly by the income of endowments, invested a fund, derived from voluntary contributions towards the general purposes of the charity, in the purchase of land. They afterwards sold part of the land to a railway co. The Charity Comrs. claimed that the purchase-money should not be paid to the corpn. without the consent of the comrs.:—*Held:* (1) "income arising from any endowment" means *primâ facie* the income of any invested funds, whether such funds be held upon any special trust or for the general purposes of the charity; (2) in the case of a charity partly maintained by voluntary subscriptions & partly by the income of any endowment, bequests & donations for the general purposes of the charity which may be lawfully applied as income consistently with the terms of the gift are exempt from the jurisdiction of the Charity Comrs.; (3) such gifts & the income thereof are not brought within the jurisdiction of the comrs. by being invested by the governing body; (4) the claim of the Charity Comrs. must be rejected, & the fund in ct. be paid to the corpn.; (5) (KEKEWICH, J.) the claim of the Charity Comrs. was not adverse litigation within the meaning of Lands Clauses Consolidation Act, 1845 (c. 18), s. 80, & the railway co. must pay the costs of the application.—*Re* CLERGY ORPHAN CORPN., [1894] 3 Ch. 145; 64 L. J. Ch. 66; 71 L. T. 450; 43 W. R. 150; 10 T. L. R. 672; 38 Sol. Jo. 695; 7 R. 549, C. A.

Annotations:—*As to* (1) **Consd.** *Re* Church Army (1905), 74 L. J. Ch. 624. **Refd.** *Re* Stockport Ragged, Industrial & Reformatory Schools, [1898] 2 Ch. 687; *Re* Soc. for Training Teachers of the Deaf, & Whittle's Contract, [1907] 2 Ch. 486. *As to* (2) **Consd.** *Re* Gilchrist Educational Trust, [1895] 1 Ch. 367; *Re* Harding & Welsh Calvinistic Methodist Connexion Trustees (1905), 92 L. T. 641. **Apld.** *Re* Church Army (1906), 75 L. J. Ch. 467. **Distd.** A.-G. *v.* Mathieson, [1907] 2 Ch. 383. **Apld.** *Re* Wesleyan Methodist Chapel, South Street, Wandsworth, [1909] 1 Ch. 454. **Consd.** *Re* Orphan Working School & Alexandra Orphanage's Contract, [1912] 2 Ch. 167. **Refd.** *Re* Dod's Charity, [1905] 1 Ch. 442; *Re* Richard Murray Hospital, [1914] 2 Ch. 713. *Generally*, **Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54; *Re* Howard Street Congregational Chapel, Sheffield (1913), 83 L. J. Ch. 99.

1550. —— ——.]—The trustees of the W. Connexion sold a chapel which was conveyed to them by an indenture dated Oct. 31, 1879, to hold unto & to the use of themselves, their heirs & assigns upon trust for the Connexion, & also upon trust to sell, exchange, mortgage, demise, or let the chapel; & it was declared that the trustees should hold the proceeds of sale upon trust for the Connexion. The consideration money of the conveyance was paid by the vendors out of moneys which they had borrowed on promissory notes signed by some of them, the principal & interest of which was afterwards paid out of a fund formed by voluntary contributions subsequently made or collected by members of the congregation. It was admitted that the proceeds of sale were applicable as income:—*Held:* the money raised for the purchase of the chapel was not a donation or bequest unto & in trust for the charity, but was raised by voluntary contributions, & as such came within the exceptions in Charitable Trusts Act, 1853 (c. 137), s. 62, & the consent of the Charity Comrs. to a sale was unnecessary.—*Re* HARDING & WELSH CALVINISTIC

Sect. 3.—Management of trust property: Sub-sect. 2, C. & D.]

METHODIST CONNEXION (TRUSTEES) (1905), 92 L. T. 641.

Annotation :—**Follid.** *Re* Parry & Horton's Contract, Parry *v.* Horton (1905), 49 Sol. Jo. 500.

1551. —— ——.]—*Re* PARRY & HORTON'S CONTRACT, PARRY *v.* HORTON (1905), 49 Sol. Jo. 500.

1552. —— ——.]—Under its memorandum of assocn. a charitable society incorporated under Companies Acts, 1862 (c. 89) to 1890 (c. 63), had full power to purchase, lease, & acquire real or personal property, erect & maintain buildings, & sell, exchange or deal with all its property. Appeals were from time to time made for donations to special objects of the charity, including one for the completion of new headquarters of the society. A large sum was obtained, & leasehold premises acquired. Upon an application to register the society as proprietor of these leaseholds under the Land Transfer Acts, 1875 (c. 87) & 1897 (c. 65) :—*Held :* (1) the subscribers to the headquarters must be taken to have known that their contributions, although primarily applicable to this particular object, were given for the general purposes of the society, & that there was no intention to take the money out of the control of the managing body ; (2) there was no such "endowment" within the meaning of Charitable Trusts Act, 1853 (c. 137), s. 66, as rendered the society amenable to the jurisdiction of the Charity Comrs. ; (3) the society could deal with the property within the powers of the memorandum of assocn., & was entitled to be registered in respect of the leaseholds without any restriction to the effect that no disposition of the land was to be registered without the consent of the Charity Comrs.—*Re* CHURCH ARMY (1906), 75 L. J. Ch. 467 ; 94 L. T. 559 ; 22 T. L. R. 428, C. A.

Annotations :—*As to* (2) **Follid.** *Re* Wesleyan Methodist Chapel, South Street, Wandsworth, [1909] 1 Ch. 454. **Consd.** *Re* Orphan Working School & Alexandra Orphanage's Contract, [1912] 2 Ch. 167. **Apld.** A.-G. *v.* Foundling Hospital, [1914] 2 Ch. 154. **Refd.** A.-G. *v.* Mathieson (1907), 76 L. J. Ch. 682.

1553. —— ——.]—An educational society, which was ordinarily maintained out of voluntary contributions, payments by or for scholars, grants from the Board of Education, & grants from local education authorities out of local rates, purchased land in 1886, & paid the purchase money partly out of voluntary subscriptions & partly out of the proceeds of a bazaar organised in 1886 for the purpose of putting the society in funds to enable it to discharge the debt owing in respect of the purchase price :—*Held :* (1) the property had been purchased with money which was applicable both as to capital & interest for general purposes, & was, under Charitable Trusts Act, 1853 (c. 137), s. 62, exempt from the jurisdiction or control of the Board of Education ; (2) the society was a society wholly maintained by voluntary contributions within the above sect. ; (3) the property could be sold without being subject to the Charitable Trusts Amendment Act, 1855 (c. 124), s. 29.—*Re* SOCIETY FOR TRAINING TEACHERS OF THE DEAF & WHITTLE'S CONTRACT, [1907] 2 Ch. 486 ; 76 L. J. Ch. 656 ; 97 L. T. 538 ; 71 J. P. 454 ; 23 T. L. R. 693 ; 51 Sol. Jo. 673.

1554. —— ——.]—By a conveyance on sale dated Feb. 13, 1906, a piece of land in the administrative county of L. & contiguous to other land already held by them was conveyed to the trustees of a W. chapel upon the trusts of the model deed for W. chapels. Clause 36 of the model deed provided that upon a sale of land subject to the trusts thereof the trustees should apply the net proceeds either for or towards promoting the preaching of the Gospel amongst the people called Methodists, in the circuit in which the chapel or place of religious worship should, for the time being, be situated, or otherwise as therein mentioned :—*Held :* the case came within the exemption provided by Charitable Trusts Act, 1853 (c. 137), s. 62, & the trustees were entitled to be registered as proprietors of the piece of land so conveyed to them, without the entry on the register of any restrictions on their right to deal with the land.—*Re* WESLEYAN METHODIST CHAPEL, SOUTH STREET, WANDSWORTH, [1909] 1 Ch. 454 ; 78 L. J. Ch. 414.

1555. —— ——.]—A charity was formed in 1758, & was supported by the donations, legacies, & subscriptions of benevolent persons. In 1771 it contemplated building a new school in L., &, through a committee, collected subscriptions for the purchase of land as the site of the school, & for the building of the school, which was used by the charity until 1848, when a school in another locality was built & thenceforth used in lieu of the L. school. The site for the L. school & the building of that school were paid for partly by the subscriptions given for that purpose, & partly, & to at least an equal extent, out of the ordinary subscriptions to the charity which could be used for the general purposes of the society. The committee had the land conveyed to trustees upon trust for & for the only use, benefit & service of the charity, & to be conveyed & disposed of, from time to time, in such manner as should be ordered & directed for that purpose at any general ct. or meeting of the subscribers to the charity for the time being. There was no evidence as to whether the donors of the subscriptions to the school fund had or had not authorised a conveyance upon these trusts. By an Act passed in 1848 the charity was incorporated, with power to hold land & for the purposes of the institution to convey & dispose of such land. In 1905 this power of disposition was taken away by an Act which amalgamated the charity with other charities under a different name, & gave the newly incorporated body power to sell its land, but provided, by s. 13, that this power should "as regards property forming an endowment for charitable purposes, other than educational, & not exempted from the jurisdiction or control of the Charity Comrs. or the powers or provisions of the Charitable Trusts Acts, 1853 (c. 137) to 1894 (c. 35), by such Acts or otherwise, be exerciseable with the consent of the Comrs., &, as regards property forming an endowment for educational purposes, & not exempted under the Charitable Trusts Acts, 1853 to 1894, & the Endowed Schools Acts, 1869 (c. 56) to 1889 (c. 40), or otherwise, with the consent of the Board of Education." The charity having contracted to sell land forming the site of the L. school, the purchasers raised the question whether the consent, either of the Charity Comrs. or of the Board of Education, was required :—*Held :* (1) the meaning of s. 13 of the Act of 1905 was that where, but for that Act, the consent of the Charity Comrs., or of the Board of Education would be necessary, it was still to be necessary notwithstanding the power of sale previously given ; (2) the charity was not within the exemptions from the control of the Charity Comrs. or the Board of Education given by 1853 Act, s. 62, as a society "wholly maintained by voluntary contribution" ; (3) the charity was within the exemptions of the above sect. so far as it was maintained by voluntary subscriptions ; (4) the

committee must, in the absence of evidence, be assumed to have had the authority of the subscribers to the building fund to declare trusts for the general purposes of the charity; (5) the land contracted to be sold was a donation to a mixed charity of which no special application or appropriation had been directed or declared by the donor, & which might legally be applied by the charity as income in aid of the voluntary subscriptions, & was, by 1853 Act, s. 62, exempted from the control of the Charity Comrs. & the Board of Education.—*Re* ORPHAN WORKING SCHOOL & ALEXANDRA ORPHANAGE'S CONTRACT, [1912] 2 Ch. 167; 81 L. J. Ch. 627; 107 L. T. 254.

Annotation :—As to (5) **Refd.** A.-G. *v.* Foundling Hospital, [1914] 2 Ch. 154.

1556. —— ——.]—The charity commonly called the F. Hospital, was incorporated in 1739 by royal charter with power to purchase, hold, sell, demise & dispose of land of any tenure. In the same year the charter was confirmed by Act of Parliament. In 1750 the governors of the charity purchased land in B. which was conveyed to them without the expression of any trust. The purchase price was paid out of moneys in the hands of the governors representing voluntary contributions, in obtaining which there had undoubtedly been some idea that the governors should not immediately spend all they received but should make investments, as & when possible & expedient, in property producing income for the maintenance of the charity, but nevertheless the contributions so obtained were such that they might have been expended as income, or in whatever manner the governors pleased for the purpose of the charity. On part of this land the F. Hospital was subsequently built, the chapel being the subject of a special subscription, & the rest of the land was developed under long building leases. The yearly rentals received from the B. estate at the present time were very considerable, but for some time past the yearly subscriptions, irrespective of donations & benefactions, had only averaged eleven guineas. In 1744 certain property in the City of L. had been conveyed by the donors to the governors of the hospital without the expression of any trusts. In an action by the A.-G. for a declaration that the governors of the hospital could not deal with the B. estate or City property except in accordance with the provisions of Charitable Trusts Amendment Act, 1855 (c. 124), s. 29 :—*Held :* (1) the charity was at the time of the passing of Charitable Trusts Act, 1853 (c. 137), & had ever since been supported in part, though possibly to a comparatively small extent, by voluntary subscriptions, & was a charity "maintained partly by subscriptions & partly by income arising from endowment" to which the exemption in respect of donations & bequests contained in the latter part of s. 62 of the Act applied; (2) the charity was, by virtue of Charitable Trusts Amendment Act, 1855, s. 48, exempted from the operation of s. 29 of the latter Act; (3) the B. estate, whether called endowment or not, was exempt from the jurisdiction or control of the board & from the provisions of the Act of 1855 as well as of the Act of 1853; (4) there was no material difference in point of law between the position of the City property & the B. estate.—A.-G. *v.* FOUNDLING HOSPITAL, [1914] 2 Ch. 154; 83 L. J. Ch. 673; 110 L. T. 894; 78 J. P. 233; 30 T. L. R. 372; 58 Sol. Jo. 398; 12 L. G. R. 500.

1557. —— **Sale of land held in trust for general purposes—Not subject to any specific & particular trusts.**]—Under Charitable Trusts Acts, 1853 (c. 137) & 1855 (c. 124), the consent of the Comrs. to the sale of land belonging to a charity is not required when the land is held in trust for the general purposes of the charity, & is not subject to any specific & particular trust distinct from those general objects.—CHARITY FOR THE RELIEF OF THE POOR WIDOWS & CHILDREN OF CLERGYMEN (COMMONLY CALLED THE CORPN. OF THE SONS OF THE CLERGY) (GOVERNORS) & SKINNER, [1893] 1 Ch. 178; 62 L. J. Ch. 148; 67 L. T. 751; 41 W. R. 461; 9 T. L. R. 105; 3 R. 161.

Annotations :—**Consd.** *Re* Church Army (1905), 74 L. J. Ch. 624. **Refd.** *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618; A.-G. *v.* Foundling Hospital, [1914] 2 Ch. 154. **Mentd.** St. Thomas', St. Bartholmew's, & Bridewell Hospitals *v.* Hudgell, [1901] 1 K. B. 364.

Consent of Charity Commissioners.] —— *See, generally*, Part IX., Sect. 4, *post.*

D. Payment of Purchase-money.

1558. Money paid into court—Under Lands Clauses Consolidation Act, 1845 (c. 18)—Consent of Charity Commissioners before payment out—Unless trustees have full power of sale.]—*Re* FAVERSHAM CHARITIES (1862), 5 L. T. 787; 10 W. R. 291.

Annotation :—**Refd.** *Re* Clergy Orphan Corpn. (1894), 64 L. J. Ch. 66.

See, also, Nos. 2160 *et seq.*, *post.*

1559. —— —— **Paid out to trustees of charity—On production of chief clerk's certificate that sum expended on purposes of charity—Respondents not opposing.**]—*Ex p.* ST. ALPHAGE (PARSON, ETC.) (1886), 55 L. T. 314.

1560. —— —— ——.]—*Re* PETERBOROUGH, WISBEACH & SUTTON RY. ACT, 1863, *Ex p.* TID ST. GILES CHARITY (TRUSTEES) (1869), 17 W. R. 758.

1561. —— —— —— **"As persons absolutely entitled."**]—*Re* SPURSTOWE'S CHARITY (1874), L. R. 18 Eq. 279; 43 L. J. Ch. 512; 30 L. T. 355; 22 W. R. 566.

Annotation :—**N.F.** *Ex p.* Charity for Relief of Widows & Children of Norfolk Clergy Governors, [1882] W. N. 53.

1562. —— —— —— ——.]—*Ex p.* HABERDASHERS' CO. (1886), 55 L. T. 758.

1563. —— —— —— ——.]—Trustees of a charity, who have power with the consent of the bishop to sell the charity land & to give a full discharge for the money paid therefor are persons "absolutely entitled" within s. 69 of the above Act; & the purchase-money of land of the charity, which has been paid into ct. under the Act, can be ordered to be paid out to them without the consent of the Charity Comrs.—*Re* SHEFFIELD CORPN. & ST. WILLIAM'S ROMAN CATHOLIC CHAPEL & SCHOOLS, SHEFFIELD (TRUSTEES), [1903] 1 Ch. 208; 72 L. J. Ch. 71; 88 L. T. 157; 51 W. R. 380.

1564. —— —— **Not paid out to trustees of charity—Ordered to be invested.**]—*Ex p.* CHARITY FOR THE RELIEF OF WIDOWS' & CHILDREN OF NORFOLK CLERGY (GOVERNORS), [1882] W. N. 53.

—— —— **Investment of.**]—*See* Sub-sect. 6, C. (a), *post.*

1565. —— —— **Payment out to municipal corporation—Under Settled Land Act, 1882 (c. 38), s. 32.**]—A part of certain land held by the Corpn. of L. for the purpose of a public park was bought by a local body under a local Improvement Act, with which was incorporated Lands Clauses Consolidation Act, 1845 (c. 18), & the purchase money was paid into ct. :—*Held :* there was power under Settled Land Act, 1882 (c. 38), s. 32, to order the money to be paid out to the Corpn. of L. to be applied to the permanent improvement of the park. —*Re* WEST HAM CORPN. ACT, 1898, *Re* LANDS CLAUSES CONSOLIDATION ACT, 1845, *Ex p.* CITY OF

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LONDON CORPN., *Ex p.* WEST HAM CORPN. (1901), 17 T. L. R. 232 ; 45 Sol. Jo. 259.

1566. Sale of charity property to corporation—Authorised by Act of Parliament—Delay in payment of purchase money, not arising by wilful default—Interest not payable.]—A.-G. *v.* LUDLOW CORPN. (1849), 1 H. & Tw. 216 ; 47 E. R. 1390, L. C.

See, generally, COMPULSORY PURCHASE OF LAND & COMPENSATION.

See, also, No. 1549, *ante.*

SUB-SECT. 3.—LEASES.

A. In General.

See 1853 Act, ss. 21, 26 ; 1855 Act, ss. 16, 29, 38, 39.

1567. Lands may be let by tender—Instead of by public auction.]—*Re* PEYTON'S HOSPITAL (1845), 14 L. J. Ch. 129 ; 9 Jur. 675.

1568. Trustees with general power of leasing—Have power to take fines or reserve rents—As is most beneficial to charity.]—A.-G. *v.* STAMFORD CORPN. (1747), 2 Swan. 591 ; 36 E. R. 741, L. C.

Annotations :—**Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54. **Mentd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1569. Power of trustees to grant building leases—Necessity for Act of Parliament—Reference to master to ascertain.]—A.-G. *v.* CAMBERWELL FREE GRAMMAR SCHOOL (GOVERNORS) (1843), 1 L. T. O. S. 432.

1570. Lease good at time of making—Not affected by subsequent alteration of circumstances.]—A.-G. *v.* HUNGERFORD (1834), 2 Cl. & Fin. 357 ; 8 Bli. N. S. 437 ; 6 E. R. 1189, H. L.

Annotations :—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395 ; A.-G. *v.* Pilgrim (1849), 13 L. T. O. S. 202. **Mentd.** A.-G. *v.* Brazen Nose College (1834), 8 Bli. N. S. 377 ; Browne *v.* Tighe (1834), 2 Cl. & Fin. 396 ; A.-G. *v.* Higham (1843), 2 Y. & C. Ch. Cas. 634.

1571. —— Merged in fee by invalid conveyance to lessee—Sustained on conveyance being set aside.]—A.-G. *v.* KERR (1840), 2 Beav. 420 ; 9 L. J. Ch. 190 ; 4 Jur. 406 ; 48 E. R. 1244 ; *subsequent proceedings* (1841), 3 Beav. 425 ; 4 Beav. 297.

Annotations :—**Refd.** A.-G. *v.* Pilgrim (1849), 12 Beav. 57 ; *Re* Mason's Orphanage & London & North Western Ry. [1896] 1 Ch. 54 ; *Re* Fletcher, Reading *v.* Fletcher (1916), 86 L. J. Ch. 139. **Mentd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395 ; A.-G. *v.* Newcastle Corpn. (1842), 5 Beav. 307 ; Capital & Counties Bank *v.* Rhodes, [1903] 1 Ch. 631.

1572. Purchaser of charity lease—Takes with notice of facts on face thereof showing equitable invalidity.]—A.-G. *v.* PARGETER (1843), 6 Beav. 150 ; 13 L. J. Ch. 81 ; 49 E. R. 783.

1573. Lessee with no notice of trust—Protection as purchaser for valuable consideration—Constructive notice when lessee put on inquiry by circumstances.]—A.-G. *v.* HALL (1853), 16 Beav. 388 ; 20 L. T. O. S. 302 ; 1 W. R. 117 ; 51 E. R. 828.

Annotation :—**Mentd.** *Re* Female Orphan Asylum (1867), 17 L. T. 59.

Purchasers for value with & without notice.]—*See* Sect. 1, sub-sect. 2, *ante.*

1574. Onus of proof that lease beneficial—On lessee.]—A.-G. *v.* PILGRIM (1850), 2 H. & Tw. 186 ; 14 J. P. 287 ; 14 Jur. 1053 ; 47 E. R. 1650, L. C.

Annotation :—**Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1575. —— ——.]—A.-G. *v.* HALL (1853), 16 Beav. 388 ; 20 L. T. O. S. 302 ; 1 W. R. 117 ; 51 E. R. 828.

Annotation :—**Mentd.** *Re* Female Orphan Asylum (1867), 17 L. T. 59.

1576. Lease ordered to be delivered up—Lessee bonâ fide purchaser—Account not carried back beyond time of filing information.]—A.-G. *v.* HARPER, A.-G. *v.* NASH (1838), 8 L. J. Ch. 12.

1577. Lease granted after 1855 Act—Consent of Charity Commissioners—Unnecessary where valid contract entered into before Act—1855 Act, s. 29.]—MOORE *v.* CLENCH (1875), 1 Ch. D. 447 ; 45 L. J. Ch. 80 ; 34 L. T. 13 ; 24 W. R. 169.

Annotation :—**Mentd.** Salamon *v.* Sopwith (1876), 35 L. T. 463.

1578. Reversionary lease for ninety-nine years—Granted sixty-two years before end of existing lease—Set aside as improvident.]—A.-G. *v.* KERR (1840), 2 Beav. 420 ; 9 L. J. Ch. 190 ; 4 Jur. 406 ; 48 E. R. 1244 ; *subsequent proceedings* (1841), 3 Beav. 425 ; 4 Beav. 297.

Annotations :—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395 ; *Re* Mason's Orphanage & London & North Western Ry., [1896] 1 Ch. 54. **Mentd.** A.-G. *v.* Newcastle Corpn. (1842), 5 Beav. 307 ; A.-G. *v.* Pilgrim (1849), 12 Beav. 57 ; Capital & Counties Bank *v.* Rhodes, [1903] 1 Ch. 631 ; *Re* Fletcher, Reading *v.* Fletcher (1916), 86 L. J. Ch. 139.

See, also, No. 1640, *post.*

B. Length of Term.

1579. Court cannot vary directions of founder—Lands to be leased for twenty-one years—No authority to order leases for ninety-nine years.]—A.-G. *v.* ROCHESTER (MAYOR) (1827), 2 Sim. 34 ; 57 E. R. 703.

1580. Lease for thousand years—Refusal of court to establish.]—A.-G. *v.* GORE (LORD) (1740), Barn. Ch. 145 ; 9 Mod. Rep. 224 ; 27 E. R. 589, L. C.

Annotations :—**Refd.** A.-G. *v.* Magwood (1811), 18 Ves. 315 ; A.-G. *v.* Wilson (1812), 18 Ves. 518.

1581. Long lease—Not necessarily void.]—A lease of charity estates by the trustees for a long term is not absolutely void ; its validity must depend on all the circumstances of the transaction, & the difficulty of ascertaining those circumstances & of restoring the lessee to his original situation after the lapse of many years is an impediment to the setting aside such a lease in equity.

Information to set aside a lease for 980 years, of tithes belonging to a charity, dismissed : the lease having been granted 150 years before the information filed, & pursuant to a decree of this ct., which decree remained unreversed & was not impeached or sought to be set aside by the present suit.—A.-G. *v.* WARREN (1818), 2 Swan. 291 ; 1 Wils. Ch. 387 ; 36 E. R. 627.

Annotations :—**Refd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437 ; A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395 ; *Re* Clergy Orphan Corpn., [1894] 3 Ch. 145. **Mentd.** St. Thomas's Hospital Governors *v.* Charing Cross Ry. (1861), 1 John. & H. 400 ; Lang *v.* Purves (1862), 15 Moo. P. C. C. 389 ; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54 ; *Re* Howard Street Congregational Chapel, Sheffield, [1913] 2 Ch. 690.

1582. —— Proof of improvident management—Set aside.]—A.-G. *v.* GRIFFITH (1807), 13 Ves. 565 ; 33 E. R. 406, L. C.

Annotations :—**Refd.** A.-G. *v.* Backhouse (1810), 17 Ves. 283 A.-G. *v.* Newbury Corpn. (1838), Coop. Pr. Cas. 72.

1583. —— —— ——.]—A.-G. *v.* DAY, A.-G. *v.* JOHNSON (1844), 3 L. T. O. S. 230.

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c. Consent of bishop essential — 8 Wm. 4, No. 5, s. 21.]—Trustees of glebe lands belonging to a church demised an allotment to S. for 99 years. The lease, which purported to be made under Church Acts, was executed between the death of a bishop & the appointment of his successor. S. assigned the lease to T. The succeeding bishop refused to give his consent to the lease, as provided by above Act, save upon conditions to which T. would not agree :—*Held :* (1) the bishop's consent was essential to the validity of the lease ; (2) the lease was bad.—A.-G. *v.* TEY (1890-1), 12 N. S. W. Eq. 23.—AUS.

1584. —— —— ——.]—A.-G. *v.* WARD (1829), 7 L. J. O. S. Ch. 114.

Annotation :—**Mentd.** *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643.

1585. —— —— —— **Unless barred by Statute of Limitations.**]—A.-G. *v.* DAVEY (1859), 4 De G. & J. 136 ; 33 L. T. O. S. 158 ; 23 J. P. 405 ; 7 W. R. 429 ; 45 E. R. 53, L. C. & L. JJ.

Annotations :—**Distd.** Scarborough Corpn. *v.* Cooper, [1910] 1 Ch. 68. **Refd.** Magdalen Hospital Governors *v.* Knotts (1878), 8 Ch. D. 709.

1586. —— **Underlease upheld—Inquiry as to validity of head lease.**]—A.-G. *v.* BACKHOUSE (1810), 17 Ves. 283 ; 34 E. R. 110, L. C.

Annotations :—**Consd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437. **Refd.** A.-G. *v.* Moses (1817), 2 Madd. 294 ; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54. **Mentd.** Jones *v.* Smith (1841), 1 Hare, 43 ; Beadon *v.* King (1852), 22 L. J. Ch. 111.

1587. —— **Determinable on lives at small rent—Practice supported by custom—Upheld—No proof of undervalue.**]—A.-G. *v.* CROSS (1817), 3 Mer. 524 ; 36 E. R. 201.

Annotations :—**Consd.** A.-G. *v.* Warren (1818), 2 Swan. 291 ; A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437. **Apld.** A.-G. *v.* Crook (1836), 1 Keen, 121. **Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1588. —— **Benefit of charity—Absence of fraud—Upheld.**]—A.-G. *v.* SOUTH SEA CO. (1841), 4 Beav. 453 ; 49 E. R. 414.

Annotations :—**Consd.** A.-G. *v.* Pilgrim (1850), 2 H. & Tw. 186. **Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1589. —— **At fixed rent—Covenant to lay out money—Set aside after eighty-five years.**]—A.-G. *v.* GREEN (1801), 6 Ves. 452 ; 31 E. R. 1140, L. C.

Annotations :—**Consd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437. **Folld.** A.-G. *v.* Pilgrim (1850), 2 H. & Tw. 186. **Refd.** Kirkham *v.* Chadwick (1807), 13 Ves. 547 ; A.-G. *v.* Backhouse (1810), 17 Ves. 283 ; A.-G. *v.* Moses (1817), 2 Madd. 294 ; A.-G. *v.* Warren (1818), 2 Swan. 291. **Mentd.** A.-G. *v.* Owen (1805), 10 Ves. 555.

1590. —— —— —— **Set aside after one hundred & fifty years.**]—A.-G. *v.* PILGRIM (1850), 2 H. & Tw. 186 ; 14 J. P. 287 ; 14 Jur. 1053 ; 47 E. R. 1650, L. C.

Annotation :—**Mentd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1591. Building lease—For long term—Rent increased.]—SMITH *v.* STOWEL (1671), 1 Cas. in Ch. 195 ; 22 E. R. 759.

Annotation :—**Mentd.** A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407.

1592. —— **For more than ninety-nine years—Set aside.**]—A.-G. *v.* FOORD (1843), 6 Beav. 288 ; 12 L. J. Ch. 238 ; 49 E. R. 837.

1593. —— **For six hundred years—Custom of neighbourhood & beneficial — Upheld.**] — *Re* CROSS'S CHARITY (1859), 27 Beav. 592 ; 54 E. R. 235.

1594. Husbandry lease—For ninety-nine years at fixed rent—Set aside.]—A.-G. *v.* OWEN (1805), 10 Ves. 555 ; 32 E. R. 960, L. C.

Annotations :—**Consd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437 ; A.-G. *v.* Newbury Corpn. (1838), Coop. Pr. Cas. 72. **Refd.** A.-G. *v.* Backhouse (1810), 17 Ves. 283 ; A.-G. *v.* Brooke (1811), 18 Ves. 319 ; A.-G. *v.* Moses (1817), 2 Madd. 294 ; A.-G. *v.* Warren (1818), 2 Swan. 291 ; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1595. —— —— ——.]—A.-G. *v.* HOTHAM (LORD) (1827), 3 Russ. 415 ; 38 E. R. 631, L. C.

Annotations :—**Refd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437. **Mentd.** A.-G. *v.* Webster (1875), L. R. 20 Eq. 483 ; *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142 ; *Re* St. Stephen Coleman Street, *Re* St. Mary the Virgin, Aldermanbury (1888), 39 Ch. D. 492 ; Haigh *v.* West, [1893] 2 Q. B. 19.

1596. —— —— ——.]—A.-G. *v.* HALL (1853), 16 Beav. 388 ; 20 L. T. O. S. 302 ; 1 W. R. 117 ; 51 E. R. 828.

Annotation :—**Mentd.** *Re* Female Orphan Asylum (1867), 17 L. T. 59.

1597. —— **For two hundred years at fixed rent—Custom immaterial—Set aside.**]—A.-G. *v.* PARGETER (1843), 6 Beav. 150 ; 13 L. J. Ch. 81 ; 49 E. R. 783.

1598. Lease for more than twenty-one years—Without approval of Charity Commissioners—Absolutely void—1855 Act, s. 29.]—A lease by the trustees of a charity for more than twenty-one years without the approval of the Charity Comrs., as required by the above sect., is not valid for twenty-one years, but is absolutely void.—BANGOR (BP.) *v.* PARRY, [1891] 2 Q. B. 277 ; 60 L. J. Q. B. 646 ; 65 L. T. 379 ; 39 W. R. 541.

C. Renewal.

1599. Breach of founder's rules—Covenant to renew—Void.]—LYDIATT *v.* FOACH (1700), 2 Vern. 410 ; 23 E. R. 864.

Annotations :—**Consd.** A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223. **Refd.** Watson *v.* Hemsworth Hospital (1807), 14 Ves. 324.

1600. Perpetual renewal without fine—One-third of rack rent—Decreed by court—Rent computed on value of land on each renewal—Money expended by lessee in recovery of property.]—A.-G. *v.* SMITH (1716), 2 Vern. 746 ; 23 E. R. 1087, L. C.

Annotations :—**Distd.** Roe d. Eberall *v.* Lowe (1790), 1 Hy. Bl. 446. **Consd.** Watson *v.* Hemsworth Hospital (1807), 14 Ves. 324 ; A.-G. *v.* Warren (1818), 1 Wils. Ch. 387 ; South Molton Corpn. *v.* A.-G. (1854), 23 L. T. O. S. 117.

1601. Claim of perpetual renewal upon usage sanctioned by decrees, & upon expenditure—Not supported by custom or contract—Not enforceable.]—WATSON *v.* HEMSWORTH HOSPITAL (MASTER, ETC.) (1807), 14 Ves. 324 ; 33 E. R. 546.

Annotation :—**Refd.** A.-G. *v.* Warren (1818), 2 Swan. 291.

1602. Covenant for perpetual renewal—Set aside—Trustees exceeding authority.]—A.-G. *v.* BROOKE (1811), 18 Ves. 319 ; 34 E. R. 338, L. C. ; *subsequent proceedings* (1812), 18 Ves. 496, L. C.

Annotations :—**Consd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389. **Refd.** A.-G. *v.* Moses (1817), 2 Madd. 294 ; Jones *v.* Creswicke, Booth *v.* Creswicke (1841), 5 Jur. 763 ; A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395. **Mentd.** Scarisbrick *v.* Skelmersdale (1840), 4 Y. & C. Ex. 78.

1603. —— —— **As against assignee for value with notice.**]—A.-G. *v.* LADYMAN (1838), Coop. Pr. Cas. 180 ; 47 E. R. 456.

1604. —— —— **As tending to perpetuity—Validity not established by former decrees.**]—HOPE *v.* GLOUCESTER CORPN. (1855), 7 De G. M. & G. 647 ; 25 L. J. Ch. 145 ; 26 L. T. O. S. 144 ; 2 Jur. N. S. 27 ; 4 W. R. 138 ; 44 E. R. 252, L. JJ.

Annotation :—**Refd.** A.-G. *v.* Greenhill (1863), 33 Beav. 193.

1605. —— —— —— **Leasing at undervalue to kindred of testator's wife.**]—A.-G. *v.* GREENHILL (1863), 33 Beav. 193 ; 3 New Rep. 236 ; 33 L. J. Ch. 208 ; 9 L. T. 500 ; 9 Jur. N. S. 1307 ; 12 W. R. 188 ; 55 E. R. 341.

Annotation :—**Refd.** A.-G. *v.* Sidney Sussex College, Cambridge (1866), 15 L. T. 518.

Rule against perpetuities generally, *see* Part III., Sect. 6, sub-sect. 4, *ante* ; PERPETUITIES.

1606. —— **Clause in scheme authorising granting of leases with such covenant struck out—Charitable Trusts Act, 1853 (c. 137).**]—*Re* SMITH'S (HENRY) CHARITY, HARTLEPOOL (1882), 20 Ch. D. 516 ; 30 W. R. 929, C. A.

1607. —— **Enforced—Reserved rent applied uniformly to one charitable purpose.**]—GOZNA *v.* GRANTHAM (1827), 3 Russ. 261 ; 38 E. R. 574.

1608. Renewal upon terms of award—Enforced.]—A.-G. *v.* CLEMENTS (1823), Turn. & R. 58 ; 37 E. R. 1016, L. C.

Annotation :—**Refd.** A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92.

1609. Renewal on fine—At small reserved rent—Long custom—Inquiry refused as to propriety of granting leases.]—A.-G. *v.* CROOK (1836), 1 Keen, 121 ; 5 L. J. Ch. 239 ; 48 E. R. 252.

Annotation :—**Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

Sect. 3.—Management of trust property: Sub-sect. 3, C., D., E., F., G. & H.; sub-sects. 4, 5 & 6.]

1610. —— Formerly decreed by court—Fresh renewal refused—Lessees expending money on faith of continuance compensated.]—A.-G. *v.* ST. JOHN'S HOSPITAL, BATH (1865), 1 Ch. App. 92; 35 L. J. Ch. 207; 13 L. T. 616; 30 J. P. 72; 12 Jur. N. S. 127; 14 W. R. 237, L. JJ.

1611. —— Fines retained by master of hospital —Master liable to refund.]—A.-G. *v.* PRETYMAN (1841), 4 Beav. 462; 49 E. R. 418; *subsequent proceedings* (1845), 8 Beav. 316.

D. Rent.

1612. More than moiety of value must be reserved —College lands in Ireland—10 & 11 Car. 1, c. 3, s. 2.]—CLEMENTS *v.* WALLER (1768), 4 Burr. 2154; 98 E. R. 123.

See, also, No. 1600, *ante.*

1613. Lease made at undervalue—Collusion between trustees & lessees—Both parties liable.]—YERVEL (POOR) *v.* SUTTON (1619), Duke, 43.

Annotation :—**Reld.** A.-G. *v.* Magwood (1811), 18 Ves. 315.

1614. —— —— ——.]—A.-G. *v.* STAMFORD CORPN. (1747), 2 Swan. 591; 36 E. R. 741, L. C.

Annotations :—**Reld.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54. **Mentd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1615. —— Setting aside—Tenant liable to pay mesne profits.]—ROWE *v.* TAVISTOCK ALMSMEN (1624), Duke, 42.

1616. —— ——.]—CROUCHER *v.* WORCESTER (CITIZENS) (1626), Duke, 33.

1617. —— —— As fraudulent.]—WRIGHT *v.* NEWPORT POND SCHOOL (1664), Duke, 46.

1618. —— —— —— Underleases upheld & rent ordered to be paid to charity.]—PUGH *v.* RYAL (1725), Cas. *temp.* King, 40; 25 E. R. 211, L. C.

1619. —— —— Lessee decreed to deliver up possession.]—RERESBY *v.* FARRER (1700), 2 Vern. 414; 1 Eq. Cas. Abr. 100, pl. 7; 23 E. R. 866.

1620. —— ——.]—ELTHAM (INHABITANTS) *v.* WARREYN (1634), Duke, 67.

Annotations :—**Reld.** A.-G. *v.* Magwood (1811), 18 Ves. 315. **Mentd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

1621. —— —— Account directed with just allowances.]—A.-G. *v.* GREEN (1801), 6 Ves. 452; 31 E. R. 1140, L. C.

Annotations :—**Consd.** A.-G. *v.* Backhouse (1810), 17 Ves. 283; A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437. **Folld.** A.-G. *v.* Pilgrim (1850), 2 H. & Tw. 186. **Reld.** A.-G. *v.* Owen (1805), 10 Ves. 555; Kirkham *v.* Chadwick (1807), 13 Ves. 547; A.-G. *v.* Moses (1817), 2 Madd. 294; A.-G. *v.* Warren (1818), 2 Swan. 291.

1622. —— —— Application to set aside may be made by trustees—Application refused—Rent fair & reasonable.]—A.-G. *v.* TALBOT (*circa* 1800), cited in 13 Ves. 571; 33 E. R. 408, L. C.

1623. —— —— If undervalue substantial—Underlease at fine not conclusive.]—A.-G. *v.* MAGWOOD (1811), 18 Ves. 315; 34 E. R. 336.

Annotation :—**Reld.** A.-G. *v.* Wilson (1812), 18 Ves. 518.

1624. —— —— Trustees having beneficial interest—Breach of trust.]—A.-G. *v.* WILSON (1812), 18 Ves. 518; 34 E. R. 414.

Annotation :—**Reld.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

1625. —— —— In toto—Personal covenants of trustees cancelled.]—A.-G. *v.* MORGAN (1826), 2 Russ. 306; 38 E. R. 351, L. C.

1626. —— —— No allowance for money laid out in building.]—A.-G. *v.* PILGRIM (1850), 2 H. & Tw. 186; 14 J. P. 287; 14 Jur. 1053; 47 E. R. 1050, L. C.

Annotation :—**Reld.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1627. —— Tenant acting fairly—Allowed to retain possession—Lease not set aside.]—*Re* LAWFORD CHARITY, *Ex p.* SKINNER (1817), 2 Mer. 453; 35 E. R. 1013, L. C.; *subsequent proceedings* (1818), 1 Wils. Ch. 14, L. C.

Annotation :—**Reld.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

1628. —— Insufficient evidence of undervalue —Lease upheld.]—A.-G. *v.* CROSS (1817), 3 Mer. 524; 36 E. R. 201.

Annotations :—**Consd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437; A.-G. *v.* Crook (1836), 1 Keen, 121. **Reld.** A.-G. *v.* Warren (1818), 2 Swan. 291; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

1629. Property subsequently increasing in value —Lease not invalidated.]—A.-G. *v.* PEMBROKE HALL (1825), 2 Sim. & St. 441; 4 L. J. O. S. Ch. 58; 57 E. R. 415; *affd.* (1829), 1 Russ. & M. 751, L. C.

Annotation :—**Reld.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

See, also, No. 1570, *ante.*

1630. Direction against increase of rent—Not binding.]—LYDIATT *v.* FOACH (1700), 2 Vern. 410; 23 E. R. 864.

Annotations :—**Consd.** A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223. **Mentd.** Watson *v.* Hemsworth Hospital (1807), 14 Ves. 324.

1631. —— ——.]—WATSON *v.* HINSWORTH HOSPITAL (1707), 2 Vern. 596; 1 Eq. Cas. Abr. 100, pl. 8; 23 E. R. 988, L. C.

Annotations :—**Distd.** Roe d. Eberall *v.* Lowe (1790), 1 Hy. Bl. 446. **Mentd.** Watson *v.* Hemsworth Hospital (1807), 14 Ves. 324.

1632. —— ——.]—A.-G. *v.* CATHERINE HALL, CAMBRIDGE (1820), Jac. 381; 37 E. R. 894, L. C.

Annotations :—**Mentd.** A.-G. *v.* Drapers' Co. (1843), 6 Beav. 382; A.-G. *v.* Greenhill (1863), 33 Beav. 193.

1633. —— ——.]—A.-G. *v.* YORK (ARCHBP.) (1853), 17 Beav. 495; 51 E. R. 1126.

1634. Recommendation to renew at less than rack rent—By college to successors—In breach of constitution—Not sanctioned.]—TAYLOR *v.* DULWICH HOSPITAL (1720), 1 P. Wms. 655; 2 Eq. Cas. Abr. 198, pl. 2; 24 E. R. 556, L. C.

Annotations :—**Consd.** Mill *v.* Hawker (1874), L. R. 9 Exch. 309. **Mentd.** Watson *v.* Hemsworth Hospital (1807), 14 Ves. 324; Wilmot *v.* Coventry Corpn. (1835), 1 Y. & C. Ex. 518; Ludlow Corpn. *v.* Charlton (1840), 6 M. & W. 815.

E. To Trustees.

1635. Set aside upon general principles—Notwithstanding absence of fraud.]—A.-G. *v.* CLARENDON (EARL) (1810), 17 Ves. 491; 34 E. R. 190.

Annotations :—**Mentd.** A.-G. *v.* Smythies (1836), 2 My. & Cr. 135; A.-G. *v.* Stamford (1842), 1 Ph. 737.

1636. Scheme providing against trustees holding or occupying property—Trustees already holding lease—Must surrender or resign.]—FOORD *v.* BAKER (1859), 27 Beav. 193; 54 E. R. 75.

1637. Lessee becoming trustee—Subsequent conveyance & assignment of premises—Purchasers with notice of title of charity—Not protected.]—A.-G. *v.* FLINT (1844), 4 Hare, 147; 67 E. R. 597; *subsequent proceedings* (1845), 9 J. P. 836.

F. By Corporations.

1638. Power to lease implied—Where power to sell & exchange land—By private Act of Parliament.]—*Re* FEMALE ORPHAN ASYLUM (1867), 17 L. T. 59; 15 W. R. 1056.

1639. Leases relating to lands of St. Thomas's Hospital—Approbation & signature of Aldermen of City of London not necessary—As distinct class from governors of hospital—Construction of articles of agreement.]—R. (ON THE PROSECUTION OF ST. THOMAS'S HOSPITAL GOVERNORS) *v.* LONDON CORPN. (1853), 21 L. T. O. S. 152; 17 J. P. 359.

1640. Lease before expiration of former lease—Lessee having part interest in first lease—Entire interest acquired within three years—Binding

on lessors.]—GRUMBRELL *v.* ROPER (1820), 3 B. & Ald. 711 ; 106 E. R. 821.

See, also, No. 1578, *ante.*

1641. Lease void under 13 Eliz. c. 10, 14 Eliz. c. 11 & 18 Eliz. c. 11—Unless not tending to impoverishment of successor—Land given to use of poor—Lease by parson for thirty years.]—BANISTER'S CASE (1600), Duke, 139.

1642. —— Perpetual composition in lieu of tithes.]—YORK (DEAN & CHAPTER) *v.* MIDDLEBOROUGH (1828), 2 Y. & J. 196; 148 E. R. 888, Ex. Ch.

1643. —— Lease for lives by governors of charity —Covenant to put in new life.]—MOORE *v.* CLENCH (1875), 1 Ch. D. 447 ; 45 L. J. Ch. 80 ; 34 L. T. 13 ; 24 W. R. 169.

Annotation :—**Mentd.** Salamon *v.* Sopwith (1876), 35 L. T. 463.

1644. —— Lease for ninety-nine years—At peppercorn rent.]—MAGDALEN HOSPITAL (PRESIDENT & GOVERNORS) *v.* KNOTTS (1879), 4 App. Cas. 324 ; 48 L. J. Ch. 579 ; 40 L. T. 466 ; 43 J. P. 460 ; 27 W. R. 602, H. L.

Annotations :—**Refd.** Webster *v.* Southey (1887), 36 Ch. D. 9 ; Churcher *v.* Martin (1889), 42 Ch. D. 312 ; Bangor *v.* Parry, [1891] 2 Q. B. 277 ; Rickard *v.* Graham, [1910] 1 Ch. 722. **Mentd.** *Re* Devon's S. E., White *v.* Devon, *Re* Steer, Steer *v.* Dobell, [1896] 2 Ch. 562 ; Kingston Race Stand *v.* Kingston Corpn., [1897] A. C. 509 ; Mid. Ry. *v.* Wright (1901), 70 L. J. Ch. 411 ; Canterbury Corpn. *v.* Cooper (1908), 99 L. T. 612 ; *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176.

Corporations generally, *see* CORPORATIONS.

Charitable corporations generally, *see* Part VIII., *post.*

G. Improvements by Lessee.

1645. Absence of covenant to repair or lay out money—Long lease—Set aside.]—A.-G. *v.* FOORD (1843), 6 Beav. 288 ; 12 L. J. Ch. 238 ; 49 E. R. 837.

1646. Compensation for—When granted—Long lease at fixed rent & sum to be laid out in repairs —Account directed with just allowances.]—A.-G. *v.* GREEN (1801), 6 Ves. 452 ; 31 E. R. 1140, L. C.

Annotations :—**Distd.** Kirkham *v.* Chadwick (1807), 13 Ves. 517 ; A.-G. *v.* Moses (1816), 2 Madd. 294. **Folld.** A.-G. *v.* Pilgrim (1850), 2 H. & Tw. 186. **Refd.** A.-G. *v.* Owen (1805), 10 Ves. 555 ; A.-G. *v.* Backhouse (1810), 17 Ves. 283 ; A.-G. *v.* Warren (1818), 2 Swan. 291 ; A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

1647. —— —— Improvident reversionary lease set aside—Improvements on faith of continuance.] —A.-G. *v.* KERR (1840), 2 Beav. 420 ; 9 L. J. Ch. 190 ; 4 Jur. 406 ; 48 E. R. 1244.

Annotations :—**Distd.** A.-G. *v.* Pilgrim (1849), 12 Beav. 57. **Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395 ; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54. **Mentd.** Capital & Counties Bank *v.* Rhodes, [1903] 1 Ch. 631 ; *Re* Fletcher, Reading *v.* Fletcher (1916), 86 L. J. Ch. 139.

1648. —— —— Lease to new tenant at increased rent—Improvements by outgoing tenant.]—A.-G. *v.* GAINS (1848), 11 Beav. 63 ; 11 L. T. O. S. 510 ; 12 Jur. 275 ; 50 E. R. 740.

1649. —— —— —— ——.]—A.-G. *v.* PRETYMAN (1854), 19 Beav. 538 ; 52 E. R. 460.

1650. —— When refused—Long building lease at fixed rent—Set aside after one hundred & fifty years.]—A.-G. *v.* PILGRIM (1850), 2 H. & Tw. 186 ; 14 J. P. 287 ; 14 Jur. 1053 ; 47 E. R. 1650, L. C.

Annotation :—**Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

H. Other Cases.

1651. Lease by warden & some inhabitants—Concurrence of majority of inhabitants necessary—Benefit for inhabitants in general.]—ANON. (1675), 1 Cas. in Ch. 269 ; 22 E. R. 795.

1652. Insertion of onerous covenant—To grind corn at trustees' mill—Improper.]—A.-G. *v.* STAMFORD CORPN. (1747), 2 Swan. 591 ; 36 E. R. 741, L. C.

Annotations :—**Refd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54. **Mentd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1653. Lease of great & small tithes—Charity entitled to great tithes only—Assignee with notice —Relief against apportionment of rent.]—A.-G. *v.* DIXON (1842), 1 Y. & C. Ch. Cas. 614 ; 11 L. J. Ch. 396 ; 6 Jur. 1101 ; 62 E. R. 1040.

1654. Master authorised to appropriate fines on leases—By unauthorised ordinance—Proceeding prejudicial to charity—New mode of management directed.]—A.-G. *v.* WYGGESTON HOSPITAL (1849), 12 Beav. 113 ; 50 E. R. 1003.

Annotation :—**Consd.** A.-G. *v.* Payne (1859), 27 Beav. 168.

When schemes directed generally, *see* Part IV., Sect. 1, *ante.*

1655. Clause likely to lead to litigation—Against assignment to "indigent or improper person"—Not inserted in scheme.]—A.-G. *v.* DONNINGTON HOSPITAL (1852), 16 Jur. 899.

1656. Lease by majority of trustees—In breach of trust—Of residence of minister—In order to prevent minister taking up appointment—Lease set aside.]—WARD *v.* HIPWELL (1862), 3 Giff. 547 ; 6 L. T. 238 ; 8 Jur. N. S. 666 ; 66 E. R. 525.

1657. Charity with power to grant building leases—Model lease settled by court—Charity allowed to settle other leases in same form without reference to chambers.]—A.-G. *v.* CHRIST CHURCH, OXFORD (1862), 3 Giff. 514 ; 7 L. T. 238 ; 8 Jur. N. S. 989 ; 66 E. R. 512.

SUB-SECT. 4.—EXCHANGES.

See 1853 Act, ss. 24, 26 ; 1855 Act, ss. 32, 34.

Jurisdiction of court—Under Charities Procedure Act, 1812 (c. 101).]—*See* Part X., Sect. 2, subsect. 1, *post.*

SUB-SECT. 5.—PARTITION.

See 1855 Act, ss. 32, 34.

See PARTITION.

SUB-SECT. 6.—MORTGAGES.

See 1853 Act, ss. 21, 26 ; 1855 Act, ss. 29, 30, 33, 34.

1658. Charge to secure annuity—Upheld.]—A.-G. *v.* HART (LADY) (1703), Prec. Ch. 225 ; 24 E. R. 109.

1659. Power to mortgage in trust deed—Trustees may be mortgagees—& exercise rights thereof in opposition to trusts.]—A.-G. *v.* HARDY (1851), 1 Sim. N. S. 338 ; 20 L. J. Ch. 450 ; 15 Jur. 441 ; 61 E. R. 131.

Annotations :—**Refd.** Kirkwood *v.* Thompson (1865), 2 Hem. & M. 392 ; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54. **Mentd.** A.-G. *v.* Clapham (1855), 4 De G. M. & G. 591.

1660. When sanctioned by court—Mortgage to repay funds borrowed for improvements—Land in possession of parish officers for sixty years—Treated as parish land.]—DIXON'S TRUST (1853), 1 W. R. 244.

Usage generally, *see* Part III., Sect. 7, *ante.*

1661. —— Mortgage for costs—Sinking fund for extinction.]—A.-G. *v.* YORK (ARCHBP.) (1853), 17 Beav. 495 ; 51 E. R. 1126.

1662. —— Two charities with one object—Funds of one charity used to discharge mortgage on property of other charity—Mortgage kept alive for benefit of first charity.]—COCKBURN *v.* RAPHAEL, [1891] W. N. 14.

1663. When sanction required—Overdraft at bank—"Charge" on charity estate—1855 Act,

Sect. 3.—Management of trust property: Sub-sects. 6 & 7, A., B., C. (a), (b) & (c) & D.]

s. 29.]—(1) The borrowing of money by trustees of a charity by means of an overdraft at their bankers is a "charge" of the charity estate within the above sect., though the transaction is not carried out by means of any written document, & it cannot be lawfully made without the authority of an Act of Parliament or a ct. of competent jurisdiction or under a scheme or with the approval of the Charity Comrs.

(2) Churchwardens are not a corpn. in the full sense of the word, they are not a corporate entity & cannot sue or be sued by any corporate name, but they are a *quasi*-corpn. for the purpose of holding land & the devolution of property.—FELL *v.* OFFICIAL TRUSTEE OF CHARITY LANDS, [1898] 2 Ch. 44; 67 L. J. Ch. 385; 78 L. T. 474; 62 J. P. 804; 14 T. L. R. 376; 42 Sol. Jo. 488, C. A.

1664. —— Mortgage of lands of industrial school —School not exempted—1853 Act, s. 62.]—The trustees of an industrial school maintained by voluntary contributions, Government grants, contributions from school boards, boards of guardians, & other public authorities, & possessed of lands & buildings occupied by the school, presented a petition under Charities Procedure Act, 1812 (c. 101) asking for the sanction of the ct. to a proposed mtge. of part of the school lands & buildings: —*Held:* (1) the consent of the Charity Comrs. to the presentation of the petition & to the proposed mtge. was necessary, either (*a*) upon the construction of the above sect., or (*b*) having regard to the nature of the property proposed to be mortgaged; (2) Government grants & contributions by school boards, boards of guardians, & other public authorities to an industrial school, were not voluntary contributions within the sect.; (3) the proviso at the end of the sect., excluding "any cathedral, collegiate, chapter or other schools" from the "exemption" contained in the sect., did not extend to all schools of whatsoever description, but only extended to the schools there mentioned, & to schools of a similar character.—*Re* STOCKPORT RAGGED, INDUSTRIAL & REFORMATORY SCHOOLS, [1898] 2 Ch. 687; 68 L. J. Ch. 41; 79 L. T. 507; 47 W. R. 166; 14 T. L. R. 589; 42 Sol. Jo. 730, C. A.

Annotations:—As to (2) **Consd.** *Re* Soc. for Training Teachers of the Deaf & Whittle's Contract, [1907] 2 Ch. 486. *As to* (3) **Refd.** Bolam *v.* Allgood (1913), 110 L. T. 8; A.-G. *v.* Brown, [1920] 1 K. B. 773. **Mentd.** *Re* Dod's Charity, [1905] 1 Ch. 442; Tillmanns *v.* Knutsford SS., [1908] 2 K. B. 385; *Re* Layard, Layard *v.* Bessborough (1916), 85 L. J. Ch. 505; Maghhild SS. *v.* McIntyre, [1920] 3 K. B. 321.

1665. Unnecessary mortgage—Injunction to restrain—Granted.]—RIGALL *v.* FOSTER (1853), 18 Jur. 39.

See, generally, MORTGAGE.

SUB-SECT. 7.—INVESTMENT.

A. In General.

1666. Suspension of accumulation of dividends —Granted—Dividends to be applied as income for benefit of fellows & scholars—College revenues diminished by agricultural depression.]—A.-G. *v.* VIGOR (1887), 3 T. L. R. 292.

Reinvestment & change of investments.]—*See* Nos. 1670, 1671, *post.*

—— Of money paid into court—Application for —How made.]—*See* No. 2409, *post.*

B. What Investments Authorised.

1667. On mortgage.]—*Re* PRIOR'S (LADY) CHARITY, A.-G. *v.* GIBSON, *Ex p.* LUSHINGTON (1853), Lewin on Trusts 12th ed. 636, n.

In land.]—*See* Sub-sect. 7, D., *post.*

1668. Funds in court—Securities restricted by scheme established by statute—Investment in other securities authorised.]—*Re* BIRMINGHAM BLUE-COAT SCHOOL (1866), L. R. 1 Eq. 632; 35 Beav. 345; 35 L. J. Ch. 837; 55 E. R. 929.

Annotation:—**Folld.** *Re* Wilkinson's Estate (1870), L. R. 9 Eq. 343.

Money paid into court—Under Lands Clauses Consolidation Act, 1845 (c. 18).]—*See* Sub-sect. 7, C. (a), *post.*

1669. In any stocks, funds & securities on which cash under control of court may be invested —Under Law of Property Amendment Act, 1860 (c. 38), s. 11—Or in Metropolitan Consolidated Stock —Under Metropolitan Board of Works Loans Act, 1871 (c. 47), s. 13.]—*Re* CLERGY ORPHAN CORPN. (1874), L. R. 18 Eq. 280; 30 L. T. 806; 22 W. R. 789.

Annotation:—**Consd.** *Re* Manchester Royal Infirmary, Manchester Royal Infirmary *v.* A.-G. (1889), 43 Ch. D. 420.

1670. On any securities mentioned or referred to in Trust Investment Act, 1889 (c. 32), s. 3—Unless expressly forbidden by instrument creating trust.]—A corpn. incorporated by a special Act held funds for charitable purposes:—*Held:* (1) the corpn. were trustees within the above Act, & were entitled to invest any trust moneys in their hands on any of the securities mentioned or referred to in above sect., unless they were expressly forbidden to do so by the instrument creating the trust; (2) if a trustee has not, under the instrument creating his trust, power to vary the investments of the trust funds, the sect. does not authorise him to sell existing investments for the purpose of reinvesting the proceeds on securities mentioned therein.—*Re* MANCHESTER ROYAL INFIRMARY, MANCHESTER ROYAL INFIRMARY *v.* A.-G. (1889), 43 Ch. D. 420; 59 L. J. Ch. 370; 62 L. T. 419; 38 W. R. 460; *sub nom.* MANCHESTER ROYAL INFIRMARY, DISPENSARY & LUNATIC HOSPITAL *v.* A.-G., *Re* NATIONAL PERMANENT MUTUAL BENEFIT BUILDING SOCIETY, 6 T. L. R. 129.

Annotation:—As to (2) **Dbtd.** *Re* Dick, Lopes *v.* Hume-Dick, [1891] 1 Ch. 423.

1671. Consols exchanged for new stock at 2¾ per cent. interest—Income of charity thereby reduced—Petition for reinvestment in India 3½ per cent. stock—Fund transferred to Official Trustee of Charities pending inquiry as to modernisation of scheme & change of investments.]—MILNE'S CHARITY, MILNE *v.* GELBARD (1889), *Times* Jan. 28.

1672. Not £3 5s. per cent. Annuities.]—A.-G. *v.* ALFORD (1854), 2 Sm. & G. 488; 23 L. T. O. S. 226; 18 Jur. 592; 2 W. R. 580; 65 E. R. 494; *on appeal* (1855), 4 De G. M. & G. 843, L. C.

Annotations:—**Mentd.** Penny *v.* Avison (1856), 23 L. T. O. S. 142; Berwick-upon-Tweed Corpn. *v.* Murray (1857), 7 De G. M. & G. 497; Townend *v.* Townend (1859), 1 Giff. 201; Blogg *v.* Johnson (1867), 2 Ch. Ap. 225; Burdick *v.* Garrick (1870), 5 Ch. App. 233; Vyse *v.* Foster (1872), 8 Ch. App. 309; Price *v.* Price (1880), 42 L. T. 626; Gilroy *v.* Stephens (1882), 51 L. J. Ch. 834; *Re* Hulkes, Powell *v.* Hulkes (1886), 33 Ch. D. 552; Phillips *v.* Homfray (1890), 44 Ch. D. 694; *Re* Barclay, Barclay *v.* Andrew, [1899] 1 Ch. 674; Silkstone & Haigh Moor Coal Co. *v.* Edey, [1900] 1 Ch. 167.

C. Money paid into Court.

(a) Under Lands Clauses Consolidation Act, 1845 (c. 18).

See, generally, COMPULSORY PURCHASE OF LAND & COMPENSATION.

d. *In Government securities—Not on private security.*]—CHARITABLE DONATIONS COMRS. *v.* WARREN (1829), 2 Ir. L. Rec. 1st ser. 451.—IR.

Whether consent of Charity Commissioners necessary.]—*See* Part IX., Sect. 4, sub-sect. 3, B. (b), iii., *post.*

Whether consent of Attorney-General necessary.]—*See* Part X., Sect. 2, sub-sect. 2, D., *post.*

By petition.]—*See* Part X., Sect. 2, *post.*

1673. To what purposes applicable—Investment in leaseholds—Proceeds of sale of freeholds & copyholds—Not allowed.]—*Re* LANCASHIRE & YORKSHIRE RY. CO., *Ex p.* MACAULAY (1854), 23 L. J. Ch. 815; 23 L. T. O. S. 263; 2 W. R. 667, L. JJ.

1674. —— —— Proceeds of sale of freeholds—Allowed.]—*Ex p.* TRINITY COLLEGE, CAMBRIDGE (MASTER, FELLOWS, & SCHOLARS) (1868), 18 L. T. 849.

1675. —— —— —— ——.]—*Re* REHOBOTH CHAPEL (1874), L. R. 19 Eq. 180; 44 L. J. Ch. 375; 31 L. T. 571; 23 W. R. 405.

1676. —— Enfranchisement of copyholds—Proceeds of sale of freeholds.]—*Re* CHESHUNT COLLEGE, *Re* NEW RIVER CO.'S ACT, 1852 (1855), 1 Jur. N. S. 995; 3 W. R. 638.

Annotation :—**Folld.** Dixon *v.* Jackson (1856), 27 L. T. O. S. 53.

1677. —— Fitting up temporary accommodation for patients of hospital—Purchase-money of permanent building.]—*Re* ST. THOMAS'S HOSPITAL (1863), 11 W. R. 1018.

1678. —— Rebuilding—Ornamental church belonging to corporation as trustees of charity—Rebuilding in same style not necessary but surplus applicable to extension of charity.]—CLEPHANE *v.* EDINBURGH MAGISTRATES, EDINBURGH MAGISTRATES *v.* FORRESTER, FORRESTER *v.* EDINBURGH MAGISTRATES (1864), 10 L. T. 278; 28 J. P. 564, H. L.; *subsequent proceedings, sub nom.* CLEPHANE *v.* EDINBURGH CORPN. (1869), L. R. 1 Sc. & Div. 417, H. L.

1679. —— —— Parish church.]—*Ex p.* ST. ALPHAGE (PARSON, ETC.) (1886), 55 L. T. 314.

1680. —— Purchase of adjoining land—& conversion of nuisance thereon into additional buildings of charity.]—*Re* LYMINGTON BAPTIST CHAPEL (TRUSTEES), [1877] W. N. 226.

1681. —— Purchase & alteration of house for vicarage—Purchase-money of churchyard.]—Funds representing the purchase-money of part of a churchyard taken for street improvements applied in the purchase, alteration, & repair of a house for a vicarage.—*Ex p.* ST. BOTOLPH, ALDGATE (VICAR), [1894] 3 Ch. 544; *sub nom. Ex p.* LONDON SEWERS COMRS. & ST. BOTOLPH WITHOUT, ALDGATE (VICAR), 63 L. J. Ch. 862; 38 Sol. Jo. 682; 8 R. 649.

1682. —— Erection of new buildings—With consent of Board of Agriculture—Universities & College Estates Amendment Act, 1880 (c. 46).]—The effect of Universities & College Estates Amendment Act, 1880 (c. 46), ss. 2, 4, in conjunction with Universities & College Estates Act, 1858 (c. 44), ss. 27, 28, is that the purchase-money of land, belonging to a college, which has been compulsorily taken under the provisions of Lands Clauses Consolidation Act, 1845 (c. 18), may be applied, with the consent of the Board of Agriculture, in the erection of new buildings upon land belonging to such college, & repaid into ct. by thirty equal annual instalments.—*Ex p.* KING'S COLLEGE, CAMBRIDGE, [1891] 1 Ch. 333, 677; 60 L. J. Ch. 508; 64 L. T. 623.

1683. —— Discharge of incumbrance—New purchase—Proceeds of sale of college lands.]—*Ex p.* QUEEN'S COLLEGE (1849), 14 Beav. 159, n.; 51 E. R. 247.

1684. —— Investment in railway debenture stock—Settled Land Act, 1882 (c. 38), s. 32.]—*Re* BYRON'S CHARITY (1883), 23 Ch. D. 171; 53 L. J. Ch. 152; 48 L. T. 515; 31 W. R. 517.

Annotation :—**Refd.** *Ex p.* Castle Bytham, *Ex p.* Mid. Ry., [1895] 1 Ch. 348.

(b) Under Trustee Relief Act, 1847 (c. 96).

Whether sanction of Charity Commissioners necessary—For payment into court—Or for application of funds.]—*See* Part IX., Sect. 4, sub-sect. 3, B. (b), iii., *post.*

(c) Dividends.

1685. Paid to trustees.]—*Ex p.* TEMPLE CHURCH LANDS, BRISTOL (TRUSTEES) (1870), 23 L. T. 135.

1686. —— Instead of accumulation—Discretion of court—Lands Clauses Consolidation Act, 1845 (c. 18), s. 74.]—*Ex p.* ST. THOMAS'S CHURCH LANDS, BRISTOL (TRUSTEES) (1870), 23 L. T. 135.

1687. —— Form of order—"Trustees or any two of them."]—A.-G. *v.* BRICKDALE (1845), 8 Beav. 223; 50 E. R. 87.

1688. —— —— —— "For the time being."]—*Re* COLLINS' CHARITY & LONDON & BIRMINGHAM RY. ACT (1851), 20 L. J. Ch. 168; 17 L. T. O. S. 161.

1689. —— —— —— ——.]—MILNE *v.* GILBART, [1875] W. N. 128.

1690. —— —— "Trustees & survivors & survivor of them"—"& trustees for the time being."]—*Ex p.* SHREWSBURY HOSPITAL (TRUSTEES) (1852), 9 Hare, App. I. xlv.; 68 E. R. 782.

1691. Paid to rector—For the time being—Rector perpetual trustee.] — *Re* DAVENANT'S CHARITY (1854), 2 W. R. 344.

1692. —— —— Uncertainty as to party in whom legal estate vested—Long usage.]—*Re* ST. BENET'S (RECTOR, ETC.) (1865), 12 L. T. 762.

1693. Paid to secretary of trustees—& successors for the time being—No treasurer.]—*Re* CODRINGTON'S CHARITY (1874), L. R. 18 Eq. 658.

1694. Paid to treasurer—For the time being.]—*Ex p.* CHARITY FOR RELIEF OF WIDOWS & CHILDREN OF NORFOLK CLERGY (GOVERNORS), [1882] W. N. 53.

D. In Land.

See Charitable Trusts Amendment Act, 1855 (c. 124), ss. 35, 36; 1888 Act, s. 4; 1891 Act, s. 8.

1695. Contrary to policy of Mortmain Acts—Not allowed.]—A.-G. *v.* WILSON (1838), 2 Keen, 680; 2 Jur. 772; 48 E. R. 791.

1696. Sanctioned where beneficial to charity—Not contrary to Mortmain Acts—Licence to hold in mortmain.]—A.-G. *v.* NEW ENGLAND CO. (1808), cited in 2 Keen, 685; 48 E. R. 792, L. C.

Annotation :—**Consd.** A.-G. *v.* Wilson (1838), 2 Keen, 680.

1697. —— —— Improvements & repairs—Paying off mortgages.]—A.-G. *v.* MANSFIELD (EARL), *Ex p.* HIGHGATE FREE GRAMMAR SCHOOL (WARDENS & GOVERNORS) (1845), 14 Sim. 601; 60 E. R. 491; *sub nom.* A.-G. *v.* HIGHGATE SCHOOL (WARDENS & GOVERNORS), 14 L. J. Ch. 425.

1698. —— —— Building almshouses—On land to be purchased.]—*Re* HONNOR'S TRUSTS (1855), 25 L. T. O. S. 301; 3 W. R. 429.

1699. ——.]—*Re* ECCLESALL OVERSEERS (1852), 16 Beav. 297; 21 L. J. Ch. 729; 51 E. R. 793.

Annotation :—**Mentd.** *Re* Christchurch Inclosure Act, Meyrick *v.* A.-G., [1894] 3 Ch. 209.

PART V. SECT. 3, SUB-SECT. 7.—D.

e. *Added property—Purchased out of trust funds—Augmentation of trust property.]*—DUNDEE MAGISTRATES *v.* DUNDEE PRESBYTERY (1861), 4 Macq. 228, H. L.—SCOT.

Sect. 3.—*Management of trust property: Sub-sect.* 7, *D.; sub-sects.* 8 & 9. *Part VI. Sect.* 1: *Sub-sects.* 1, 2, 3 & 4.]

Assurances for charitable purposes—Subject to Mortmain Acts.]—*See* Part II., *ante*.

1700. Reference as to title—When ordered—Purchase under special conditions of sale.]—*Ex p.* CHRIST'S HOSPITAL (GOVERNORS) (1864), 2 Hem. & M. 166; 71 E. R. 425.

Annotation:—**Mentd.** *Re* Bishopsgate Foundation, [1894] 1 Ch. 185.

1701. —— Approved by conveyancing counsel of court.]—*Re* CHAMBERLAIN'S CHARITY ESTATES (1852), 1 W. R. 15.

1702. —— —— Dispensed with when purchase small.]—*Re* LAPWORTH CHARITY, [1879] W. N. 37.

1703. Added property—Whether purchased out of charity funds—Onus on trustees.]—*Re* AMBLESIDE CHARITY (1870), 18 W. R. 663.

1704. —— —— No proof—Not to be applied for purposes of charity.]—A.-G. *v.* WAX CHANDLERS' CO. (MASTER, WARDENS, ETC.) (1873), L. R. 6 H. L. 1; 42 L. J. Ch. 425; 28 L. T. 681; 37 J. P. 532; 21 W. R. 361, H. L.

Annotations:—**Mentd.** Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512; Cunningham *v.* Foot (1878), 38 L. T. 889; Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; *Re* Palatine Estate Charity (1888), 39 Ch. D. 54; Haigh *v.* West, [1893] 2 Q. B. 19.

SUB-SECT. 8.—REDEMPTION OF LAND TAX.

See LAND TAX.

SUB-SECT. 9.—REGISTRATION.

Without restrictions—As to power of disposition.]—*See* Nos. 1544, 1552, 1554, *ante*, No. 2137, *post*.

Part VI.—Appointment and Removal of Officers, Ministers, Fellows, etc.

SECT. 1.—OFFICERS, FELLOWS, ETC., OF COLLEGES.

SUB-SECT. 1.—MODE OF ELECTION.

1705. Of fellow—By master or president & major part of fellows—Concurrence of master or president dispensed with—Caius College, Cambridge.]—GONVILLES & CAIUS COLLEGE CASE (1617), 5 Russ. 76, n.; 38 E. R. 963.

1706. —— —— —— Clare Hall, Cambridge.]—CLARE HALL CASE (1788), 5 Russ. 73, n.; 38 E. R. 961.

1707. —— —— Concurrence of master or president necessary—Catherine Hall, Cambridge.]—CATHERINE HALL CASE (1802), 5 Russ. 85, n.; 38 E. R. 964.

Annotation:—**Distd.** R. *v.* Kendall (1841), 1 Q. B. 366.

1708. —— —— —— Queen's College, Cambridge.]—*Re* QUEEN'S COLLEGE, CAMBRIDGE (1828), 5 Russ. 64; 6 L. J. O. S. Ch. 176; 38 E. R. 951, L. C.

Annotation:—**Distd.** R. *v.* Kendall (1841), 1 Q. B. 366.

1709. —— On day different from that appointed by master—Election valid—Trinity Hall, Cambridge.]—R. *v.* GREGORY (1772), 4 Term Rep. 240, n.; 100 E. R. 995.

Annotations:—**Consd.** R. *v.* St. Catherine's Hall, Cambridge (1791), 4 Term Rep. 233. **Refd.** Darley *v.* R. (1846), 12 Cl. & Fin. 520; R. *v.* Hertford College (1877), 2 Q. B. D. 590.

1710. Powers of majority—Power of certain members to dispense with absence of fellow—Majority not sufficient—New College, Oxford.]—NEW COLLEGE, OXFORD, CASE (1566), 2 Dyer, 247, a; 73 E. R. 546.

SUB-SECT. 2.—QUALIFICATIONS OF CANDIDATES.

1711. For fellowship—Birth qualification—Candidate born nearest to particular place—Of equal learning—Preferred.]—HOBSON'S CASE (1740), cited in 2 Ph. 523; 41 E. R. 1045, L. C.

Annotations:—**Consd.** *Re* University College, Oxford (1848) 2 Ph. 521; A.-G. *v.* Powis (1853), Kay, 186.

1712. —— —— —— Operative only when merit equal.]—ROBSON'S CASE (1802), cited in 2 Ph. 523; 17 L. J. Ch. 300, n.; 41 E. R. 1045, L. C.

Annotation:—**Consd.** *Re* University College, Oxford (1848), 2 Ph. 521.

1713. —— —— —— ——.]—*Re* UNIVERSITY COLLEGE, OXFORD (1848), 2 Ph. 521; 17 L. J. Ch. 298; 11 L. T. O. S. 21; 41 E. R. 1044, L. C.

Annotation:—**Distd.** A.-G. *v.* Powis (1853), Kay, 186.

1714. —— —— Candidate born at particular place—Examination to determine ability—Power to elect "able" candidate not qualified by birth if candidate so qualified is not "able."]—*Re* ST. JOHN'S COLLEGE, CAMBRIDGE (1831), 2 Russ. & M. 603; 39 E. R. 524.

Annotation:—**Consd.** *Re* Catharine Hall, *Ex p.* Inge (1831), 2 Russ. & M. 590.

1715. —— Close fellowship—Candidate fulfilling conditions of endowment—Liable to be examined for fitness—Standard of merit to be positive & not relative.]—*Re* CATHARINE HALL, *Ex p.* INGE (1831), 2 Russ. & M. 590; 39 E. R. 519, L.C.

Annotation:—**Consd.** *Re* University College, Oxford (1848), 2 Ph. 521.

1716. —— Holy orders—Graduates in arts intended for—Fit & proper persons to study

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PART V. SECT. 3, SUB-SECT. 9.

f. *Under* 9 *Geo.* 4, *c.* 2—*Non-registration—Deed void.*]—DOE d. BOWMAN *v.* CAMERON (1847), 4 U. C. R. 155.—**CAN.**

g. *Unnecessary where complying in other respects with Charitable Uses Act*, 1736.] MERCER *v.* HEWSTON (1860), 9 C. P. 349.—**CAN.**

h. *Necessary under Religious, Educational & Charitable Institutions Act*, 1861, *s.* 3.]—Where a bequest was made in favour of P. Church & its congregation, & it appeared that the congregation had voluntarily joined the Presbyterian Church of Q., an ecclesiastical body which had been incorporated through its officers under Religious, Educational & Charitable Institutions Act, 1861:—*Held*: the congregation, having regard to the terms of incorporation, had become, by virtue of their union, constituent members of the Church, so that a bequest in their favour was in reality a bequest to the incorporated body, & was accordingly invalidated, not having been registered or attested in the mode prescribed by the Act.—MCSWAINE *v.* LASCELLES, [1895] A. C. 618, P. C. —**AUS.**

k. ——.]—*Re* TRAVIS (DECEASED), MANT *v.* A.-G., [1911] St. R. Qd. 216. —**AUS.**

PART VI. SECT. 1, SUB-SECT. 2.

l. *For bursary—To student on entering Divinity Hall—Election after examination—Disappointed candidate no locus standi to dispute.*]—A. gave a fund for a bursary to a student on his entering the Divinity Hall of a Scottish university declaring that certain qualifications should be required of competitors. The trustees after an examination awarded the bursary to B. C., who had competed in the examination, raised an action for declarator that he had been duly elected & was entitled to the bursary & for damages. He averred that B. was ineligible, as he was not entering the Divinity Hall, but had attended for a year, & that

theology — Laymen excluded.]— *Re* MAGDALEN COLLEGE, OXFORD, ELLERTON'S CASE (1803), 17 L. J. Ch. 300, n.

Annotation :—**Refd.** *Re* University College, Oxford, *Ex p.* Moorsom (1848), 17 L. J. Ch. 298.

1717. —— —— Admission to deacon's orders sufficient.]—*Re* UNIVERSITY COLLEGE, OXFORD (1848), 2 Ph. 521 ; 17 L. J. Ch. 298 ; 11 L. T. O. S. 21 ; 41 E. R. 1044, L. C.

Annotation :—**Refd.** A.-G. *v.* Powis (1853), Kay, 186.

1718. —— Religious qualifications—Court cannot compel election of candidate not qualified—Universities Tests Act, 1871 (c. 26), confined to colleges subsisting before Act passed.]—R. *v.* HERTFORD COLLEGE (1878), 3 Q. B. D. 693 ; 47 L. J. Q. B. 649 ; 39 L. T. 18 ; 42 J. P. 772 ; 27 W. R. 347, C. A.

1719. For mastership—Holy orders—Master not disqualified by—If possessing other prescribed qualifications—Downing College, Cambridge.]—DOWNING COLLEGE CASE (1837), 2 My. & Cr. 642 ; 40 E. R. 785.

1720. For exhibition—Provided out of surplus funds—Whether boarders objects of charity.]—A.-G. *v.* STAMFORD (EARL) (1843), 1 Ph. 737 ; 12 L. J. Ch. 297 ; 7 Jur. 359 ; 41 E. R. 812, L. C.

Annotations :—**Consd.** A.-G. *v.* Ludlow Corpn. (1848), 2 Ph. 685 ; Manchester School Case (1867), 2 Ch. App. 407. **Mentd.** A.-G. *v.* Devon (1846), 15 Sim. 193 ; A.-G. *v.* Worcester (1851), 9 Hare, 328 ; *Re* Bristol Free Grammar School (1860), 28 Beav. 161 ; A.-G. *v.* Clifton (1863), 32 Beav. 596.

1721. —— —— ——.]—A.-G. *v.* LUDLOW CORPN. (1848), 2 Ph. 685 ; 41 E. R. 1108, L. C.

1722. —— Boys who "shall have been or have been" three years at particular school—Construed as three years at time of & immediately before election.]—*Re* STORIE'S UNIVERSITY GIFT (1860), 2 De G. F. & J. 529 ; 30 L. J. Ch. 193 ; 3 L. T. 638 ; 25 J. P. 243 ; 7 Jur. N. S. 31 ; 9 W. R. 323 ; 45 E. R. 726, L. JJ.

1723. —— Religious qualification—Removed by statute—Universities of Oxford & Cambridge Act, 1877 (c. 48).]—*Re* PAUNCEFORT, SONS OF THE CLERGY CORPN. *v.* CHRIST CHURCH, OXFORD (1889), 42 Ch. D. 624 ; 58 L. J. Ch. 578 ; 61 L. T. 109 ; 38 W. R. 172 ; 5 T. L. R. 557.

1724. For scholarship—Preference of scholars related to testator & of his race—Construction of statutes—All Souls College, Oxford.]—SPENCER *v.* ALL SOULS COLLEGE (1762), Wilm. 163 ; 97 E. R. 64.

1725. —— Scholar to be child of resident of named town—Preference to be given cæteris paribus to son of freeman of town—Competitive examination & not test provided.]—*Re* NETTLE'S CHARITY (1872), L. R. 14 Eq. 434 ; 41 L. J. Ch. 694 ; 20 W. R. 965.

1726. —— Candidate passing "best" examination—Candidate obtaining highest marks not entitled—If insufficient merit.]—Under the provisions of a deed founding a scholarship, the scholarship was to be awarded to the pupil leaving a certain school & fulfilling certain other conditions, who should pass the "best" examination in subjects to be determined upon from time to time by the examiner or examiners for the scholarship. The trustees announced an examination for June, 1894, at which pltf. & another boy were the only candidates, & pltf. obtained the larger number of marks, but the trustees declined to award the scholarship, the examiner having reported that neither candidate was deserving of quite so valuable a scholarship. Pltf. commenced an action against the trustees for a declaration that he was entitled to the possession & enjoyment of the scholarship, subject to performing the conditions contained in the trust deed :—*Held :* upon the true construction of the trust deed, no boy was entitled to the scholarship, unless in the examiner's opinion he had passed a satisfactory examination in the subjects selected, & if a boy, though the best of those who competed, was unable to pass a satisfactory examination, then the examiner ought to say, as he had in effect said here, that there was no boy who had passed the best examination so as to be entitled to the scholarship.—ROOKE *v.* DAWSON (1895), 65 L. J. Ch. 31 ; 73 L. T. 399 ; 44 W. R. 77 ; 12 T. L. R. 16 ; 40 Sol. Jo. 11.

SUB-SECT. 3.—REMOVAL AND EXPULSION.

1727. Without giving cause of expulsion of fellow — Valid.]—WITHERINGTON *v.* CHRIST COLLEGE, CAMBRIDGE (1662), 1 Sid. 71 ; 1 Keb. 150, 234 ; 82 E. R. 976 ; *sub nom.* WIDDRINGTON'S CASE, 1 Lev. 23 ; T. Raym. 31, 68.

Annotations :—**Consd.** R. *v.* All Souls, Oxford (1680), Skin. 13. **Refd.** R. *v.* Patrick (1667), 2 Keb. 65, 164 ; Parkinson's Case (1688), Comb. 143. **Mentd.** R. *v.* Lambert (1697), 12 Mod. Rep. 153 ; R. *v.* Heathcote (1712), 10 Mod. Rep. 48.

1728. On non-compliance with condition of fellowship—Failure to travel—Condition dispensed with by acceptance of resignation—No liability to refund.]—A.-G. *v.* STEPHENS (1737), 1 Atk. 358 ; 2 Eq. Cas. Abr. 196 ; West *temp.* Hard. 50 ; 26 E. R. 228, L. C.

1729. —— Failure to take holy orders—Absolute forfeiture.]—*Re* ST. CATHERINE'S HALL, CAMBRIDGE (1849), 1 Mac. & G. 473 ; 1 H. & Tw. 601 ; 41 E. R. 1348, L. C.

1730. —— Acceptance of Regius professorship —Subsequent election as senior fellow void.]— *Re* TRINITY COLLEGE, CAMBRIDGE, *Ex p.* EDLESTON (1854), 3 De G. M. & G. 742 ; 23 L. T. O. S. 41 ; 2 W. R. 317 ; 43 E. R. 292, L. C.

1731. Construction of college statute—"A Collegii emolumentis recedere"—Import absolute forfeiture of fellowship—Not merely temporary suspension.]—*Re* ST. CATHERINE'S HALL, CAMBRIDGE (1849), 1 Mac. & G. 473 ; 1 H. & Tw. 601 ; 15 L. T. O. S. 81 ; 41 E. R. 1348, L. C.

1732. On marriage—Chaplain—Christ Church, Oxford—Lawful cause of removal.]—*Ex p.* LAMPREY (1737), West *temp.* Hard. 209 ; 25 E. R. 899, L. C.

SUB-SECT. 4.—OTHER CASES.

Jurisdiction of visitor.]—*See* Part IX., Sect. 2, sub-sect. 1, *post.*

1733. Number of fellows elected—Practice of electing two from county instead of one—Dispensation from Crown presumed.]—QUEEN'S COLLEGE,

he, C., "did the best examinations" & possessed the required qualifications, also that he had been put to trouble & expense & had suffered loss by the conduct of defenders :—*Held :* (1) as C. was not elected he was not entitled to decree of declarator & payment ; (2) there was no sufficient averment of pecuniary loss to sustain the conclusion for damages.—MCDONALD *v.* MCCOLL (1890), 17 R. (Ct. of Sess.) 951. —SCOT.

m. —— *Pupils of particular school —Six months before date of examination —Parents requiring aid—Authorised absence from school not disqualification —Pupil who had left school disqualified.*] —A scheme provided that a bursary should be awarded by competitive examination among those who had been pupils in public or state-aided schools in the parish of B. for at least 6 months before the date of examination & whose parents or guardians required aid for giving them higher education. A pupil had not been for the 6 months immediately preceding examination a pupil of the school :—*Held :* a pupil's absence from school for a short time did not disqualify from competition. but a pupil who had left the school was no longer entitled to compete.—MCQUAKER *v.* BALLANTRAE EDUCATIONAL TRUST (GOVERNORS) (1891), 18 R. (Ct. of Sess.) 521 ; 28 Sc. L. R. 377.—SCOT.

Sect. 1.—*Officers, fellows, etc., of colleges: Sub-sect.* 4. *Sects.* 2, 3, 4 & 5. *Part VII. Sect.* 1: *Sub-sects.* 1 & 2.]

CAMBRIDGE, CASE (1821), Jac. 1; 37 E. R. 750, L.C.

Annotations :—**Mentd.** Wastell *v.* Leslie (1844), 8 Jur. 1001; *Re* Trinity College, Cambridge, *Ex p.* Edleston (1854), 3 De G. M. & G. 742.

1734. Examination of fellows—Repeal of bye-laws—Substituted bye-laws recommended by assessors accepted by visitor.]—WATSON & FREEMANTLE *v.* ALL SOULS' COLLEGE, OXFORD (WARDEN, ETC.) (1864), 11 L. T. 166.

1735. Construction of College statute—Admission of master—Distinct from ceremonies mentioned in statute.]—QUEEN'S COLLEGE, CAMBRIDGE, CASE (1821), Jac. 1; 37 E. R. 750, L. C.

Annotations :—**Mentd.** Wastell *v.* Leslie (1844), 8 Jur. 1001; *Re* Trinity College, Cambridge, *Ex p.* Edleston (1854), 3 De G. M. & G. 742.

1736. —— "Discedere"—Fellow vacating fellowship—Not confined to vacancy by death.]—*Re* ST. CATHERINE'S HALL, CAMBRIDGE (1849), 1 Mac. & G. 473; 1 H. & Tw. 601; 15 L. T. O. S. 81; 41 E. R. 1348, L. C.

1737. Woman governor—Majority of governors entitled to alter rules of college & elect.]—By a deed poll which declared the rules & regulations by which a college, founded by the grantor of the deed, was to be carried on it was provided that "at no time shall a woman be appointed a governor or honorary governor" of the college. A later clause in the deed provided that "a majority of three-fourths of the whole number of governors may, after the death of the founder & the expiration of a period of twenty years from the date of these presents, by deed revoke or alter all or any of the rules & regulations herein contained, & by the same or any other deed prescribe any other rules or regulations as to the college & the management & conduct of the affairs thereof, but only in such way as shall not alter the fundamental principles laid down in this deed":—*Held:* after the death of the founder & the expiration of twenty years, it was competent for a three-fourths majority of the governors so to alter the rules & regulations as to enable a woman to be a governor or honorary governor.—*Re* HOLLOWAY'S TRUSTS, GREENWELL *v.* RYAN (1909), 26 T. L. R. 62; 54 Sol. Jo. 49.

SECT. 2.—MINISTERS OF THE ESTABLISHED CHURCH AND OF CHAPELS OF EASE, AND PERPETUAL CURATES.

See ECCLESIASTICAL LAW.

SECT. 3.—MINISTERS OF DISSENTING BODIES.

See ECCLESIASTICAL LAW.

SECT. 4.—SCHOOLMASTERS.

See EDUCATION.

SECT. 5.—OTHER OFFICERS.

1738. Mastership of hospital—Cannot be granted in reversion.]—BRUNKER (VISCOUNT) *v.* ATKINS (1681), T. Jo. 176; 84 E. R. 1204.

1739. Lecturer in parish church—Lecturer getting into debt & going abroad—Good ground for removal & appointment of new lecturer.]—PHILIPS *v.* WALTER (1720), 2 Bro. Parl. Cas. 250; 1 E. R. 923.

1740. Pensioner of hospital—Court will not scrutinise reasons for removal with same nicety as if freehold of person in question.]—A.-G. *v.* LOCK (1744), 3 Atk. 164; 26 E. R. 897.

Annotation :—**Mentd.** St. Mary Castlegate *v.* St. Mary Bishopshill (1852), 16 J. P. 87.

1741. Chorister in cathedral—Court has no jurisdiction to grant mandamus—Unnecessary to set out cause of removal in return.]—R. *v.* CHESTER (DEAN & CHAPTER) (1850), 15 Q. B. 513; 19 L. J. Q. B. 485; 15 L. T. O. S. 342; 14 J. P. 654; 15 Jur. 10; 117 E. R. 553.

Annotation :—**Refd.** R. *v.* Rochester (1851), 17 Q. B. 1.

1742. High steward—Cambridge University—Mandamus granted—For seal to be put to appointment.]—R. *v.* CAMBRIDGE (VICE-CHANCELLOR) (1765), 3 Burr. 1647; 1 Wm. Bl. 547; 97 E. R. 1027.

Annotation :—**Mentd.** R. *v.* Westwood (1825), 4 B. & C. 781.

1743. President of hospital—Who may be elected as—Choice limited by ancient usage—No restrictions in statute confirming old usage.]—R. *v.* ST. BARTHOLOMEW'S HOSPITAL (TREASURER) (1860), 31 J. P. 277.

1744. Rector & churchwardens—Have not "vested interest"—Under City of London Parochial Charities Act, 1883 (c. 36), s. 10.]—*Re* ST. JOHN THE EVANGELIST, D'AUNGRE'S CHARITY, No. 1898, *post.*

1745. Clerk to charity—Has not "vested interest"—Under City of London Parochial Charities Act, 1883 (c. 36), s. 10.]—An application was made, under above sect. by the clerk & solr. to the trustees of a charity founded in 1503, raising the question whether he had, as such clerk & solr., a "vested interest" under the Act. S. 7 of the Act provides that no person shall be deemed to have any vested interest within the Act if the office he holds is tenable at the pleasure of some other person or persons; but the comrs. may consider any fair & equitable claims. In 1883 a scheme for the regulation of the charity was sanctioned by the Ch. Div. Shortly before the passing of the Act, the trustees of the charity passed a resolution appointing the applicant clerk & solr. to the charity at a salary of £63 a year, but without fixing any period as the duration of his appointment. He claimed that his appointment was a freehold office, & not tenable only at the pleasure of the trustees; & accordingly, that he had a "vested interest" under the Act:—*Held:* the office in question was not contemplated by the scheme, the trustees had no power whatever to create it as a freehold office, & if they intended to create such an office by their resolution it was a breach of trust, & appct. had not a vested interest in any of the charity property.—*Re* ST. EDMUND THE KING & MARTYR (PARISH) (1889), 60 L. T. 622.

PART VI. SECT. 5.

n. *Religion of governors no bar to appointment.*]—A.-G. *v.* TOTTENHAM (1870), 5 I. R. Eq. 241.—IR.

o. *Manager of hospital—Who may be elected as—Effect of long usage.*]—WALKER *v.* LAW (1872), 11 Macph. (Ct. of Sess.) 199; 45 Sc. Jur. 122.—SCOT.

Part VII.—Trustees.

SECT. 1.—CORPORATIONS AND QUASI-CORPORATIONS AS TRUSTEES.

SUB-SECT. 1.—CORPORATIONS GENERALLY.

See, generally, CORPORATIONS; TRUSTS & TRUSTEES.

1746. May be trustees—Municipal corporation—Devise of personalty for poor—Discretion of feoffees.]—BRISTOL CORPN. *v.* WHITTON (1633), Duke, 81.

1747. —— Hospital—Devise of realty & personalty.]—A.-G. *v.* LANDERFIELD (or LAUNDERFIELD) (1743), 9 Mod. Rep. 286; 3 Swan. 416, n.; 88 E. R. 456, L. C.

Annotation :—**Consd.** *Re* Thompson's Settlmt. Trusts, Thompson *v.* Alexander, [1905] 1 Ch. 229.

1748. —— —— Incorporated by special Act—Trustee within Trust Investment Act, 1889 (c. 32).]—*Re* MANCHESTER ROYAL INFIRMARY, MANCHESTER ROYAL INFIRMARY *v.* A.-G., No. 1670, *ante*.

1749. —— City livery company—Trustees of lands in corporate character—For support of masters of school.]—A.-G. *v.* SKINNERS' CO. (MASTERS & WARDENS) (1820), 5 Madd. 173; 56 E. R. 860; *affd.* (1821), Jac. 629, L. C.

Annotation :—**Mentd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

1750. —— Corporation empowered to undertake trusts—Power to act as custodian trustee—Public Trustee Act, 1906 (c. 55), s. 4 (3).]—Under above sect. a corporate body empowered to undertake trusts within Public Trustee Rules, 1912, r. 30, can be appointed & has power to act as custodian trustee of real, leasehold or personal estate devised or bequeathed upon charitable trusts. The prohibition against the Public Trustee himself accepting such a trust, imposed by s. 2 (5) of the Act, is personal to the Public Trustee; & there is nothing in the appointment of such a corporate body as custodian trustee which abridges or affects the powers or duties of the Official Trustee of Charity Lands or the Official Trustees of Charitable Funds within s. 2 (5).—*Re* CHERRY'S TRUSTS, ROBINSON *v.* WESLEYAN METHODIST CHAPEL PURPOSES TRUSTEES, [1914] 1 Ch. 83; 83 L. J. Ch. 142; 110 L. T. 16; 30 T. L. R. 30; 58 Sol. Jo. 48.

1751. May impose conditions—On accepting accession to foundation.]—A.-G. *v.* DRAPERS' CO. (1843), 6 Beav. 382; 12 L. J. Ch. 421; 1 L. T. O. S. 107; 7 J. P. 272; 8 Jur. 1060; 49 E. R. 873.

Annotation :—**Mentd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383.

Whether entitled to hold land.]—*See* Part II., Sect. 6, sub-sects. 1, 3, *ante*; CORPORATIONS.

SUB-SECT. 2.—CORPORATIONS SOLE.

1752. Chamberlain of London—Enabled to take recognisances, obligations, etc., for orphanage money.]—FULWOOD'S CASE (1591), 4 Co. Rep. 64, b.; 76 E. R. 1031.

Annotations :—**Refd.** Graves *v.* Colby (1838), 9 Ad. & El. 356; Power *v.* Banks, [1901] 2 Ch. 487. **Mentd.** Hoe's Case (1600), 5 Co. Rep. 89, b.; Lampet's Case (1612), 10 Co. Rep. 46, b.; Foster *v.* Jackson (1615), Hob. 52; Duncombe *v.* Wingfield (1617), Hob. 254; Child *v.* Bailye (1619), 2 Roll. Rep. 129; Kent *v.* Steward (1634), Cro. Car. 358; Baker *v.* Willis (1637), Cro. Car. 476; Lyn *v.* Wyn (1665), O. Bridg. 122; Warman *v.* Seaman (1675), Freem. Ch. 306; Plummer *v.* Whitchot (1676), 2 Mod. Rep. 119; Dighton *v.* Greenvil (1690), 2 Vent. 321; Gurnett *v.* Wood (1739), 7 Mod. Rep. 302; Goodtitle *v.* Wood (1740), Willes 211; Ryall *v.* Rowles (1750), 1 Ves. Sen. 348; Mirehouse *v.* Rennell (1833), 7 Bli. N. S. 241; Colonial Bank *v.* Whinney (1885), 30 Ch. D. 261.

1753. Parson—Corporation for taking of land—For benefit of church.]—A.-G. *v.* RUPER (1722), 2 P. Wms. 125; 24 E. R. 667.

Annotations :—**Refd.** De Windt *v.* De Windt (1854), 2 Eq. Rep. 1107. **Mentd.** Cooper *v.* Law (1859), 5 Jur. N. S. 1263.

See, also, No. 1758, *post;* Part II., Sect. 6, sub-sect. 2, *ante*.

1754. —— Enabled to receive & give good discharge for money vested in him—Not capable of holding lands—Private Act.]—By 31 Geo. 2, c. ii., it was enacted that £3,274 7*s.* 6*d.* South Sea Annuities should be transferred to the rector of S. & his assigns to the intent that the dividends might be received by the rector & his successors towards his & their maintenance, but not to be transferred, sold or disposed of unless for such purpose & with such licence as therein mentioned, & which stock should on the death or removal of the rector, vest in the succeeding rector; & it was declared that when a proper & convenient purchase of lands for the benefit of the rector could be found, it should be lawful for the rector for the time being, with the consent of the bishop, to sell & lay out the money in the payment of the purchase-money of such lands, & same should be settled & assured to the use of the rector, & his successors for & towards his & their maintenance. By 16 Vict. c. 23 all persons who did not assent to conversion of the South Sea stock into Govt. stock were paid off at par, & under that Act D., the then rector, received £3,524 6*s.* 7*d.* In 1880 D. resigned & paid his successor I. £3,524 6*d.* 7*s.* with a year's interest. I. invested part of the money in the purchase of ground rents at L. & took a conveyance to himself, his heirs & assigns. I. resigned in 1892, & conveyed the unsold portion of the L. estate to H., his successor, for a nominal consideration. In 1893 H. sold the property by auction, & the deft. bought part for £310. H. misappropriated the purchase-money & resigned in 1899. The present rector claimed a declaration that the conveyance to deft. was void under 13 Eliz. c. 10, & that the hereditaments formed a part of the endowment of S. In the alternative, he asked a declaration that the deft. took with notice that the property was subject to a trust for the rector of S. for the time being:—*Held:* (1) the rector as a corpn. sole was not capable of holding lands, but was authorised by statute to receive & give a good discharge for the money representing the South Sea stock; (2) the investment of the money in real estate being irregular, it was H.'s duty to reconvert the real estate; (3) the sale to deft. was regular & proper, & his payment to H. discharged him from all liability.—POWER *v.* BANKS, [1901] 2 Ch. 487; 70 L. J. Ch. 700; 85 L. T. 376; 66 J. P. 21; 49 W. R. 679; 17 T. L. R. 621.

Annotations :—*Generally,* **Mentd.** *Re* Jenkins & Randall Co.'s Contract, [1903] 2 Ch. 362; *Re* Bourne, Bourne *v.* Bourne, [1906] 1 Ch. 113.

See, further, Part V., Sect. 1, sub-sect. 2, *ante*.

1755. Public trustee—Cannot accept trust involving selection of charitable objects—Public Trustee Act, 1906 (c. 55), s. 2 (5).]—The Public Trustee is

Sect. 1.—*Corporations and quasi-corporations as trustees: Sub-sects.* 2 & 3. *Sect.* 2: *Sub-sect.* 1, *A., B. & C.; sub-sects.* 2 & 3.]

precluded by above sub-sect. from accepting a trust which involves the selection of charitable objects for testator's bounty. Such selection is a power attached to the office of trustee, & would devolve on persons appointed trustee by the ct.—*Re* HAMPTON, PUBLIC TRUSTEE *v.* HAMPTON (1918), 88 L. J. Ch. 103; 63 Sol. Jo. 68.

See, also, No. 1750, *ante.*

SUB-SECT. 3.—QUASI-CORPORATIONS.

1756. Churchwardens—Corporation for taking of personalty—Gift to church—Used in repairs & decoration.]—A.-G. *v.* RUPER (1722), 2 P. Wms. 125; 24 E. R. 667.

Annotations:—**Folld.** De Windt *v.* De Windt (1854), 2 Eq. Rep. 1107. **Refd.** Cooper *v.* Law (1859), 5 Jur. N. S. 1263.

1757. —— Quasi-corporation for holding land—& devolution of property.]—FELL *v.* CHARITY LANDS OFFICIAL TRUSTEE, No. 1663, *ante.*

1758. Parson & churchwardens—Devise of land for benefit of poor—Power to sell & apply proceeds.]—CHAMPION *v.* SMITH (1605), Toth. 30; Duke, 81; 21 E. R. 114.

See, also, Part II., Sect. 6, sub-sect. 2, *ante.*

Churchwardens & overseers—Vesting of property of parish under Poor Relief Act, 1819 (c. 12).]—*See* LOCAL GOVERNMENT.

1759. Guardians of poor—In whom all estates & money for benefit of poor of parish vested by local Act—"Unless otherwise particularly appropriated"—Devise to trustees within proviso.]—A.-G. *v.* FREEMAN (1818), Dan. 117; 5 Price, 425; 146 E. R. 653.

SECT. 2.—APPOINTMENT OF NEW TRUSTEES.

SUB-SECT. 1.—WHO MAY OR SHOULD BE APPOINTED.

A. In General.

See, generally, TRUSTS & TRUSTEES.

1760. Fit and proper persons—Not necessarily most fit & proper persons—Trustees related to each other — No disqualification.] — *Re* LANCASTER CHARITIES, *Re* CHARITABLE TRUSTS ACT, 1853 (1860), 3 L. T. 582; 25 J. P. 356; 7 Jur. N. S. 96; 9 W. R. 192.

See, also, No. 1737, *ante,* No. 1784, *post.*

B. Residential Qualifications.

1761. Required by instrument of foundation—Men of particular parish—Practice of electing trustees from adjacent parishes & counties condemned.]—A.-G. *v.* STAMFORD (EARL) (1843), 1 Ph. 737; 10 L. J. Ch. 58; 41 E. R. 812, L. C.; *subsequent proceedings* (1849), 16 Sim. 453.

Annotations:—**Folld.** A.-G. *v.* Clifton (1863), 32 Beav. 596. **Mentd.** A.-G. *v.* Devon (1846), 15 Sim. 193; A.-G. *v.* Ludlow Corpn. (1848), 2 Ph. 685; A.-G. *v.* Worcester (1851), 9 Hare, 328; *Re* Bristol Free Grammar School (1860), 28 Beav. 161; Manchester School Case (1867), 2 Ch. App. 497.

1762. —— —— —— Persons carrying on business in parish with dwelling-houses within six miles of school eligible.]—A.-G. *v.* STAMFORD (EARL) (1849), 16 Sim. 453; 12 L. T. O. S. 395; 13 Jur. 438; 60 E. R. 950.

Annotations:—**Mentd.** A.-G. *v.* Worcester (1851), 9 Hare, 328; Manchester School Case (1867), 2 Ch. App. 497.

1763. —— —— Removal to distance from parish vacates appointment.]—A.-G. *v.* CLIFTON (1863), 32 Beav. 596; 2 New Rep. 215; 9 L. T. 136; 27 J. P. 565; 9 Jur. N. S. 939; 55 E. R. 234.

Annotation:—**Mentd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554.

1764. —— Area extended—Trustees within radius of six miles appointed.]—*Re* SEKFORDE'S CHARITY (1861), 4 L. T. 321.

1765. No provision in instrument of foundation—Trustees living at short distance from locality of charity — May be appointed.]— *Re* LANCASTER CHARITIES, *Re* CHARITABLE TRUSTS ACT, 1853 (1860), 3 L. T. 582; 25 J. P. 356; 7 Jur. N. S. 96; 9 W. R. 192.

Residential disqualification—As ground for removal.]—*See* Nos. 1851, 1852, 1859, 1860, 1861, *post.*

C. Religious Qualifications.

1766. School not exclusively Church of England—Maintenance & education of poor children—Selection not confined to members of Church of England.]—*Re* NORWICH CHARITIES (1837), 2 My. & Cr. 275; 40 E. R. 645, L. C.; *subsequent proceedings, sub nom.* BIGNOLD *v.* SPRINGFIELD (1839), 7 Cl. & Fin. 71, H. L.

Annotation:—**Refd.** *Re* Stafford Charities (1857), 3 Jur. N. S. 1191.

1767. Church of England school—Trustees must be members of Church of England.]—*Re* STAFFORD CHARITIES (1857), 25 Beav. 28; 27 L. J. Ch. 381; 31 L. T. O. S. 20; 21 J. P. 821; 3 Jur. N. S. 1191; 53 E. R. 546.

1768. —— ——.]—A.-G. *v.* CLIFTON (1863), 32 Beav. 596; 2 New Rep. 215; 9 L. T. 136; 27 J. P. 565; 9 Jur. N. S. 939; 55 E. R. 234.

Annotation:—**Refd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554.

1769. School for teaching of literature & godly learning—Trustees must be members of Church of England—Dissenters not eligible—Notwithstanding long usage.]—BAKER *v.* LEE (1860), 8 H. L. Cas. 495; 30 L. J. Ch. 625; 2 L. T. 701; 7 Jur. N. S. 1; 11 E. R. 522, H. L.

Annotations:—**Consd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554. **Refd.** *Re* Hodgson's School (1878), 3 App. Cas. 857.

1770. Income applicable to repairs of church—Trustees must be members of Church of England.]—*Re* SCARBOROUGH CORPN. (1837), 1 J. P. 19; 1 Jur. 36.

Annotation:—**Consd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554.

1771. —— Rector & churchwardens alone eligible—Origin of charity unknown—Rents collected by churchwardens for repairs.]—*Re* DONINGTON CHURCH ESTATE, *Re* CHARITABLE TRUSTS ACT, 1853 (1860), 2 L. T. 10; 24 J. P. 324; 6 Jur. N. S. 290; 8 W. R. 301.

1772. Charity for benefit of Protestant dissenters—Unitarians & members of Church of England not eligible.]—A.-G. *v.* SHORE (1843), 11 Sim. 592; 1 L. T. O. S. 166; 7 J. P. 302; 7 Jur. 781; 59 E. R. 1002.

Annotations:—**Refd.** A.-G. *v.* Murdoch (1849), 7 Hare, 445.

PART VII. SECT. 2, SUB-SECT. 1.—A.

p. Fit & proper persons — Ecclesiastical Commissioners.]—*Re* GORE'S (BP.) CHARITY (1844), Drury *temp.* Sug. 536.—IR.

q. Presbyterian ministers — & their successors—Cannot be trustees in a corporate capacity.]—A.-G. FOR IRELAND *v.* LEE (1869), I. R. 4 Eq. 84; 18 W. R. 247.—IR.

PART VII. SECT. 2, SUB-SECT. 1.—C.

r. Charity for benefit of persons of particular denomination—Trustees of that denomination only appointed.]—*Re* DROGHEDA CHARITABLE & TRUST ESTATES (1846), 2 Jo. & Lat. 422.—IR.

1767 i. Church of England school—Trustees must be members of Church of England.]—A.-G. *v.* FITZGERALD (1850), 3 Ir. Jur. 37; 17 L. T. O. S. 296.—IR.

1767 ii. —— *Trustees must be Protestants.*]—A.-G. *v.* LIMERICK (BP.) (1870), 18 W. R. 1102.—IR.

Mentd. A.-G. *v.* Wilson (1843), 16 Sim. 210; A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161.

1773. Hospital with chapel annexed for poor persons—Not restricted to particular religious denomination—Master of hospital to be member of Church of England—Primary object eleemosynary—Trustees not confined to members of Church of England.]—A.-G. *v.* ST. JOHN'S HOSPITAL, BATH (1876), 2 Ch. D. 554; 45 L. J. Ch. 420; 34 L. T. 563; 24 W. R. 913.

Annotation:—**Refd.** *Re* Ross' Charity, [1897] 2 Ch. 397.

Religious disqualifications—As ground for removal.]—*See* Nos. 1847 *et seq.*, 1855, 1863, *post.*

Whether gifts denominational.]—*See, generally,* Part III., Sect. 4, sub-sect. 5, A., *ante.*

SUB-SECT. 2.—UNDER EXPRESS POWERS.

1774. Vacancies to be filled when trustees reduced to certain number—Trustees may elect before event occurs.]—DOE d. DUPLEIX *v.* ROE (1794), 1 Anst. 86; 145 E. R. 808.

1775. —— Reduction below minimum number—Appointment by survivors—Valid.]—*Re* GOOSNAIGH'S HOSPITAL (1849), 13 L. T. O. S. 87.

1776. —— Provision merely directory—Appointment in excess of total authorised—Valid.]—DOE d. —— *v.* STABLE (1852), 16 J. P. Jo. 726.

1777. Who may appoint—Parishioners—Original trust deed lost—Presumption from long usage.]—A.-G. *v.* DALTON (1851), 13 Beav. 141; 20 L. J. Ch. 569; 16 L. T. O. S. 530; 15 Jur. 412; 51 E. R. 55; *subsequent proceedings, sub nom. Re* HAYLE'S ESTATE (1862), 31 Beav. 139.

1778. Deed prohibiting appointment of sole trustee—Application to appoint association registered under Companies Acts—In place of retiring trustees—Sanctioned by court.]—*Re* BARNARDO (1907), *Times*, June 14.

SUB-SECT. 3.—UNDER STATUTORY POWERS.

1779. Under Metropolis Management Acts, 1855 (c. 120) & 1856 (c. 112)—Decree establishing right of parish vestry to appoint—Character of vestry altered by such Acts—Power to appoint in vestry as altered.]—*Re* HAYLE'S ESTATE (1862), 31 Beav. 139; 31 L. J. Ch. 612; 7 L. T. 18; 26 J. P. 516; 8 Jur. N. S. 810; 10 W. R. 577; 54 E. R. 1091.

1780. Under Conveyancing & Law of Property Act, 1881 (c. 41), s. 31—Appointment in place of trustee abroad for more than twelve months—Absent trustee not joining in making appointment—Appointment valid—No evidence that absent trustee either willing or competent to join—Deed omitting to provide for filling up vacancy—"Contrary intention" not expressed thereby.]—*Re* COATES TO PARSONS (1886), 34 Ch. D. 370; 56 L. J. Ch. 242; 56 L. T. 16; 35 W. R. 375; 3 T. L. R. 173.

1781. Under Local Government Act, 1894 (c. 73)—Power of parish council to appoint—Whether charity "ecclesiastical."]—The founder of an eleemosynary charity by her deed of endowment declared that the objects of the charity should be selected by the trustees thereof, one of whom was to be the rector of the parish, from amongst poor men & women resident in a certain parish who should have regularly attended divine service in the church of the parish for a fixed period, been partakers of the Holy Communion & lived a godly, righteous & sober life to the glory of God's Holy Name; & she also declared that the lay trustees should always be members of the Church of England:—*Held:* (1) the charity was one for the benefit of members of the Church of England "as such," *i.e.*, in their character of members of that church, & to the exclusion of non-members thereof, & was accordingly an ecclesiastical charity within s. 75 of above Act, & the parish council had no power, under s. 14 (1) of the Act, to appoint trustees of it; (2) in s. 75 (2) (*e*), of the Act, the words "or otherwise for the benefit of any particular church or any members thereof as such" are not to be construed as limited to religious "benefit," to the exclusion of mere temporal benefit; (3) there may be a charity in the legal sense for purposes which are both eleemosynary & ecclesiastical or religious.

Testatrix by her will, made in 1799, devised a rentcharge to be paid to the churchwardens for the time being of the parish of B. on a certain day in every year for ever, & to be laid out in the purchase of garments to be given to "six old & poor widows of the parish whom they shall judge the properest objects to receive the same with preference to those who not being disabled by infirmity or sickness are most constant in their attendance on the public service of the church":—*Held:* (4) the charity thus created was not an ecclesiastical charity within the meaning of the above Act; (5) s. 14 (2) of that Act had application to the case of a non-ecclesiastical charity, the only trustees of which were churchwardens, & the parish council had power to appoint trustees of such a charity in place of the churchwardens.—*Re* PERRY ALMSHOUSES, *Re* ROSS' CHARITY, [1899] 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 63 J. P. 52; 47 W. R. 197; 15 T. L. R. 42; 43 Sol. Jo. 61, C. A.

1782. —— —— —— Parish school.]—S. by his will, made in 1558, directed his exors. to erect an almshouse for ten poor persons, & gave his exors. the rents of certain real estate for five years after his death, for the purpose of founding & maintaining the intended almshouses, & gave his residue to his exors. on condition that they should procure the creation of a corpn. to enable the corporators to take on themselves his real estate for the finding of such poor persons. Some time after the death of testator legal proceedings were taken & the money recovered from the exors. was invested in lands at M. A deed was executed declaring the trusts of the property to be for the relief of poor lame, & impotent people dwelling within A. or otherwise to employ same for the raising & maintenance of a school according to the statute in that behalf made so as & where same should be thought convenient by the greatest number of inhabitants being also the most chargeable to the relief of the poor until a charter of incorporation should be obtained. Until 1818 the income was applied in aid of the rates for the relief of the poor. In 1818 the vestry of A. resolved to erect a school, & since 1819 the rents of M. were applied in supporting the school which was then erected. The governors of the school, who were trustees, now retired, & the parish council appointed new trustees in their place. The churchwardens now petitioned against the decision of the Charity Comrs. that the parish council had power to appoint. They said in 1819 the income had been definitely appropriated to educational purposes, & trustees of the income of a permanent endowment of a school were in the same position as trustees of a school. Secondly, it was said that the charity was ecclesiastical:—*Held:* (1) s. 66 of the Act did not include trusteeship of property temporarily devoted to the use of the school; (2) the charity was not ecclesiastical.—*Re* SPENDLUFFE'S CHARITY (1900), 83 L. T. 498; 65 J. P. 72; 17 T. L. R. 62.

Under Charitable Trusts Act, 1853 (c. 137)—By court.]—*See* Sub-sect. 5, A., *post.*

Sect. 2.—Appointment of new trustees: Sub-sects. 4 & 5, A., B., C., D., E., F., G. & H.]

SUB-SECT. 4.—BY STATUTE.

1783. Mode of election of trustees injurious to interests of charity—Application to Parliament to alter mode of appointment—Sanctioned by court.]—*Re* BEDFORD CHARITY (1854), 24 L. T. O. S. 153; 19 J. P. 19.

SUB-SECT. 5.—BY COURT.

A. In General.

1784. Trustees being holders of annual offices—New trustees appointed to hold funds—Selection of objects left to office holders.]—*Re* TAYLOR'S CHARITY, *Ex p.* BLACKBURNE (1820), 1 Jac. & W. 297; 37 E. R. 389.

1785. Original deed not enrolled under Charitable Uses Act, 1735 (9 Geo. 2, c. 36)—Legal estate vested in trustees—Admission of trust.]—The ct. will make a decree for the appointment of new trustees of lands for a charitable use, although the deed originally declaring the use be not enrolled under the above Act, if the trustees in whom the legal estate is vested admit the trust, & do not object that the deed is void under the statute, but submit to act under the direction of the ct.—A.-G. *v.* WARD (1848), 6 Hare, 477; 67 E. R. 1253.

Annotation :—**Mentd.** Yem *v.* Edwards (1857), 3 K. & J. 564.

1786. Jurisdiction of Vice-Chancellor—To appoint in place of judges of Court of Chester—Law Terms Act, 1830 (c. 70), s. 31.]—*Re* ROBINSON'S CHARITY (1853), 3 De G. M. & G. 188; 22 L. J. Ch. 841; 21 L. T. O. S. 1; 1 W. R. 216; 43 E. R. 75, L. C.

—— **Under Municipal Corporations Act, 1835 (c. 76), s. 71.**]—*See* Sub-sect. 5, F., *post.*

1787. Under 1853 Act, s. 48—Wesleyan Methodist chapel—Trustee Appointment Act, 1850 (c. 28), inapplicable.]—*Re* HOGHTON CHAPEL (1854), 23 L. T. O. S. 268.

1788. Governors of grammar school empowered to make statutes & ordinances—With sanction of bishop of diocese—Court, even if it has jurisdiction, will not impose trustees on governors.]—*Re* CHELMSFORD GRAMMAR SCHOOL (1855), 1 K. & J. 543; 3 Eq. Rep. 517; 24 L. J. Ch. 742; 25 L. T. O. S. 32; 19 J. P. 147; 3 W. R. 291; 69 E. R. 575.

Annotation :—**Reid.** Baker *v.* Lee (1860), 8 H. L. Cas. 495.

Trustee becoming lunatic—Vesting order.]—*See* Part X., Sect. 3, sub-sect. 1, B., *post.*

Jurisdiction on petition.]—*See* Part X., Sect. 2, sub-sect. 1, *post.*

B. Trustees declining to act.

1789. New trustees appointed.]—MAGGERIDGE *v.* GREY (1641), Nels. 42; 21 E. R. 785.

1790. —— By Lord Chancellor.]—*Re* BEVERLEY GRAMMAR SCHOOL (1839), 9 L. J. Ch. 91; 4 Jur. 621, L. C.

1791. —— On petition under 1853 Act—& Trustee Act, 1850 (c. 60).]—*Re* LINCOLN PRIMITIVE METHODIST CHAPEL, *Re* CHARITABLE TRUSTS ACT, 1853, & TRUSTEE ACT, 1850 (1855), 1 Jur. N. S. 1011; 3 W. R. 608.

C. Office vacated by Death.

1792. Under Transfer of Trust Estates Act, 1830 (c. 60) –Party appointed to convey—To new trustees appointed—Leasehold & freehold charity estates.]—*Re* ST. ANTHOLIN IN THE CITY OF LONDON PARISH TRUST ESTATES (1838), 7 L. J. Ch. 269.

1793. —— —— —— Rentcharge.]—*Re* NIGHTINGALE'S CHARITY (1844), 3 Hare, 336; 8 Jur. 1005; 67 E. R. 411.

Annotation :—**Mentd.** *Re* Belke's Charity (1849), 13 L. T. O. S. 22.

D. Number of Trustees becoming Reduced.

1794. When court will fill up vacancies—On number being reduced by one fourth.]—*Re* BEDFORD CHARITY (undated), cited in 10 Hare, App. I., IV., n.; 68 E. R. 1115.

1795. —— Not merely because some vacancies have occurred—Sufficient number remaining.]—*Re* COVENTRY CHARITIES (1845), 6 L. T. O. S. 42, L. C.

1796. —— Trustees appointed under Municipal Corporations Act, 1835 (c. 76)—Numbers reduced by one fourth & one third.]—*Re* HEREFORD CHARITIES, *Re* GLOUCESTER CHARITIES (1842), 6 Jur. 289; 6 J. P. 182, L. C.

Annotation :—**Mentd.** *Re* Coventry Charities (1845), 6 L. T. O. S 42.

1797. —— —— Not when only two vacancies.]—*Re* MARLBOROUGH SCHOOL (1843), 13 L. J. Ch. 2; 2 L. T. O. S. 93; 7 Jur. 1047, L. C.

1798. —— —— Only when existing number insufficient.]—*Re* WORCESTER CHARITIES (1847), 2 Ph. 284; 41 E. R. 952, L. C.

Annotation :—**Expld.** *Re* Shrewsbury Municipal Charities, *Re* Shrewsbury Free Grammar School (1849), 13 Jur. 201.

1799. —— —— ——.]—*Re* SHREWSBURY CHARITIES (1849), 1 Mac. & G. 84; 1 H. & Tw. 204; 13 Jur. 201; 41 E. R. 1194, L. C.

1800. —— —— No general rule of court.]—*Re* GLOUCESTER CHARITIES (1853), 10 Hare, App. I., iii.; 68 E. R. 1114.

E. Doubt in whom Legal Estate Vested.

1801. Reference to master to ascertain & appoint—Under Charities Procedure Act, 1832 (c. 57).]—*Re* FOWEY CHARITIES (1841), 4 Beav. 225; 10 L. J. Ch. 368; 49 E. R. 325.

1802. —— —— Property never vested in trustees.]—A.-G. *v.* ILES (1844), 8 J. P. 484.

1803. —— Master unable to ascertain—Case not within Trustee Acts, 1830 (c. 60), 1834 (c. 23) & 1838 (c. 69).]—A.-G. *v.* RANDLES (1845), 8 Beav. 185; 50 E. R. 73.

—— **Whether essential.**]—*See* Sub-sect. 5, H., *post.*

F. Determination of Trusteeship of Corporation.

1804. Under Municipal Corporations Act, 1835 (c. 76), s. 71—Jurisdiction of Lord Chancellor to appoint—Exercisable by Vice-Chancellor.]—*Re* NORTHAMPTON CHARITIES (1853), 3 De G. M. & G. 179; 22 L. J. Ch. 611; 20 L. T. O. S. 186; 17 Jur. 6; 1 W. R. 105; 43 E. R. 71, L. C.

1805. —— —— ——.]—*Re* GLOUCESTER CHARITIES (1853), 10 Hare, App. I, iii.; 68 E. R. 1114.

1808. —— —— From Aug. 1, 1836.]—BIGNOLD *v.* SPRINGFIELD (1839), 7 Cl. & Fin. 71; 5 Bing. N. C. 745; Macl. & Rob. 837; 8 Scott, 101; 3 Jur. 618; 7 E. R. 992, H. L.; *affg.* S. C. *sub nom. Re* NORWICH CHARITIES (1837), 2 My. & Cr. 275, L. C.

Annotations : **Consd.** Doe d. Bristol Hospital Governors *v.* Norton (1843), 11 M. & W. 913. **Reid.** *Re* Stafford

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s. *Jurisdiction of Court of Chancery To appoint in place of Commissioners of Charitable Donations & Bequests.*]—*Re* FANNING'S CHARITY (1864), 15 I. Ch. 384.—IR.

t. *Gift to institutions having no trustees.*]—P. gave his residuary estate upon trust for the Trustees of Hospitals & Lunatic Asylums in W. A. The Govt. Lunatic Asylum, which was the only one in existence, had no trustees:—*Held:* trustees should be appointed by the ct.—WESTERN AUSTRALIA CHURCH OF ENGLAND DIOCESAN TRUSTEES *v.* SOLICITOR-GENERAL. HOME OF PEACE FOR THE DYING & INCURABLES (INCORPORATE) *v.* SOLICITOR-GENERAL (1909), 9 C. L. R. 757.—AUS.

Charities (1857), 3 Jur. N. S. 1191. **Mentd.** R. *v.* Johnson (1839), 6 Cl. & Fin. 41.

1807. —— **When Act applicable—Lands left to corporation by other persons for charitable purposes.**]—R. *v.* WILLIAMS (1836), 2 Har. & W. 275.

1808. —— —— **Not where property appropriated by corporation to maintenance of lecturers to preach before corporation.**]—*Re* OXFORD CHARITIES (1837), 3 My. & Cr. 239; 1 Jur. 620; 40 E. R. 916, L. C.

Annotations :—**Consd.** *Re* St. John's Hospital (1851), 3 Mac. & G. 235. **Mentd.** *Re* Huntingdon Charities (1859), 24 J. P. 37.

1809. —— —— **Not to charities whose property was vested in trustees—Corporation only visitors with nomination of objects.**]—A.-G. *v.* NEWBURY CORPN. (1838), Coop. Pr. Cas. 72; 47 E. R. 406, L. C.

1810. —— —— **Corporation need not be possessed of legal estate.**]—*Re* KING'S LYNN BOROUGH CHARITIES, *Re* FRAMINGHAM'S HOSPITAL CHARITY (1839), 3 Jur. 402, L. C.

1811. —— —— **Only to equitable interest in charity funds—Not when legal estate vested in corporation.**]—DOE d. BRISTOL HOSPITAL (GOVERNORS) *v.* NORTON (1843), 11 M. & W. 913; 12 L. J. Ex. 418; 1 L. T. O. S. 387; 7 J. P. 788; 7 Jur. 751; 152 E. R. 1076.

Annotation :—**Expld. & Distd.** A.-G. *v.* Exeter Corpn. (1852), 2 De G. M. & G. 507.

1812. —— —— **Hospital governed by corporation—Recorder not member of but officer elected by corporation.**]—A.-G. *v.* EXETER CORPN. (1852), 2 De G. M. & G. 507; 42 E. R. 969; *sub nom.* A.-G. *v.* EXETER CORPN., *Re* ST. JOHN'S HOSPITAL, 19 L. T. O. S. 356; 17 Jur. 265, L. C.

1813. —— —— **Corporation not actually seised or possessed of property in trust—But having interfered in management.**]—*Re* MUNICIPAL CORPORATION ACT, *Re* GRANTHAM CHARITIES (1856), 26 L. T. O. S. 302, L. C.

1814. —— —— **Lands of charity vested in master—Master appointed by corporation.**]—*Re* HUNTINGDON MUNICIPAL CHARITIES (1859), 27 Beav. 214; 33 L. T. O. S. 281; 24 J. P. 37; 5 Jur. N. S. 950; 54 E. R. 83.

1815. —— —— **Not when trustees chosen by survivors—With advice & consent of high bailiff & capital burgesses of borough.**]—A.-G. *v.* PHILLIMORE (1840), 9 L. J. Ch. 338.

1816. —— **Who eligible as trustees—Members of new corporation—Although corporation claiming property in opposition to charity.**]—*Re* LUDLOW CHARITIES (1837), 3 My. & Cr. 262; 40 E. R. 925, L. C

1817. —— **When trustees appointed—Not when corporation holding monopoly—Monopoly not exercisable by new trustees.**]—*Re* ST. ALBANS CHARITIES (1837), 1 J. P. 4, L. C.

1818. —— —— **Some trustees dead—Others not taking active part in management.**]—*Re* NEWARK CHARITIES (1845), 5 L. T. O. S. 69; 9 J. P. 265, L. C.

1819. —— —— **Right of presentation & appointment of master of hospital with chapel annexed ancillary to trust—Not liable to be sold.**]—*Re* ST. JOHN'S HOSPITAL (1851), 3 Mac. & G. 235; 20 L. J. Ch. 458; 15 Jur. 233; 42 E. R. 251, L. C.

Annotations :—**Refd.** *Re* Huntingdon Municipal Charities (1859), 27 Beav. 214; A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554.

1820. —— **Trustees appointed under—Secret election of new trustees by survivors—Invalid.**]—*Ex p.* BRISTOL CORPN. (1851), 17 L. T. O. S. 173, L. C.

See, now, Municipal Corporations Act, 1882 (c. 50), s. 133.

1821. Corporation becoming extinct—Order appointing new trustees valid—With assent of Crown.]—*Re* YARM FREE GRAMMAR SCHOOL (1853), 10 Hare, App. I., V.; 68 E. R. 1115; *sub nom. Re* CONYERS FREE GRAMMAR SCHOOL, 22 L. J. Ch. 707; 17 Jur. 411.

G. Provision for Future Appointments.

1822. Power to make future appointments—Inserted in deed.]—*Re* 52 GEO. 3, c. 101 (CHARITIES PROCEDURE ACT, 1812) (1841), 12 Sim. 262; 59 E. R. 1132.

1823. —— —— **Master & fellows of college—Acting under corporate seal.**]—*Re* SIDNEY SUSSEX COLLEGE, CAMBRIDGE, *Ex p.* DAVIES (1849), 14 L. T. O. S. 307.

1824. —— **Inserted in order appointing new trustees.**]—*Re* PUCKERING'S CHARITY (1854), Seton's Judgments & Orders 7th ed. 1264.

1825. Future appointment by application to court—When trustees of prescribed class reduced—Notice to be given to Attorney-General.]—*Re* EAST BERGHOLT TOWN LANDS (1853), 2 Eq. Rep. 90; 2 W. R. 4.

1826. —— **Proposal giving absolute discretion to trustees—Over appointment of successors & charity property—Rejected.**]—*Re* YARM FREE GRAMMAR SCHOOL (1853), 10 Hare, App. I., V.; 68 E. R. 1115; *sub nom. Re* CONYERS FREE GRAMMAR SCHOOL, 22 L. J. Ch. 707; 17 Jur. 411.

1827. Not necessary that future applications should be made to same judge that appointed new trustees.]—*Re* WATT'S & OTHER CHARITIES (1862), 30 Beav. 404; 8 Jur. N. S. 204; 10 W. R. 365; 54 E. R. 945.

H. References to and Appointments by Master

1828. Reference to master—Funds of charity small—Reference not dispensed with.]—A.-G. *v.* ARRAN (EARL) (1820), 1 Jac. & W. 229; 37 E. R. 362.

1829. —— —— **Reference dispensed with—On affidavits of respectability of proposed trustees.**]—*Re* CHARNOCK CHARITIES (1844), 8 J. P. 484.

1830. —— **For what purposes directed—Holder of office nominated as trustee—Office abolished by Act of Parliament.**]—A.-G. *v.* STEPHENS (1834), 3 My. & K. 347; 40 E. R. 132.

Annotation :—**Consd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175.

1831. —— —— **Not to consider addition to number of trustees—Involving alteration of original trust.**]—*Re* STOREY'S ALMSHOUSES, CAMBRIDGE (1839), 9 L. J. Ch. 93; 4 Jur. 620, L. C.

1832. —— —— **For scheme enabling less number of trustees—To act effectually for whole body.**]—*Re* BEVERLEY GRAMMAR SCHOOL (1839), 9 L. J. Ch. 91; 4 Jur. 621, L. C.

1833. —— —— —— ——.]—LANCASTER CHARITIES (1843), 7 J. P. 178, L. C.; *subsequent proceedings* (1844), 2 L. T. O. S. 366, L. C.

1834. —— —— **To approve of particular persons to be appointed.**]—*Re* SHREWSBURY SCHOOL (1849), 1 Mac. & G. 85; 41 E. R. 1195; *sub nom. Re* SHREWSBURY MUNICIPAL CHARITIES, 1 H. & Tw. 204; 13 Jur. 201, L. C.

1835. —— **To approve of persons to be appointed—Confirmation of report by Lord Chancellor—Constitutes valid appointment of trustees by Lord**

1822 i. *Power to make future appointments—Inserted in deed.*]—A.-G. *v.* MADDEN (1843), 2 Con. & Law. 519.—IR.

Sect. 2.—*Appointment of new trustees: Sub-sect.* 5, *H.; sub-sect.* 6. *Sect.* 3: *Sub-sect.* 1, *A. & B.; sub-sect.* 2. *Sect.* 4.]

Chancellor.]—DOE d. CHILDE *v.* WILLIS (1850), 5 Exch. 894; 20 L. J. Ex. 85; 16 L. T. O. S. 129; 15 J. P. 275; 155 E. R. 391.

Annotations:—**Mentd.** R. *v.* M. S. & L. Ry. (1854), 4 E. & B. 88; Abergavenny *v.* Llandaff (1888), 20 Q. B. D. 460.

1836. Appointment by master—Court will adopt—Unless trustees proved to be objectionable.]—When a reference has been made to the master to appoint trustees of a charity, it is the rule of the ct. to adopt the master's appointments, unless the persons appointed can be shown to be objectionable; & the ct. will not enter into the question of the fitness of other persons whom the master has refused to appoint. Where, however, under Municipal Corpns. Act, 1835 (c. 76), a reference had been made to the master, to appoint new trustees of charity property, in the stead of the old corpn., who had been the former trustees, & the master had received evidence which tended to show that there was a suspicion of the old trustees having exercised their trust for political purposes, & had declined to reappoint any of the old trustees, & had written a memorandum, stating that he had come to that determination in consequence of the case made against the old trustees, the ct. entered into the consideration of the propriety of the master's conduct in rejecting all the old trustees:—*Held:* the existence of a general suspicion of impropriety on the part of the old trustees in the exercise of their trust, whether that suspicion were well or ill founded, justified the master in declining to reappoint any of the old trustees.—*Re* NORWICH CHARITIES (1837), 2 My. & Cr. 275; 40 E. R. 645, L. C.; *subsequent proceedings, sub nom.* BIGNOLD *v.* SPRINGFIELD (1839), 7 Cl. & Fin. 71, H. L.

Annotation:—**Refd.** *Re* Stafford Charities (1857), 3 Jur. N. S. 1191.

1837. —— —— Betting at races or having irritable temper—Not objections to character.]—A.-G. *v.* BIRCH (1842), 6 J. P. 407.

1838. —— —— Unless trustees elected improperly—Report remitted back for review.]—*Ex p.* BRISTOL CORPN. (1851), 17 L. T. O. S. 173, L. C.

1839. Fitness of persons whom master has refused to appoint—Not entered into by court—Refusal to reappoint old trustees—Justified when trust exercised for political purposes.]—*Re* NORWICH CHARITIES, No. 1836, *ante.*

1840. Reference back to master—No affidavit of respectability before master—Affidavit produced before Lord Chancellor—No ground for reference back.]—*Re* LUDLOW CHARITIES (1837), 3 My. & Cr. 262; 40 E. R. 925, L. C.

SUB-SECT. 6.—BY CHARITY COMMISSIONERS.

1841. Jurisdiction to appoint—Under 1860 Act—Who must be appointed—Interference by court.]—(1) Under 1860 Act, s. 5, the Charity Comrs. are at liberty to exercise their jurisdiction in any case in which they think they ought to exercise it, but are not bound to exercise their jurisdiction in any case which for any special reason they consider would be better dealt with by the ct.

(2) The Comrs. have power to appoint additional trustees of a charity where there are *ex-officio* trustees already in existence.

(3) *Qu.* whether the Comrs. have power to remove an *ex officio* trustee.—*Re* BURNHAM NATIONAL SCHOOLS (1873), L. R. 17 Eq. 241; 43 L. J. Ch. 340; 29 L. T. 495; 38 J. P. 116; 22 W. R. 198.

Annotation:—*As to* (1) **Refd.** *Re* Campden Charities (1881), 18 Ch. D. 310.

1842. Order of Commissioners appointing & vesting property in new trustees—Chargeable with duty in respect both of appointment & of vesting order—Not conveyance or transfer for effectuating appointment of new trustee—Stamp Act, 1870 (c. 97), ss. 8, 78.]—HADGETT *v.* INLAND REVENUE COMRS. (1877), 3 Ex. D. 46; 37 L. T. 612; 42 J. P. 216; 26 W. R. 115.

See, generally, REVENUE.

Jurisdiction of Charity Commissioners.]—*See, generally,* Part IX., Sect. 4, *post.*

SECT. 3.—**REMOVAL OF TRUSTEES.**

SUB-SECT. 1.—BY COURT.

A. Sufficient Grounds for Removal.

See, generally, TRUSTS & TRUSTEES.

1843. Breach of trust—Misapplication of rents, etc.]—LOVE *v.* EADE (1676), Cas. *temp.* Finch 269; 23 E. R. 147.

1844. —— ——.]—A.-G. *v.* DIXIE, *Ex p.* BOSWORTH SCHOOL (1805), 13 Ves. 519; 33 E. R. 388, L. C.

Annotations:—**Refd.** A.-G. *v.* Hartley (1820), 2 Jac. & W. 353. **Mentd.** A.-G. *v.* Clarendon (1810), 17 Ves. 491; A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

1845. —— By corporation as trustees—Misapplication of increased revenue—Gross misbehaviour in execution of trust.]—COVENTRY CORPN. *v.* A.-G. (1720), 7 Bro. Parl. Cas. 235; 3 E. R. 153, H. L.

Annotations:—**Refd.** A.-G. *v.* Clarendon (1810), 17 Ves. 491. **Mentd.** A.-G. *v.* Foundling Hospital Governors (1793), 2 Ves. 42; A.-G. *v.* Brazen Nose College (1834), 8 Bli. N. S. 377; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1.

1846. —— Chapel pulled down & materials sold—Burial ground converted to other uses.]—*Ex p.* GREENHOUSE (1815), 1 Madd. 92; 56 E. R. 36; *on appeal, sub nom.* LUDLOW CORPN. *v.* GREENHOUSE (1827), 1 Bli. N. S. 17, H. L.

Annotations:—**Mentd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312; *Re* Upton Warren (1833), 1 My. & K. 410; *Re* Dean Clarke's Charity (1836), 8 Sim. 34; A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85; *Re* Phillipott's Charity (1837), 8 Sim. 381; *Re* West Retford Church Lands (1839), 10 Sim. 101; A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172; A.-G. *v.* Haberdashers' Co. (1852), 15 Beav. 397; *Re* Harden Wesleyan Chapel (1853), 1 W. R. 212; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223.

1847. —— Charity for benefit of "Protestant dissenters"—Applied for Unitarian purposes—Majority of trustees Unitarians.]—SHORE *v.* WILSON (1842), 9 Cl. & Fin. 355; 4 State Tr. N. S. App. A. 1370; 5 Scott, N. R. 958; 8 E. R. 450, H. L.; *affg.* S. C. *sub nom.* A.-G. *v.* SHORE (1833), 7 Sim. 309, n; *subsequent proceedings, sub nom.* A.-G. *v.* SHORE (1843), 11 Sim. 592.

Annotations:—**Refd.** *Re* Scarborough Charity Petitions (1837), 1 Jur. 36. **Mentd.** A.-G. *v.* Wilson (1843), 16 Sim. 210; A.-G. *v.* Lawes (1849), 14 Jur. 77; A.-G. *v.* Murdoch (1849), 7 Hare, 445; Drummond *v.* A.-G. (1849), 2 H. L. Cas. 837; A.-G. *v.* Sherborne Grammar School Governors (1854), 18 Beav. 256; A.-G. *v.* Clapham (1855), 4 De G. M. & G. 591; A.-G. *v.* Calvert (1857), 23 Beav. 248; Natal *v.* Gladstone (1866), L. R. 3 Eq. 1; A.-G. *v.* Bunce (1868), L. R. 6 Eq. 563; Menzies *v.* Lightfoot (1871), L. R. 11 Eq. 459; A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554; Neale *v.* Neale (1898), 79 L. T. 629; *Re* Perry Almhouses, *Re* Ross' Charity, [1899] 1 Ch. 21; *Re* Johnson, Greenwood *v.* Greenwood & Robinson (1903), 89 L. T. 520; *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643; *Re* Rayner, Rayner *v.* Rayner, [1904] 1 Ch. 176; Camden *v.* I. R. Comrs., [1914] 1 K. B. 641; Bowman *v.* Secular Soc., [1917] A. C. 406; G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414.

1848. —— —— —— —— Trinitarian trustees concurring in breaches also removed.]—DRUMMOND *v.* A.-G. (1849), 2 H. L. Cas. 837; 14 Jur. 137; 9 E. R. 1312, H. L.

Annotations:—**Mentd.** A.-G. *v.* Clapham (1855), 4 De

G. M. & G. 591; Watcham *v.* East Africa Protectorate, [1919] A. C. 533.

1849. —— **Charity for benefit of "Independents"—Nature of religious worship converted to that of "Particular Baptists."**]—A.-G. *v.* AUST (1865), 13 L. T. 235.

Denominational gifts, generally, *see* Part III., Sect. 4, sub-sect. 5, A., *ante*.

1850. —— **Chapel for Particular Baptists—Appointment of new trustees with object of transferring trust property to seceding congregation—Trustees for seceding congregation removed.**]—NEWSOME *v.* FLOWERS (1861), 30 Beav. 461; 31 L. J. Ch. 29; 5 L. T. 570; 26 J. P. 100; 7 Jur. N. S. 1268; 10 W. R. 26; 54 E. R. 968.

See, also, Sect. 2, sub-sect. 1, C., *ante*.

—— **Innocently committed by trustees—Insufficient ground for removal.**]—*See* Sub-sect. 1, B., *post*.

1851. Residential disqualification—Trustees not inhabitants—According to founder's intention.]—A.-G. *v.* FRANCE (1780), cited in 1 Bro. C. C. 439, L. C.

Annotation :—**Dbtd.** A.-G. *v.* Cowper (1785), 1 Bro. C. C. 439.

1852. —— **Permanent removal from borough.**]—DOE d. CHILDE *v.* WILLIS, as reported in (1850), 15 J. P. 275.

Annotations :—**Mentd.** R. *v.* M. S. & L. Ry. (1854), 4 E. & B. 88; Abergavenny *v.* Llandaff (1888), 20 Q. B. D. 460.

See, also, Sect. 2, sub-sect. 1, B., *ante*, sub-sect. 1, B., *post*.

1853. Irregular or improper appointment—Trustees appointed by surviving trustees after information filed for appointment of new trustees—Appointment set aside—Although not contempt of court nor of itself void.]—A.-G. *v.* CLACK (1839), 1 Beav. 467; 3 Jur. 215; 48 E. R. 1021.

Annotations :—**Refd.** Cafe *v.* Bent (1843), 3 Hare, 245; *Re* Cotter, Jennings *v.* Nye, [1915] 1 Ch. 307. **Mentd.** Talbot *v.* Marshfield (1867), L. R. 4 Eq. 661.

1854. Trustee holding lease of charity lands—Scheme providing against trustees holding or occupying charity property—Lease granted by public tender.]—FOORD *v.* BAKER (1859), 27 Beav. 193; 54 E. R. 75.

B. Insufficient Grounds for Removal.

1855. Reason for not appointing trustees—May not be ground for removing trustee already appointed — Joining another congregation.]—A.-G. *v.* CLAPHAM (1853), 10 Hare, 540; 2 Eq. Rep. 91; 23 L. J. Ch. 70; 22 L. T. O. S. 156; 2 W. R. 28; 68 E. R. 1042; *revsd.* on other grounds (1855), 4 De G. M. & G. 591, L. C.

Annotation :—**Mentd.** G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414.

1856. Innocent breach of trust—Mistake of judgment—Charity to lend small sums to assist industrious poor in their callings—Interest on capital given in such small sums as only to encourage idleness.]—A.-G. *v.* STAFFORD CORPN. (1740), Barn. Ch. 33; 27 E. R. 543, L. C.

1857. —— —— **Great errors & misapplication of funds—No corrupt or improper motive.**]—A.-G. *v.* CAIUS COLLEGE (1837), 2 Keen, 150; 6 L. J. Ch. 282; 48 E. R. 585.

Annotation :—**Mentd.** Solicitor-General *v.* Bath Corpn., A.-G. *v.* Blair (1849), 18 L. J. Ch. 275.

1858. Trustees not being inhabitants—Where no proof of eligible inhabitants.]—A.-G. *v.* COWPER (1785), 1 Bro. C. C. 439; 28 E. R. 1225, L. C.

1859. Trustees residing at distance from charity.]—A.-G. *v.* DEVON (EARL) (1846), 15 Sim. 193; 16 L. J. Ch. 34; 10 Jur. 1067; 60 E. R. 591.

Annotations :—**Mentd.** A.-G. *v.* Stamford (1849), 16 Sim. 453; A.-G. *v.* Worcester (1851), 9 Hare, 328.

See, also, Sect. 2, sub-sect. 1, B., Nos. 1851, 1852, *ante*.

1860. Temporary absence abroad—No concealment or misapplication—Trustee with large discretion.]—ARCHBOLD *v.* IRELAND CHARITABLE BEQUESTS COMRS. (1849), 2 H. L. Cas. 440; 13 L. T. O. S. 249; 9 E. R. 1159, H. L.

Annotations :—**Mentd.** Bromley *v.* Smith (1859), 26 Beav. 644; Traill *v.* Baring (1864), 4 De G. J. & Sm. 318; Hickson *v.* Lombard (1866), L. R. 1 H. L. 324; Nocton *v.* Ashburton, [1914] A. C. 932.

1861. —— **Not within proviso disqualifying trustees on "departing the United Kingdom."**]—*Re* MORAVIAN SOCIETY (1858), 26 Beav. 101; 31 L. T. O. S. 377; 22 J. P. 527; 4 Jur. N. S. 703; 6 W. R. 851; 53 E. R. 835.

Annotations :—**Consd.** *Re* Arbib & Class's Contract, [1891] 1 Ch. 601. **Refd.** *Re* Stamford, Payne *v.* Stamford, [1896] 1 Ch. 288.

1862. Irregular or improper appointment—Absence of fraud or concealment—Long acquiescence.]—A.-G. *v.* CUMING (1843), 2 Y. & C. Ch. Cas. 139; 7 Jur. 187; 63 E. R. 61.

Annotation :—**Mentd.** Turner *v.* Collins (1871), 25 L. T. 264.

1863. —— **Church of England school—Appointment of dissenter.**]—A.-G. *v.* CLIFTON (1863), 32 Beav. 596; 2 New Rep. 215; 9 L. T. 136; 27 J. P. 565; 9 Jur. N. S. 939; 55 E. R. 234.

Annotation :—**Mentd.** A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554.

See, also, Sect. 2, sub-sect. 1, C., *ante*.

1864. ——.]—A.-G. *v.* DAUGARS (1864), 33 Beav. 621; 28 J. P. 726; 10 Jur. N. S. 966; 12 W. R. 363; 55 E. R. 509.

1865. Bankruptcy—Trustees not withholding nor misapplying funds—Large personal discretion—Power to appoint receiver.]—ARCHBOLD *v.* IRELAND CHARITABLE BEQUESTS COMRS. (1849), 2 H. L. Cas. 440; 13 L. T. O. S. 249; 9 E. R. 1159, H. L.

Annotations :—**Mentd.** Bromley *v.* Smith (1859), 26 Beav. 644; Traill *v.* Baring (1864), 4 De G. J. & Sm. 318; Hickson *v.* Lombard (1866), L. R. 1 H. L. 324; Nocton *v.* Ashburton, [1914] A. C. 932.

SUB-SECT. 2.—BY CHARITY COMMISSIONERS.

1866. Ex officio trustee.]—*Re* BURNHAM NATIONAL SCHOOLS, No. 1841, *ante*.

SECT. 4.—DUTIES OF ORDINARY TRUSTEES.

See, generally, TRUSTS & TRUSTEES.

Not to misapply trust property.]—*See* Sect. 6, sub-sect. 1, A. (*b*), *post*.

To account.]—*See* Sect. 6, sub-sect. 3, *post*.

To inform beneficiaries of trust.]—*See* No. 1889, *post*.

1867. Where scheme has become impracticable—Duty to apply to court for directions.]—Where a scheme for the management of a charity has become

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PART VII. SECT. 3, SUB-SECT. 1.—B.

a. *Church of England charity—Public official nominated by founder—Possibility of official being Roman Catholic.*]—A.-G. *v.* LIMERICK (BP.) (1870), I. R. 5 Eq. 403.—IR.

PART VII. SECT. 4.

b. *To set apart & secure specific trust fund for payment of salary of professor—Endowment of professorship.*]—EDINBURGH MAGISTRATES *v.* EDINBURGH UNIVERSITY (PRINCIPAL & PROFESSORS) (1851), 13 Dunl. (Ct. of Sess.) 1187; 23 Sc. Jur. 561.—SCOT.

c. *To invest.*]—B. directed his trustees to stand possessed of his residuary estate upon trust to pay legacies to charitable institutions, & to use the remainder in their absolute discretion until it was exhausted in assisting any two poor widows whom they might select in paying their rent by allowing each of such widows the sum of 4*s.* per week; after payment of legacies were satisfied a sum of money remained, which, if invested, would produce considerable more income than was necessary for the payment of the two sums of 4*s.* a week:—*Held*: although the words of

Sect. 4.—*Duties of ordinary trustees. Sect.* 5: *Sub-sects.* 1 & 2, *A., B., C. & D.; sub-sect.* 3. *Sect.* 6: *Sub-sect.* 1, *A.* (*a*) & (*b*).]

impracticable in any of its details, it is the positive duty of the trustees to apply to the ct. for new directions.—MANCHESTER SCHOOL CASE (1867), 2 Ch. App. 497; 36 L. J. Ch. 544; 16 L. T. 505; 15 W. R. 805, L. JJ.

1868. —— ——.]—If trustees of a public charitable trust cannot carry out the main purpose of the trust in the mode the truster has expressed, it is their duty to apply to the ct. for directions.—ANDREWS *v.* M'GUFFOG (1886), 11 App. Cas. 313, H. L.

Annotation :—**Mentd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

SECT. 5.—POWERS OF ORDINARY TRUSTEES.

SUB-SECT. 1.—IN GENERAL.

See, generally, TRUSTS & TRUSTEES.

1869. Trustees under Municipal Corporations Act, 1835 (c. 76)—Have all rights & powers of corporation or corporate officers for whom substituted.]—A.-G. *v.* LUDLOW CORPN (1848), 2 Ph. 685; 41 E. R. 1108, L. C.

1870. Borrowing powers—Of churchwardens as trustees of parochial charity.]—FEIL *v.* CHARITY LANDS OFFICIAL TRUSTEE, No. 1663, *ante.*

Powers limited by local Act—Guardians.]—*See* No. 1759, *ante.*

Power to cut timber.] — *See* AGRICULTURE, Vol. II., p. 91, No. 721.

SUB-SECT. 2.—DISCRETIONARY POWERS.

A. In General.

Whether discretion as to determination of objects fettered by terms of will.]—*See* Part III., Sect. 4, sub-sect. 7, *ante.*

Ascertainment of objects where trustees' discretion restricted.]—*See* Nos. 820, 979, *ante.*

Validity of discretionary gifts.]—*See* Part III., Sect. 2, sub-sect. 2, A. (*b*), *ante.*

Funds divisible among objects at trustees' discretion—Apportionment of.]—*See* Part III., Sect. 3, sub-sect. 2, B., *ante.*

B. By whom Exercisable.

1871. Power given to executors—Exercisable by survivors.]—A.-G. *v.* GLEG (1738), 1 Atk. 356; Amb. 584; 26 E. R. 227; *sub nom.* A.-G. *v.* SPEED, West *temp.* Hard. 491, L. C.

Annotations :—**Refd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Mentd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1872. —— **Death of all executors—New trustees cannot exercise power—Trust confined to executors personally.**]—HIBBARD *v.* LAMB (1756), Amb. 309; 27 E. R. 209, L. C.

Annotation :—**Distd.** A.-G. *v.* Gaskell (1831), 9 L. J. O. S. Ch. 188.

1873. —— **Executor renouncing probate—No right to exercise discretion.**]—A.-G. *v.* FLETCHER (1835), 5 L. J. Ch. 75.

Annotation :—**Folld.** Crawford *v.* Forshaw, [1891] 2 Ch. 261.

1874. —— —— —— **Exercisable by other executors not renouncing.**]—Testator, by his will, after appointing three exors., bequeathed the residue of his personalty to such charitable institutions as his exors. therein named might select, in such proportions as they might approve of. One exor. renounced :—*Held :* (1) the renouncing exor. could not take part in selecting the charities & distributing the residue among them; (2) the power could be exercised by the other two exors.—*Re* MAINWARING, CRAWFORD *v.* FORSHAW, [1891] 2 Ch. 261; 60 L. J. Ch. 683; 65 L. T. 32; 39 W. R. 484, C. A.

Annotations :—**Consd.** *Re* Smith, Eastick *v.* Smith, [1904] 1 Ch. 139. **Refd.** *Re* Bacon, Toovey *v.* Turner, [1907] 1 Ch. 475.

Powers of majority.]—*See* Sub-sect. 3, *post.*

C. Mode of Exercise of.

1875. Trustees need not give reasons for their action—Trust for benefit of minister legally placed with trustees' consent & approbation—Trustees have absolute power of refusing consent & approbation—Without assigning any reason.]—A.-G. *v.* MOSELY (1848), 2 De G. & Sm. 398; 17 L. J. Ch. 446; 12 L. T. O. S. 4; 12 Jur. 889; 64 E. R. 178.

1876. —— **Charity for education of boys to be selected by trustees from named parishes—Trustees not bound to state particular grounds of selection.**]—*Re* WILKES' (BELOVED) CHARITY (1851), 3 Mac. & G. 440; 20 L. J. Ch. 588; 17 L. T. O. S. 101; 42 E. R. 330, L. C.

Annotations :—**Consd.** Hayman *v.* Rugby School Governors (1874), L. R. 18 Eq. 28; Weinberger *v.* Inglis, [1918] 1 Ch. 517. **Refd.** Tabor *v.* Brooks (1878), 10 Ch. D. 273; Cassel *v.* Inglis, [1916] 2 Ch. 211. **Mentd.** Weinberger *v.* Inglis, [1919] A. C. 606.

D. Interference by Court with Exercise of.

1877. Court will not interfere—Unless trustees act corruptly.]—(1) Where trustees of a charity have discretionary powers, the ct. will not interpose unless they act corruptly. Though it may not choose to interpose, it does not follow that an information, seeking the ct.'s interference, will be dismissed, since it may be serviceable to maintain a control over them.

(2) Where there is, in point of substance, a visitor, it excludes the general interference of the ct., either by commission within 43 Eliz., c. 4, or its ordinary jurisdiction.—A.-G. *v.* HARROW SCHOOL (GOVERNORS) (1754), 2 Ves. Sen. 551; 28 E. R. 351, L. C.

Annotation :—**Mentd.** A.-G. *v.* Foyster (1793), 1 Anst. 116.

1878. —— **When trustees competent.**]—A.-G. *v.* GASKELL (1831), 9 L. J. O. S. Ch. 188, L. C.

1879. —— **Unless trust improperly administered—Administration to A. & his heirs.**]—A.-G. *v.* BOUCHERETT (1858), 25 Beav. 116; 23 J. P. 660; 53 E. R. 580.

SUB-SECT. 3.—POWERS OF MAJORITY OF TRUSTEES.

1880. Acts of majority bind minority—Trust of public nature.]—Where a general trust of a

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the clause creating the trust did not contain any indication that the money was to be invested, an intention that the money should be invested could be gathered from the rest of the will, & the trustees were bound to invest.—*Re* BOWER, [1917] S. A. L. R. 41.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 1.

d. *Borrowing powers—Managers of charity—No personal liability—Creditors entitled to repayment out of rents.*]—ARBROATH BANK *v.* STEVENSON (1847), 9 Dunl. (Ct. of Sess.) 1228; 19 Sc. Jur. 534.—**SCOT.**

e. *Trust for support of schools of particular system—Delegation of trust—Valid.*]—GRAY *v.* FORBES (1839), Macl. & Rob. 530; 9 E. R. 195.—**SCOT.**

f. *Cannot alter materially the constitution of the charity.*]—STEEDMAN *v.* MALCOLM (1842), 4 Dunl. (Ct. of Sess.) 1441.—**SCOT.**

PART VII. SECT. 5, SUB-SECT. 2.—D.

g. *Money in court—Court will not pay out—Without affidavit as to application of fund.*]—A. bequeathed money to his exor., upon trust for such charitable purposes as he might think right :—*Held :* though he was entitled to exercise his discretion in selection of the charities, the ct. would not pay out the money without an affidavit from him showing how he intended to apply it.—*Re* DEVLIN'S ESTATE, HAGAN *v.* DUFF (1889), 23 L. R. Ir. 516.—**IR.**

PART VII. SECT. 5, SUB-SECT. 3.

h. *Acts of majority bind minority—In necessary absence of others.*]—CAMPBELL *v.* M'INTYRE (1824), 21

public nature is created, it is essential to the purposes of the trust that a majority of the trustees should have the power, both at law & in equity, of binding the minority.—PERRY *v.* SHIPWAY (1859), 4 De G. & J. 353 ; 28 L. J. Ch. 660 ; 33 L. T. O. S. 251 ; 23 J. P. 452 ; 5 Jur. N. S. 1015 ; 7 W. R. 574 ; 45 E. R. 136, L. JJ.

Annotations :—**Consd.** Spurgin *v.* White (1860), 2 Giff. 473 ; Cooper *v.* Gordon (1869), L. R. 8 Eq. 249. **Refd.** *Re* Whiteley, London *v.* Whiteley, [1910] 1 Ch. 600.

1881. —— ——.] — WILKINSON *v.* MALIN (1832), 2 Cr. & J. 636 ; 2 Tyr. 544 ; 1 L. J. Ex. 234 ; 149 E. R. 268.

Annotations :—**Consd.** Perry *v.* Shipway (1859), 1 Giff. 1. **Refd.** *Re* Whiteley, London *v.* Whiteley, [1910] 1 Ch. 600. **Mentd.** Smith *v.* Keating (1848), 6 C. B. 136 ; *Re* Campden Charities (1881), 18 Ch. D. 310.

1882. —— —— **& trust of charitable nature.**]—Testator, after appointing trustees for the general purposes of his will, directed them, out of the proceeds of sale of his residuary real & personal estate, to set apart & appropriate a sum amounting as nearly as might be to £1,000,000, & to pay same to pltf. & others, to be called the "W. trustees," who should stand possessed of same upon trust from time to time to lay out a sufficient part of the trust legacy in the purchase of freehold lands situate in some or one of the western suburbs of L., or in the adjacent country, to be selected by the W. trustees as a site for the erection of buildings to be used as homes for aged poor persons & to be called "W. Homes for the aged poor," or by such other name or names as the W. trustees should think fit, but so that the name of "W." should form part of such name or names. The will contained further directions that the site to be selected should be in a bright & healthy spot even if such a site could only be acquired at additional expense. The W. trustees were also given a very wide discretion in determining the name of the homes & administering the trust generally, & their minimum number was to be nine :—*Held :* (1) the W. trustees were not entitled to select more than one site for the homes ; (2) the rule that in the administration of a trust of a "public" nature the act of the majority was to be treated as the act of the whole body, applied equally to a trust of a "charitable" nature, & in selecting a site & in founding the homes, the decision of the majority of the W. trustees was binding upon the minority.—*Re* WHITELEY, LONDON (BP.) *v.* WHITELEY, [1910] 1 Ch. 600 ; 79 L. J. Ch. 405 ; 102 L. T. 313 ; 26 T. L. R. 309 ; 55 Sol. Jo. 291.

1883. —— **Unless majority have acted beyond scope of trust deed.**]—WARD *v.* HIPWELL (1862), 3 Giff. 547 ; 6 L. T. 238 ; 8 Jur. N. S. 666 ; 66 E. R. 525.

1884. May bring actions in name of all.]—DOE d. DUPLEIX *v.* ROE (1794), 1 Anst. 86 ; 145 E. R. 808.

Parties to actions, generally, *see* Part X., Sect. 1, sub-sect. 4, *post.*

1885. Power to alter rules & regulations—But not fundamental principles—Appointment of woman governor.]—*Re* HOLLOWAY'S TRUSTS, GREENWELL *v.* RYAN, No. 1737, *ante.*

Appointment & removal—Of officers, etc.]—*See* Part VI., Sect. 1, sub-sect. 3, *ante.*

—— **Of ministers.**]—*See* ECCLESIASTICAL LAW.

—— **Of schoolmasters.**]—*See* EDUCATION.

SECT. 6.—LIABILITY OF ORDINARY TRUSTEES.

SUB-SECT. 1.—FOR BREACH OF TRUST.

A. What amounts to Breach of Trust.

(a) Retention of Trust Property.

See, generally, TRUSTS & TRUSTEES

1886. Where no beneficiaries for time being—Annuity as salary for clergyman—No clergyman appointed by vicar—Trustee liable to account for arrears of annuity.]—A.-G. *v.* BOLTON (1796), 3 Anst. 820 ; 145 E. R. 1050.

Annotation :—**Refd.** *Re* Herbage Rents, Greenwich, Charity Comrs. *v.* Green, [1896] 2 Ch. 811.

1887. Failure to invest legacy—Although own funds applied to larger amount than investment would have produced.]—A.-G. *v.* FISHMONGERS' CO. (1837), 1 Keen, 492 ; 48 E. R. 396.

Annotation :—**Mentd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

1888. Failure to ascertain beneficiaries—Trust to lend money to poor young men—No loans made for several years—Excess of receipts over expenditure—Trustees liable to account for balance.]—A.-G. *v.* CAMBRIDGE CORPN. (1836), 5 L. J. Ch. 357.

1889. Failure to inform beneficiaries of trust—Fund invested in annuities & transferred into court on discovery of fund—Investment repudiated by court—Trustee charged with balance in hand as cash.]—A.-G. *v.* ALFORD (1854), 2 Sm. & G. 488, 23 L. T. O. S. 226 ; 18 Jur. 592 ; 2 W. R. 580 ; 65 E. R. 494 ; *on appeal* (1855), 4 De G. M. & G. 843, L. C.

Annotations :—**Expld.** Berwick-upon-Tweed Corpn. *v.* Murray (1857), 7 De G. M. & G. 497. **Consd.** Townend *v.* Townend (1859), 1 Giff. 201 ; Burdick *v.* Garrick (1870), 5 Ch. App. 233. **Refd.** Blogg *v.* Johnson (1867), 2 Ch. App. 225 ; Vyse *v.* Foster (1872), 8 Ch. App. 309 ; Price *v.* Price (1880), 42 L. T. 626 ; Gilroy *v.* Stephens (1882), 51 L. J. Ch. 834 ; *Re* Hulkes, Powell *v.* Hulkes (1886), 33 Ch. D. 552 ; *Re* Barclay, Barclay *v.* Andrew, [1899] 1 Ch. 674 ; Silkstone & Haigh Moor Coal Co. *v.* Edey, [1900] 1 Ch. 167. **Mentd.** Penny *v.* Avison (1856), 28 L. T. O. S. 142 ; Phillips *v.* Homfray (1890), 44 Ch. D. 694.

1890. Retention of small sums of money—Interest allowed thereon until amount reached £150—£150 thereupon invested—Not breach of order to invest such small sums from time to time.]—A.-G. *v.* BOSANQUET (1842), 6 J. P. 408.

Duties of ordinary trustees.]—*See* Sect. 4, *ante.*

(b) Misapplication of Trust Property.

Compare Nos. 1843 *et seq., ante.*

1891 Diversion to other uses—Notwithstanding consent of parish to which charities given.]—MAN *v.* BALLET (1682), 1 Vern. 43 ; 23 E. R. 297, L. C.

1892. Gift to poor—Used in building conduit.]—WIVELESCOM CASE (1629), Duke, 94.

1893. —— **"Heavily burthened by fee farm rents, etc."—Applied to fee farm rents due from city—Repairing gaol, maintaining prisoners & other similar public purposes.**]—A.-G. *v.* EXETER

Fac. Coll. 509 ; 3 Sh. (Ct. of Sess.) 126.—**SCOT.**

k. —— *Only after full opportunity for discussion by all.*]—The rule that in the case of charitable trusts the act of the majority will be binding on the minority only applies when such act is done after full opportunity given for mutual discussion by all the members. When the act is done after mutual discussion when the minority had an opportunity to record their dissent it will be the act of the whole body ; otherwise it will be the act of the majority alone & will not bind the minority.—KUNHAN *v.* MOORTHI (1910), I. L. R. 34 Mad. 406.—**IND.**

PART VII. SECT. 6, SUB-SECT. 1.—A. (b).

l. *Diversion to other uses—Support of schools in township—Revenue cannot be applied in building new schools outside township.*]—A.-G. OF NOVA SCOTIA *v.* AXFORD (1884), 13 S. C. R. 294.—**CAN.**

m. *Trust for religious endowment—Mortgage in breach of trust—Invalid as against successor in trust.*]—GANESH DHARNIDHAR MAHARAJDEV *v.* KESHAVRAV GOVIND KULGAVKAR (1913), I. L. R. 15 Bom. 625.—**IND.**

Sect. 6.—Liability of ordinary trustees: Sub-sect. 1, A. (b), B. & C.; sub-sects. 2 & 3, A.]

CORPN. (1827), 3 Russ. 395; 6 L. J. O. S. Ch. 50; 38 E. R. 624, L. C.

Annotations :—**Consd.** A.-G. *v.* Newbury Corpn. (1831), Coop. Pr. Cas. 75. **Distd.** A.-G. *v.* Bushby (1857), 24 Beav. 299. **Refd.** A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647; A.-G. *v.* East Retford Corpn. (1838), 3 My. & Cr. 484; A.-G. *v.* Compton (1842), 1 Y. & C. Ch. Cas. 417; A.-G. *v.* Eastlake (1853), 2 Eq. Rep. 145; Hicks *v.* Sallitt (1854), 3 De G. M. & G. 782; Andrews *v.* M'Guffog (1886), 11 App. Cas. 313.

1894. —— Of particular parish—Applied to charity extending over other parishes.]—A.-G. *v.* BRANDRETH (1842), 1 Y. & C. Ch. Cas. 200; 6 Jur. 31; 62 E. R. 854.

1895. Timber worth £1,000 cut down—By trustee in possession & as receiver—Notwithstanding consent of co-trustee.]—BAYS *v.* BIRD (1726), 2 P. Wms. 397; 24 E. R. 784, L. C.

See, generally, AGRICULTURE, Vol. II., pp. 90–93.

1896. Trust for repairing church of A. & chapel of B.—Trustees building new chapel at desire of parishioners—Old chapel unsuitable—No deviation from trust.]—A.-G. *v.* FOYSTER (1794), 1 Anst. 116; 145 E. R. 817.

1897. Bequest to use of particular church—Rents mixed up with parochial rates—General fund to defray parochial expenses & repair church.]—A.-G. *v.* VIVIAN (1826), 1 Russ. 226; 38 E. R. 88.

Annotations :—**Mentd.** Newcastle Corpn. *v.* A.-G. (1845), 12 Cl. & Fin. 402; Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

1898. —— Used for church of united parish.]—(1) Where the object of a charity was the repair of a named church it cannot be diverted to the repair of the church of a united parish.

On a petition under City of London Parochial Charities Act, 1883 (c. 36), s. 10, a preliminary objection was taken that petitioners had no "vested interest":—*Held:* (2) a vested interest under the Act meant an emolument received by some person in respect of some office which he held, an emolument which that person received for his own benefit, & the word "person" included any body of persons, whether corporate or unincorporate; (3) petitioners had not a "vested interest" in the property the subject of the petition, & the ct. had no jurisdiction; (4) the case being a test case, the costs of petitioners should be allowed out of the trust estate.—*Re* ST. JOHN THE EVANGELIST, D'AUNGRE'S CHARITY (1888), 59 L. T. 617; 4 T. L. R. 765.

1899. Chapel for maintenance of school—Not in nature of chapel of ease—Revenues applied to enlargement of chapel—For accommodation of inhabitants of hamlet.]— A.-G. *v.* MANSFIELD (EARL) (1827), 2 Russ. 501; 38 E. R. 423, L. C.

Annotations :—**Mentd.** Clephane *v.* Edinburgh (1869), L. R. 1 Sc. & Div. 417; *Re* Weir Hospital, [1910] 2 Ch. 124.

1900. Purchase of premises for pest house—Sale of premises—Proceeds of sale lent to lighting & paving commissioners—On security of rates—Repayment ordered.]—A.-G. *v.* KELL (1840), 2 Beav. 575; 9 L. J. Ch. 389; 48 E. R. 1305.

1901. Devise of house to corporation for charitable purposes—Sale of premises—Proceeds of sale applied to redeem land tax—Corporation liable to make good amount of stock so purchased.]—A.-G. *v.* WISBEACH CORPN. (1842), 11 L. J. Ch. 412; 6 J. P. 427; 6 Jur. 655.

1902. Prayer-room of one charity—Used temporarily for schoolroom of another—Not diversion from original purpose.]—A.-G. *v.* BOSANQUET (1842), 6 J. P. 408.

1903. Commissioners empowered to raise money for street improvements—Money applied towards costs of application for new Act to obviate consequences of Municipal Corporations Act, 1835 (c. 76).]—A.-G. *v.* EASTLAKE (1853), 11 Hare, 205; 2 Eq. Rep. 145; 22 L. T. O. S. 20; 18 J. P. 262; 17 Jur. 801; 1 W. R. 323; 68 E. R. 1249.

Annotations :—**Consd.** *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142. **Refd.** A.-G. *v.* West Hartlepool Improvement Comrs. (1870), L. R. 10 Eq. 152. *Re* St. Bride's Church, Fleet St. (1877), 35 Ch. D. 147, n.; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933. **Mentd.** Beaumont *v.* Oliveira (1869), 4 Ch. App. 309; Elias *v.* Griffith (1878), 8 Ch. D. 521; Smith *v.* Kerr, [1902] 1 Ch. 774.

1904. Intermixing different charity funds.]—A.-G. *v.* GOLDSMITHS' CO. (1833), Coop. Pr. Cas. 292; 47 E. R. 510.

Annotations :—**Refd.** A.-G. *v.* Fishmongers' Co. (1837), 1 Keen, 492. **Mentd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

1905. Subscription to another charity—Of general benefit to subscribing charity—Some members receiving no personal benefit—No misapplication.]—ANDERSON *v.* WRIGHTS OF GLASGOW (1865), 12 L. T. 805; 29 J. P. 660, H. L.

1906. Corporation lands not let at best rent.]—A.-G. *v.* STAFFORD CORPN., [1878] W. N. 74,

Extension of benefits of charity intended for members of one religion or sect to persons holding other religious beliefs—Violation of trust deed.]—*See* Nos. 954, 955, 957, 962, 965, 971, *ante.*

—— No violation of trust deed.]—*See* Nos. 968, 969, *ante.*

B. Breach of Trust by Trustee's Agent or by Co-trustee.

1907. Death of some trustees—Survivors alone liable—Representatives of deceased trustees need not be made parties in suit to account.]—*Ex p.* ANGLE (1741), Barn. Ch. 423; 27 E. R. 705; *sub nom. Ex p.* ANGEL, 2 Atk. 162, L. C.

Annotation :—**Consd.** Munch *v.* Cockerell (1836), 8 Sim. 219.

1908. Corporation trustees—Committee-men conniving at breach—Personally liable.]—CHARITABLE CORPN. *v.* SUTTON (1742), 2 Atk. 400; 9 Mod. Rep. 349; 26 E. R. 642, L. C.

Annotations :—**Apld.** A.-G. *v.* Wilson (1840), Cr. & Ph. 1. **Consd.** Overend Gurney *v.* Gurney (1869), 4 Ch. App. 701, n. **Refd.** Shrewsbury & Birmingham Ry. *v.* L. & N. W. Ry. (1853), 4 De G. M. & G. 115; *Re* Dover & Deal Ry., Londesborough's Case (1854), 4 De G. M. & G. 411; Turquand *v.* Marshall (1869), 2 L. T. 766; Phosphate Sewage Co. *v.* Hartmont (1877), 5 Ch. D. 394; Metropolitan Bank *v.* Heiron (1880), 5 Ex. D. 319. **Mentd.** Steward *v.* East India Co. (1742), 9 Mod. Rep. 387.

1909. —— Members of governing body—Liable for injury to charity occasioned by default.]—A.-G. *v.* WILSON (1840), Cr. & Ph. 1; 10 L. J. Ch. 53; 4 Jur. 1174; 41 E. R. 389, L. C.

Annotations :—**Consd.** London Gas & Light Co. *v.* Spottiswoode (1851), 14 Beav. 264. **Distd.** *Re* London & Birmingham Extension & Northampton, Daventry, Leamington & Warwick Ry., Carpenter's Case & Weiss's Case (1852), 5 De G. & Sm. 402. **Refd.** Foss *v.* Harbottle (1843), 2 Hare, 461; Shrewsbury & Birmingham Ry. *v.* L. & N. W. Ry. (1853), 4 De G. M. & G. 115. **Mentd.** A.-G. *v.* Norwich Corpn. (1848), 12 Jur. 424; Hare *v.* N. W. Ry. (1860), 3 L. T. 289.

1910. —— Town clerk receiving & retaining trust money—With permission of corporation—Jointly liable with corporation.] — A.-G. *v.* LEICESTER CORPN. (1844), 7 Beav. 176; 49 E. R. 1031.

PART VII. SECT. 6, SUB-SECT. 1.—B. n. *Constructive trustee—Liability.*] —A. built a temple to which were attached charities for feeding travellers & giving alms to the poor. For the maintenance of the temple & charities he dedicated property by deed of gift, under which he constituted himself a trustee for life & appointed a panch to act as his successor in trust. During his lifetime he managed the temple as provided in the deed. On his death, the panch did not take charge, but his son assumed management & misapplied the funds:—*Held:* deft. by taking charge of the endowment, & purporting to manage it as temple property, made himself a constructive trustee, & was liable as such.—JUGALKISHORE *v.* LAKSHMANDAS RAGHUNATH DAS (1899), I. L. R. 23 Bom. 659.—**IND.**

1911. Co-trustees acting in rotation—Funds applied to own use by one acting trustee—Immediate successors neglecting to recover—Ultimate successor recovering part not further liable.]—A.-G. *v.* HOLLAND (1837), 2 Y. & C. Ex. 683 ; 7 L. J. Ex. Eq. 51 ; 160 E. R. 568.

C. Breach of Trust by Visitor acting as Trustee.

1912. Liable for breach of trust.]—HYNSHAW *v.* MORPETH CORPN. (1629), Duke, 69.

Annotations :—**Consd.** A.-G. *v.* Skinners' Co. (1827), 2 Russ. 407. **Refd.** A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

1913. ——.]—CHELMSFORD (POOR) *v.* MILDMAY (1649), Duke, 83.

1914. —— **Notwithstanding directions in will giving sole management to visitor.**]—A.-G. *v.* LUBBOCK (1837), Coop. Pr. Cas. 15 ; 47 E. R. 379, L. C.

Annotation :—**Refd.** A.-G. *v.* Holland (1837), 2 Y. & C. Ex. 683.

Powers & duties of visitor generally, *see* Part IX., Sect. 2, sub-sect. 3, *post.*

SUB-SECT. 2.—FOR MISTAKES HONESTLY MADE.

1915. Trustees not liable—Slight irregularities—No corrupt motives.]—A ct. of equity will not visit slight irregularities, committed by trustees of charitable institutions, with severe censure, when they have not acted from corrupt motives.—A.-G. *v.* JOLIFFE (1822), 2 Coop. *temp.* Cott. 229 ; 1 L. J. O. S. Ch. 43 ; 47 E. R. 1142.

1916. —— **School not conducted as free grammar school—Augmentation of salaries beyond specified limits—Allowed to trustees in accounts.**]—A.-G. *v.* CHRIST-CHURCH (DEAN, ETC.) (1826), 2 Russ. 321 ; Jac. 637 ; 38 E. R. 356, L. C.

1917. —— **Mistaken construction of doubtful instrument—Funds applied by corporation to unwarranted public purposes—Corporation not chargeable.**]—A.-G. *v.* EXETER CORPN. (1827), 3 Russ. 395 ; 6 L. J. O. S. Ch. 50 ; 38 E. R. 624, L. C.

Annotations :—**Consd.** A.-G. *v.* Compton (1842), 1 Y. & C. Ch. Cas. 417 ; A.-G. *v.* Eastlake (1853), 2 Eq. Rep. 145. **Refd.** A.-G. *v.* Newbury Corpn. (1831), Coop. Pr. Cas. 72 ; A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647 ; Hicks *v.* Sallitt (1854), 3 De G. M. & G. 782 ; Andrews *v.* M'Guffog (1886), 11 App. Cas. 313. **Mentd.** A.-G. *v.* East Retford Corpn. (1838), 3 My. & Cr. 484 ; A.-G. *v.* Bushby (1857), 24 Beav. 299.

1918. —— **Bonâ fide intermixing of trust funds—Both funds for same charity—No personal liability.**]—ANDREWS *v.* M'GUFFOG (1886), 11 App. Cas. 313, H. L.

Annotation :—**Mentd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

SUB-SECT. 3.—TO MAKE GOOD LOSS AND TO ACCOUNT.

A. In General.

1919. Trustees ordered to make good deficiency out of their own estate.]—HABERDASHERS' CO. *v.* A.-G. (1702), 2 Bro. Parl. Cas. 370 ; 2 Eq. Cas. Abr. 237, pl. 2 ; 1 E. R. 1003, H. L.

1920. Duty to tender accounts without requisition—Trust for public purposes—Information filed to compel accounts—Trustees failing to account liable for costs.]—Though a trustee for a public charity is not called on for twenty years by the body to whom he is accountable to account, yet it is his duty to tender his accounts to such body without requisition, & if he do not, he is liable to the costs of an information filed to compel an account, even although, in the result, the charity prove to be indebted to such trustee.—A.-G. *v.* GIBBS (1847), 1 De G. & Sm. 156 ; 9 L. T. O. S. 35 ; 11 Jur. 745 ; 63 E. R. 1013 ; *affd.* 2 Ph. 327, L. C.

Annotation :—**Refd.** White *v.* Jackson (1852), 15 Beav. 191.

Costs, generally, *see* Part X., Sect. 6, *post.*

1921. Discretion of court to order account—Not exercised when prejudicial to charity.]—A.-G. *v.* SHEARMAN (1839), 2 Beav. 104 ; 48 E. R. 1119.

1922. Against whom account ordered—Not innocent co-trustees.]—A.-G. *v.* RANDALL (1734), 2 Eq. Cas. Abr. 742 ; 21 Vin. Abr. 534, pl. 9 ; 22 E. R. 629, L. C.

Annotation :—**Refd.** Scurfield *v.* Howes (1790), 3 Bro. C. C. 90.

1923. —— **City chamberlain.**] — GORT (VISCOUNT) *v.* A.-G. (1817), 6 Dow. 136 ; 3 E. R. 1424, H. L.

1924. —— **Not parish—Charity property applied to parish purposes—Parish cannot be made responsible for.**]—*Ex p.* FOWLSER (1819), 1 Jac. & W. 70 ; 37 E. R. 302.

1925. —— **Not against property vested in rector, churchwardens & other trustees—For benefit of parish generally—To make good charity funds misapplied by charity officers.**]—A.-G. *v.* TOWNLEY (1829), Shelford's Law of Mortmain, 442.

1926. —— **Executrix of trustee—Fund not invested but interest paid to charity—Payment of interest discontinued by executrix—Inquiry ordered.**]—A.-G. *v.* WOOTTON (1848), 11 L. T. O. S. 82.

Liability to make good loss caused by—Retention of trust property.]—*See* Nos. 1886, 1888, *ante.*

—— **Misapplication of trust property.**]—*See* Nos. 1900, 1901, *ante.*

1927. Profits made by master of charity out of official situation—Master accountable as trustee for benefit of charity.] — A.-G. *v.* SMYTHIES (1833), 2 Russ. & M. 717 ; 2 L. J. Ch. 58 ; 39 E. R. 568, L. C.

Annotations :—**Mentd.** A.-G. *v.* St. John's College, Cambridge (1834), Coop. *temp.* Brough. 394 ; A.-G. *v.* Solly (1835), 5 L. J. Ch. 5 ; A.-G. *v.* Fishmongers' Co. (1841), 5 My. & Cr. 11 ; Jack *v.* Burnett (1846), 12 Cl. & Fin. 812 ; Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1.

1928. Corporation as trustee—Refusal of court to charge loss specifically on general corporate property—Inquiry to ascertain whether any fund applicable to making good breach of trust refused—Order to produce title deeds refused.]—A.-G. *v.* EXETER CORPN. (1827), 3 Russ. 395 ; 6 L. J. O. S. Ch. 50 ; 38 E. R. 624, L. C.

Annotations :—**Apld.** A.-G. *v.* East Retford Corpn. (1838), 3 My. & Cr. 484. **Mentd.** A.-G. *v.* Newbury Corpn. (1831), Coop. Pr. Cas. 75 ; A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647 ; A.-G. *v.* Compton (1842), 1 Y. & C. Ch. Cas. 417 ; A.-G. *v.* Eastlake (1853), 2 Eq. Rep. 145 ; Hicks *v.* Sallitt (1854), 3 De G. M. & G. 782 ; A.-G. *v.* Bushby (1857), 24 Beav. 299 ; Andrews *v.* M'Guffog (1886), 11 App. Cas. 313.

1929. —— —— ——.]—A.-G. *v.* CAMBRIDGE CORPN. (1836), 5 L. J. Ch. 357.

PART VII. SECT. 6, SUB-SECT. 2.

c. Trustees not liable—After allocation orders under Churches (Scotland) Act, 1905.]—A. directed his trustees to pay annual income of his estate for the promotion of the H. Mission of the Free Presbyterian Church with power for his trustees to engage Free Church missionaries in the promotion of the mission as they might think proper either through the church or independent of it. The trustees independently of the Church appointed & paid a licensed probationer & ordained preacher of the Free Church to conduct a mission in B. By allocation orders under the Churches (Scotland) Act, 1905, the funds left by the testator were allocated to the Free Church. The trustees continued to expend the income on the mission in B., & after such orders the church was entitled to payment of the income & the trustees discretionary power to administer the trust estate, independently of the church, ceased. The trustees thereafter paid the income to the church :—*Held :* the trustees were not personally liable to repay the expenditure by them independently of the church on the mission at B. either before or after the date of the allocation orders.—FREE CHURCH OF SCOTLAND *v.* MACKNIGHT'S TRUSTEES (1915), 53 Sc. L. R. 35.—**SCOT.**

Sect. 6.—Liability of ordinary trustees: Sub-sect. 3, A., B. & C.]

1930. —— —— Injured party left to enforce remedy by usual process against corporation.]—A.-G. *v.* EAST RETFORD CORPN. (1838), 3 My. & Cr. 484 ; 8 L. J. Ch. 49 ; 2 Jur. 1079 ; 40 E. R. 1013, L. C.

Annotations :—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395. **Mentd.** Solicitor-General *v.* Bath Corpn.; A.-G. *v.* Blair (1849), 18 L. J. Ch. 275 ; Mill *v.* Hawker (1874), L. R. 9 Exch. 309.

1931. Person injured by breach—Not entitled to damages out of trust fund.]—HERIOT'S HOSPITAL (FEOFFEES) *v.* ROSS (1846), 12 Cl. & Fin. 507 ; 8 E. R. 1508, H. L.

Annotations :—**Apld.** Edinburgh City *v.* Edinburgh Corpn. (1849), 14 L. T. O. S. 121. **Refd.** Southampton & Itchin Bridge Co. *v.* Southampton L. B. (1858), 8 E. & B. 801. **Mentd.** Blair *v.* Duncan, [1902] A. C. 37.

1932. Court cannot order trustees to pay money in their hands into court—Where no account directed against them by decree.]—A.-G. *v.* WINCHESTER CORPN., as reported in (1824), 3 L. J. O. S. Ch. 64.

Annotation :—**Mentd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

B. To whom Trustees Accountable.

1933. To Crown & Corporation of London—Society incorporated for colonisation of lands in Ireland—No liability to account to City Companies interested.]—SKINNERS' CO. *v.* IRISH SOCIETY (1845), 12 Cl. & Fin. 425 ; 9 Jur. 1043 ; 8 E. R. 1474, H. L.

Annotations :—**Mentd.** Russel *v.* Buchanan (1838), 9 Sim. 167 ; A.-G. *v.* London Corpn. (1850), 2 Mac. & G. 247.

1934. To Charity Commissioners under 1853 & 1855 Acts—Bonâ fide refusal to account by trustee having privilege of Parliament—No justification for committal of trustee for contempt.]—*Re* PEEL'S (SIR ROBERT) SCHOOL, TAMWORTH, *Ex p.* CHARITY COMRS. (1868), 3 Ch. App. 543 ; 32 J. P. 707 ; *sub nom. Re* CHARITABLE TRUSTS ACT, 1853 & CHARITABLE TRUSTS AMENDMENT ACT, 1855, *Ex p.* CHARITY COMRS., TAMWORTH SCHOOL CASE, 37 L. J. Ch. 473 ; *sub nom. Re* CHARITY COMRS., *Re* TAMWORTH SCHOOL, 18 L. T. 541 ; *sub nom. Re* TAMWORTH SCHOOL, *Ex p.* CHARITY COMRS., 16 W. R. 773, L. JJ.

Annotations :—**Mentd.** Jarmain *v.* Chatterton (1882), 20 Ch. D. 493 ; *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618 ; *Re* Gilchrist Educational Trust, [1895] 1 Ch. 367.

1935. —— "Endowment"—Fund subject to power of revocation—Commissioners entitled to call for accounts until power exercised.]—*Re* PEEL'S (SIR ROBERT) SCHOOL, TAMWORTH, *Ex p.* CHARITY COMRS. (1868), 3 Ch. App. 543 ; 32 J. P. 707 ; *sub nom. Re* CHARITABLE TRUSTS ACT, 1853 & CHARITABLE TRUSTS AMENDMENT ACT, 1855, *Ex p.* CHARITY COMRS., TAMWORTH SCHOOL CASE, 37 L. J. Ch. 473 ; *sub nom. Re* CHARITY COMRS., *Re* TAMWORTH SCHOOL, 18 L. T. 541 ; *sub nom. Re* TAMWORTH SCHOOL, *Ex p.* CHARITY COMRS., 16 W. R. 773, L. JJ.

Annotations :—**Refd.** *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618 ; *Re* Gilchrist Educational Trust, [1895] 1 Ch. 367. **Mentd.** Jarmain *v.* Chatterton (1882), 20 Ch. D. 493.

1936. —— —— "Particular & specific trust"—"Any building registered as place of meeting for religious worship."]—In 1811 land was conveyed to trustees upon trust to erect thereon a Wesleyan chapel, & to collect money by pew-rents, contributions, or otherwise, & to stand possessed of the same, & also all rents, issues & profits of the chapel & other erections which should be built on the land, upon trust to pay thereout the principal & interest of money borrowed in respect of the trust premises, & to apply the surplus for the support of the preachers for the time being stationed in the circuit of the chapel ; & upon further trust, if necessary, to sell the property & apply the proceeds of sale in the purchase or erection of another more convenient chapel, & hold the same upon the like trusts. On the site so conveyed a chapel was erected, & used, & registered as a place of religious worship. Subsequently, adjoining pieces of land were purchased & conveyed to the trustees upon the same trusts. The purchase-money for the additional land was raised partly by subscriptions & collections, partly by money borrowed at interest, & partly by sale of other portions of the property. On the property so acquired buildings of various kinds were erected by means of legacies, subscriptions, & collections. One of such buildings was let by the trustees, & yielded a considerable rent. In 1881 on the application of the trustees, a scheme was settled by the Charity Comrs. for the future regulation of the charity, directing that the property should be held upon the trusts of the Wesleyan chapel model deed, which were somewhat wider than those of the original deed of 1811, & provided for the application of surplus income towards the general objects of Wesleyans. The Comrs. sought to compel the trustees to render accounts of the income & expenditure of the trust property. The trustees claimed exemption from the jurisdiction of the Comrs. under 1853 Act, s. 62 :—*Held :* (1) the exemption in the sect. of "any building registered as a place of meeting for religious worship" only extended to the chapel itself, & not to the other buildings & property held therewith ; (2) notwithstanding the extent of the objects for which the surplus income & the proceeds of sale were applicable, the property, other than the chapel, was, in substance, held on "a particular & specific trust," & constituted an "endowment" within the sect. ; (3) the property did not fall within either of the other exemptions in the sect. ; (4) the trustees must render accounts of all the trust property except the chapel itself.—*Re* ST. JOHN STREET WESLEYAN METHODIST CHAPEL, CHESTER, [1893] 2 Ch. 618 ; 62 L. J. Ch. 927 ; 69 L. T. 105 ; 9 T. L. R. 431 ; 37 Sol. Jo. 456.

Annotation :—*As to* (2) **Refd.** *Re* Clergy Orphan Corpn. (1894), 64 L. J. Ch. 66.

1937. —— —— Trustees with absolute discretionary power—Not "mixed charity."]—Testator bequeathed his residuary personal estate to trustees upon trust to apply the same in such manner as they should "in their absolute & uncontrolled discretion think proper" for the benefit of a charity, which was not supported by any voluntary subscriptions :—*Held :* (1) notwithstanding this absolute discretionary power of dealing with the trust funds, the bequest was an "endowment" of the charity within 1853 Act, s. 66 ; (2) the charity, not being a "mixed charity," was not exempted by s. 62 from the jurisdiction of the Charity Comrs., who were therefore entitled to demand from the trustees accounts of the property & income of the charity.

(3) On motion to commit the trustees for refusing to render accounts, the trustees were ordered to pay the costs of the motion.—*Re* GILCHRIST EDUCATIONAL TRUST, [1895] 1 Ch. 367 ; 64 L. J. Ch. 298 ; 71 L. T. 875 ; 43 W. R. 234 ; 13 R. 228.

1938. —— Property held for "charity"—Income applied to parish—Leases granted by churchwardens with concurrence of overseers or vestry.]—*Re* ST. BRIDE'S, FLEET STREET (CHURCH OR PARISH ESTATE) (1877), 35 Ch. D. 147, n. ; 56 L. J. Ch. 692, n. ; 35 W. R. 689, n.

Annotation : **Refd.** *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142.

1939. —— Charity not "wholly maintainable by voluntary contribution"—Charity supported entirely from property received from original donation.]—A founder by deed of gift gave real & personal property to trustees for the purpose of founding a hospital. The deed of gift provided for the sale of the property, & that £10,000 of the capital & income thereof should be applied for or towards the erection & equipment of the hospital, & the residue of the capital & income towards the general purposes of the charity. The hospital had been erected, & had been partly equipped out of the sums realised by the sale of part of the property. No other donations or subscriptions had been received by the trustees of the charity. The Charity Comrs. claimed the right to have the accounts of the charity submitted to them:—*Held:* as at present, the charity derived its support entirely from the property which it received from the original donation, it was not a charity "wholly maintained by voluntary contribution," & was not exempt, under 1853 Act, s. 62, from the jurisdiction of the Charity Comrs.—*Re* RICHARD MURRAY HOSPITAL, [1914] 2 Ch. 713; 84 L. J. Ch. 184; 111 L. T. 710; 79 J. P. 2; 30 T. L. R. 600; 58 Sol. Jo. 671.

Jurisdiction of Charity Commissioners, generally, *see* Part IX., Sect. 4, *post*.

1940. Agent of trustees—Liable to account to principal only.]—A.-G. *v.* CHESTERFIELD (EARL) (1854), 18 Beav. 596; 23 L. T. O. S. 153; 18 Jur. 686; 2 W. R. 499; 52 E. R. 234.

Annotations:—**Refd.** Maw *v.* Pearson (1860), 28 Beav. 196. **Mentd.** Brown *v.* Wales (1872), 27 L. T. 410.

C. How far Accounts carried back.

1941. Retainer of improved rents on re-letting lands—From expiration of old lease to decree.]—KENNINGTON HASTINGS CASE (1612), Duke, 71.

Annotation:—**Mentd.** A.-G. *v.* Bristol (1820), 2 Jac. & W. 294.

1942. Six years—Misapplication of rents—Charity given to parish.]—LOVE *v.* EADE (1676), Cas. *temp.* Finch 269; 23 E. R. 147.

1943. —— Before filing of information—To avoid litigation & expense—Members of corporation acting in same way as predecessors had.]—A.-G., *v.* WARWICK CORPN. (1737), West *temp.* Hard. 55; 25 E. R. 817, L. C.

1944. To commencement of breach of trust—Misapplication by schoolmaster of usher's salary.]—A.-G. *v.* BEDFORD CORPN. (1754), 2 Ves. Sen. 505; 28 E. R. 323, L. C.

Annotation:—**Mentd.** *Re* Bedford Charity (1833), 5 Sim. 578.

1945. To filing of information—Special position of college trustees.]—A.-G. *v.* BALIOL COLLEGE, OXFORD (1744), 9 Mod. Rep. 407; 88 E. R. 538, L. C.

Annotations:—**Mentd.** Brown *v.* Blount (1830), 9 L. J. O. S. Ch. 74; Willats *v.* Busby (1842), 5 Beav. 193; Bourne *v.* Keane, [1919] A. C. 815.

1946. —— Charity leases—Not general account to remote period.]—A.-G. *v.* DIXIE, *Ex p.* BOSWORTH SCHOOL (1805), 13 Ves. 519; 33 E. R. 388, L. C.

Annotations:—**Mentd.** A.-G. *v.* Clarendon (1810), 17 Ves. 491; A.-G. *v.* Hartley (1820), 2 Jac. & W. 353; A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

1947. —— —— In aggravated cases to date of lease.]—A.-G. *v.* DAVEY (1854), 19 Beav. 521; 18 J. P. 279; 52 E. R. 453; *revsd.* on another point (1859), 4 De G. & J. 136, L. C. & L. JJ.

Annotations:—**Mentd.** Magdalen Hospital Governors *v.* Knotts (1878), 8 Ch. D. 709; Scarborough Corpn. *v.* Cooper, [1910] 1 Ch. 68.

1948. —— Misapplication by corporation—Indefinite account not directed.]—A.-G. *v.* WINCHESTER CORPN. as reported in (1824), 3 L. J. O. S. Ch. 64.

Annotation:—**Mentd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

1949. —— —— No particular misconduct imputed.]—The ct. will not compel a corpn., being trustees of a charity, to account for the income further back than the filing of the information, where that income has been applied to other charitable purposes, & no particular misconduct is imputed.—A.-G. *v.* STATIONERS' CO. (1831), 9 L. J. O. S. Ch. 229.

1950. —— Improper application of funds—Since institution of charity.]—A.-G. *v.* DRAPERS' CO., KENDRICK'S CHARITY (1841), 4 Beav. 67; 49 E. R. 263; *subsequent proceedings* (1847), 10 Beav. 558.

Annotations:—**Mentd.** Southmolton Corpn. *v.* A.-G. (1854), 5 H. L. Cas. 1; A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310.

1951. —— —— Liable for rents accruing before information filed—Paid subsequently to filing.]—A.-G. *v.* DRAPERS' CO., KENDRICK'S CHARITY (1847), 10 Beav. 558; 50 E. R. 696.

1952. —— Erroneous administration for long period—Trustees insisting on own rights when called upon to administer—Failure to substantiate rights.]—A.-G. *v.* CHRIST'S HOSPITAL (1841), 4 Beav. 73; 49 E. R. 265.

Annotation:—**Mentd.** Merchant Taylors' Co. *v.* A.-G. (1871), 19 W. R. 641.

1953. —— Increase of revenue—Surplus applicable to charity—No beneficial interest reserved to persons charged with payments.]—A.-G. *v.* DRAPERS' CO., HOWELL'S CHARITY (1843), 6 Beav. 382; 12 L. J. Ch. 421; 1 L. T. O. S. 107; 7 J. P. 272; 8 Jur. 1060; 49 E. R. 873.

Annotation:—**Mentd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383.

1954. —— —— ——.]—ABERDEEN UNIVERSITY *v.* IRVINE (1868), L. R. 1 Sc. & Div. 289, H. L.

Annotation:—**Mentd.** Income Tax Special Purposes Comrs. *v.* Pemsel, [1891] A. C. 531.

1955. —— —— ——.]—A.-G. *v.* WAX CHANDLERS' CO. (MASTER, WARDENS, ETC.) (1873), L. R. 6 H. L. 1; 42 L. J. Ch. 425; 28 L. T. 681; 37 J. P. 532; 21 W. R. 361, H. L.; *revsg.* (1870), 5 Ch. App. 503, L. C.

Annotations:—**Distd.** Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512; Cunningham *v.* Foot (1878), 38 L. T. 889. **Refd.** Goodman *v.* Saltash Corpn. (1882), 7 App. Cas. 633; *Re* Christchurch Inclosure Act (1888), 38 Ch. D. 520; *Re* Palatine Estate Charity (1888), 39 Ch. D. 54; Haigh *v.* West, [1893] 2 Q. B. 19.

1956. To passing of particular Turnpike Act—When liability of corporation to repair roads ceased.]—A.-G. *v.* BREWERS' CO. (1816), 1 Mer. 495; 35 E. R. 755.

Annotations:—**Consd.** A.-G. *v.* Exeter Corpn. (1822), Jac. 443; A.-G. *v.* Stafford Corpn. (1826), 1 Russ. 547; A.-G. *v.* Newbury Corpn. (1831), Coop. Pr. Cas. 75. **Refd.** Ludlow Corpn. *v.* Greenhouse (1827), 1 Bli. N. S. 17; A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647.

1957. To time at which accounts rendered by answer commenced—Against corporation.]—A.-G. *v.* STAFFORD CORPN. (1826), 1 Russ. 547; 38 E. R. 211.

Annotation:—**Refd.** A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647.

1958. To time of possession of charity lands—Against corporation—Admitting receipt of surplus rents—& debiting themselves with amount—Period of nearly two hundred yeafs.]—A.-G. *v.* EXETER CORPN. (1827), 2 Russ. 362; 38 E. R. 372, L. C.

Annotations:—**Consd.** Ludlow Corpn. *v.* Greenhouse (1827), 1 Bli. N. S. 17; A.-G. *v.* Newbury Corpn. (1831), Coop. Pr. Cas. 75. **Refd.** A.-G. *v.* Carlisle Corpn. (1831), 4 Sim. 275; A.-G. *v.* Magdalen College (1854), 23 L. J. Ch. 844. **Mentd.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85; A.-G. *v.* Brettingham (1840), 3 Beav. 91.

1959. To time when misapplied rents claimed for use of poor—Rents for use of poor carried to corporate chest.]—A.-G. *v.* BERWICK-UPON-TWEED CORPN. (1829), Taml. 239; 48 E. R. 95.

1960. To time of notice that propriety of action questioned — Corporation following practice of

Sect. 6.—*Liability of ordinary trustees: Sub-sect.* 3, *C.; sub-sects.* 4 *&* 5. *Sects.* 7 *&* 8. *Part VIII. Sects.* 1, 2 *&* 3. *Part IX. Sect.* 1: *Sub-sect.* 1.]

predecessors in applying funds—No wilful breach of trust or misconduct imputed.]—A.-G. *v.* EAST RETFORD CORPN. (1833), 2 My. & K. 35 ; 39 E. R. 857 ; *revsd.* on another point (1838), 3 My. & Cr. 484, L. C.

Annotations :—**Mentd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395 ; Solicitor-General *v.* Bath Corpn., A.-G. *v.* Blair (1849), 18 L. J. Ch. 275 ; Mill *v.* Hawker (1874), L. R. 9 Exch. 309.

1961. To last appointment of trustees to administer trusts—Misapplication by corporation.]—A.-G. *v.* NEWBURY CORPN. (1834), 3 My. & K. 647 ; 40 E. R. 246, L. C.

1962. Against personal representatives—To date of decree declaring application improper—Retainer of rents by schoolmaster.]—A.-G. *v.* TUFNELL (1849), 12 Beav. 35 ; 50 E. R. 973.

See, also, No. 1886, *ante.*

SUB-SECT. 4.—TO PAY INTEREST.

1963. Balance of rents used in carrying on own trade—Interest payable at 5 per cent.—Without annual rests.]—A.-G. *v.* SOLLY (1829), 2 Sim. 518 ; 57 E. R. 882.

Annotation :—**Refd.** Docker *v.* Somes (1834), 2 My. & K. 655.

1964. Corporation retaining balance of receipts over expenditure—Decreed to make good balance—With interest at 5 per cent.]—A.-G. *v.* CAMBRIDGE CORPN. (1836), 5 L. J. Ch. 357.

1965. Retention of funds without investment—Trustee making no profit by misconduct—Liable to pay interest at 4 per cent.—Without annual rests.]—A.-G. *v.* ALFORD (1855), 4 De G. M. & G. 843 ; 3 Eq. Rep. 952 ; 24 L. T. O. S. 265 ; 1 Jur. N. S. 361 ; 3 W. R. 200 ; 43 E. R. 737, L. C.

Annotations :—**Expld.** Berwick-upon-Tweed Corpn. *v.* Murray (1857), 7 De G. M. & G. 497. **Distd.** Townend *v.* Townend (1859), 1 Giff. 201. **Consd.** Burdick *v.* Garrick (1870), 5 Ch. App. 233 ; Gilroy *v.* Stephens (1882), 51 L. J. Ch. 834 ; *Re* Hulkes, Powell *v.* Hulkes (1886), 33 Ch. D. 552 ; Phillips *v.* Homfray (1890), 44 Ch. D. 694. **Refd.** Penny *v.* Avison (1856), 28 L. T. O. S. 142 ; Blogg *v.* Johnson (1867), 2 Ch. App. 225 ; Vyse *v.* Foster (1872), 8 Ch. App. 309 ; Price *v.* Price (1880), 42 L. T. 626 ; *Re* Barclay, Barclay *v.* Andrew, [1899] 1 Ch. 674 ; Silkstone & Haigh Moor Coal Co. *v.* Edey, [1900] 1 Ch. 167.

SUB-SECT. 5.—OTHER CASES.

1966. Wrongful dismissal of inmate from institution—Action lies for—Misconduct of inmate matter for board of management & not matter for jury—Non-observance of rules may amount to misconduct.]—HOARE *v.* ANDERSON (1869), 20 L. T. 759, N. P.

SECT. 7.—**OFFICIAL TRUSTEES OF CHARITIES.**

1967. Official Trustee of Charity Lands—Jurisdiction of Charity Commissioners to vest lands in—Not when lands vested in churchwardens & overseers as corporation—Unless consent of churchwardens obtained.]—*Re* HACKNEY CHARITIES, *Ex p.* NICHOLLS (1865), 4 De G. J. & Sm. 588 ; 5 New Rep. 295 ; 34 L. J. Ch. 169 ; 11 L. T. 758 ; 11 Jur. N. S. 126 ; 46 E. R. 1047 ; *sub nom. Re* POOLE'S & WHITE'S CHARITIES, HACKNEY CHARITIES, 13 W. R. 398, L. JJ.

Annotation :—**Refd.** *Re* Burnham National Schools (1873), L. R. 17 Eq. 241.

Whether necessary parties to proceedings.]—*See* Part X., Sect. 1, sub-sect. 4, B. (*f*), *post.*

SECT. 8.—**INCAPACITY OR FAILURE OF TRUSTEES.**

1968. Incapacity—Devise of land to corporation in trust—Uses attach on land—Heir-at-law trustee to uses of will.]—SONLEY *v.* CLOCKMAKERS' CO. (1780), 1 Bro. C. C. 81 ; 28 E. R. 998, L. C.

1969. —— Covenant to invest money in corporate names of archdeacon, vicar & churchwardens, & dividends to be applied on charitable trusts—Covenant held not impossible of performance.]—TUFNELL *v.* CONSTABLE (1838), 7 Ad. & El. 798 ; 3 Nev. & P. K. B. 47 ; 1 Will. Woll. & H. 113 ; 7 L. J. Q. B. 106 ; 2 Jur. 79 ; 112 E. R. 670.

Annotation :—**Refd.** Kekewich *v.* Manning (1851), 1 De G. M. & G. 176.

1970. Failure—Death of trustees before testator—Legacy good in equity.]—A.-G. *v.* HICKMAN (1732), Kel. W. 34 ; 2 Eq. Cas. Abr. 193, pl. 14 ; 25 E. R. 482, L. C.

Annotations :—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Refd.** A.-G. *v.* Downing (1767), Wilm. 1 ; White *v.* White (1778), 1 Bro. C. C. 12. **Mentd.** West *v.* Shuttleworth (1835), 2 My. & K. 684.

1971. —— —— ——.]—A.-G. *v.* DOWNING (LADY) (1769), Amb. 571 ; Dick, 414 ; Wilm. 1 ; 27 E. R. 368, L. C.

Annotations :—**Consd.** White *v.* White (1778), 1 Bro. C. C. 12. **Refd.** Robson *v.* Flight (1864), 34 Beav. 110. **Mentd.** Coppin *v.* Fernyhough (1788), 2 Bro. C. C. 291 ; A.-G. *v.* Green (1789), 2 Bro. C. C. 492 ; Barnes *v.* Crow (1792), 4 Bro. C. C. 2 ; Pigott *v.* Waller (1802), 7 Ves. 98 ; Henshaw *v.* Atkinson (1818), 3 Madd. 306 ; Giblett *v.* Hobson (1834), 3 My. & K. 517 ; A.-G. *v.* Brodie (1846), 11 Jur. 137 ; Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; Philpott *v.* St. George's Hospital (1857), 6 H. L. Cas. 338 ; *Re* Smith, Bilke *v.* Roper (1890), 45 Ch. D. 632.

—— —— **How gift given effect to.**]—*See* Part IV., *ante.*

—— **Death of trustees after death of testator.**]—*See* Part IV., Sect. 2, sub-sect. 2, D., *ante.*

—— **Appointment of new trustees.**]—*See* Sect. 2, *ante.*

Part VIII.—Charitable Corporations.

SECT. 1.—**WHAT ARE.**

See, generally, CORPORATIONS.

Corporations as charity trustees.] *See* Part VII., Sect. 1, sect. 2, sub-sect. 5, F., *ante.*

SECT 2.—**FOUNDATION.**

1972. General rules—Incorporation under royal charter—Meaning of "foundation."]—By royal letters patent dated June 22, in 9 Jac. 1, reciting an Act, 9 Jac. 1. entitled, "An Act to confirm & enable the erection & establishment of an hospital & free grammar school, done & intended to be done by S. & C. . . . & also that S., during his life, & after his death, the governors . . . for the time being, & their successors, should have full power, at his & their wills & pleasures respectively, from time to time, to place therein such master of the hospital, as to S. during his life, & after his death to the governors . . . should seem convenient," a licence was granted to S. to found an hospital for the relief of poor, etc. & a free school ; &, in a subsequent part of the same letters patent, fifteen persons were appointed by name, " & the master of the hospital, & such

person as should from time to time be master . . . to be the first & present governors of the lands, etc. of the hospital." S. on Oct. 30, in the same year, appointed H. to be the first master of the hospital, to have & to hold the said office at the will of S. :—*Held :* (1) no hospital, etc. was founded by the Act itself ; (2) the incorporation ought to precede the founding the hospital ; (3) the King by his charter of incorporation might, at the petition of the founder, make the house & inheritance of the petitioner to be an hospital, & might give it a name ; (4) the words in the charter, "that the said house & other the premises shall from henceforth for ever hereafter be, remain, &c. & shall for ever hereafter be named & called the Hospital of King James, founded in the Charter-house," were a sufficient naming of the place of the corpn. : a known name was sufficient to found an hospital, & it need not be described by metes & bounds ; (5) an objection to the validity of the incorporation, that the King by his letters patent intended to make a present corpn., which his words expressly imported, but that no incorporation could be until S. had named a master, & that nomination being subsequent to the letters patent, the latter were repugnant to themselves & void could not be sustained ; (6) the incorporation might exist before the hospital was actually founded ; (7) the word "foundation" was taken in two different senses "*fundatio incipiens*" & "*fundatio perficiens ;*" as to the politic capacity, the act of incorporation was metaphorically called the foundation, but as to the dotation, the first gift of the revenues was called the foundation, & he who gave it was the founder in law : if the King had incorporated the poor of the hospital, S. need not have made any instrument comprehending any foundation, erection, &c. but his gift of the land being the first gift, had made him founder, & the very first donation was all the foundation which was requisite in law ; & to the erection of an hospital, nothing was required by the law but incorporation & donation.—SUTTON HOSPITAL CASE (1612), 10 Co. Rep. 23 a ; Jenk. 270 ; 77 E. R. 960, Ex. Ch.

Annotations :—As to (3) **Refd.** Rutter *v.* Chapman (1841), H. & W. 93. *As to* (4) **Refd.** College of Physicians *v.* Salmon (1695), 1 Ld. Raym. 680 ; A.-G. *v.* Bowyer (1800), 5 Ves. 300 ; Colchester *v.* Kewney (1866), L. R. 1 Exch. 368. *As to* (5) **Distd.** Birmingham School Case (1726), Gilb. Ch. 178. **Refd.** A.-G. *v.* Middleton (1751), 2 Ves. Sen. 327 ; R. *v.* Westwood (1830), 7 Bing. 1 ; Bostock *v.* North Staffordshire Ry. (1855), 24 L. J. Q. B. 225 ; A.-G. *v.* L. C. C., [1901] 1 Ch. 781 ; Bonanza Creek Gold Mining Co. *v.* R., [1916] 1 A. C. 566. *Generally*, **Consd.** Riche *v.* Ashbury Ry. Carriage Co. (1874), L. R. 9 Exch. 224 ; British South Africa Co. *v.* De Beers Consolidated Mines, [1910] 1 Ch. 354. **Refd.** Hayward *v.* Fulcher (1628), Palm 491 ; Philips *v.* Bury (1694), 1 Ld. Raym. 5 ; Owen *v.* Saunders (1696), 1 Ld. Raym. 158 ; Winton Corpn. *v.* Wilks (1705), 2 Ld. Raym. 1129 ; Tone River Conservators *v.* Ash (1829), 10 B. & C. 349 ; R. *v.* Dulwich College (1851), 17 Q. B. 600 ; Wenlock *v.* River Dee Co. (1883), 36 Ch. D. 675. **Mentd.** Needler *v.* Winchester (1614), Hob. 220 ; Lyn *v.* Wyn (1665), O. Bridg. 122 ; Thomas *v.* Sorrel (1673), 3 Keb. 223 ; Barker *v.* Keete (1678), Freem. K. B. 249 ; Merchants Adventurers *v.* Rebow (1686), Comb. 52 ; Ballard *v.* Gerrard (1701), 12 Mod. Rep. 608 ; Boulton *v.* Bull (1795), 2 Hy. Bl. 463 ; R. *v.* St. Giles (1816), 5 M. & S. 260 ; Lynch *v.* Knight (1861), 5 L. T. 291 ; Ford *v.* Harington (1869), 1 Hop. & Colt. 331 ; Kinnell *v.* Harding, Wace, [1918] 1 K. B. 405.

1973. Who are founders—Charity incorporated under royal charter.]—SUTTON HOSPITAL CASE, No. 1972, *ante*.

1974. —— Charity established by subscriptions—Original subscribers.]—*Re* ST. LEONARD, SHOREDITCH, PAROCHIAL SCHOOLS, *Re* ENDOWED SCHOOLS ACT, 1869, (1884), 10 App. Cas. 304 ; 54 L. J. P. C. 30 ; 51 L. T. 305 ; 33 W. R. 756, P. C.

Annotation :—**Refd.** *Re* Swansea Free Grammar School, [1894] A. C. 252.

1975. —— Municipal corporation—Included in 39 Eliz., c. 5.]—NEWCASTLE-UPON-TYNE CORPN. *v.* A.-G. (1845), 12 Cl. & Fin. 402 ; 8 E. R. 1464, H. L. ; *affg.* S. C. *sub nom.* A.-G. *v.* NEWCASTLE CORPN. (1842), 5 Beav. 307.

Annotations :—**Mentd.** Trye *v.* Gloucester Corpn. (1851), 14 Beav. 173 ; *Re* Patten & Edmonton Union Grdns. (1883), 52 L. J. Ch. 787.

SECT. 3.—**RIGHTS OF FOUNDER.**

To nominate beneficiaries.]—*See* Part III., Sect. 4, sub-sect. 8, *ante*.

To alter limits of endowment.]—*See* Part III., Sect. 8, *ante*.

As visitors.]—*See* Part IX., Sect. 2, sub-sect. 2, A., *post*.

Part IX.—Jurisdiction over Charities.

SECT. 1.—**THE CROWN.**

SUB-SECT. 1.—WHERE OBJECTS UNCERTAIN.

1976. Disposition in Crown—General gift to charity — No trust interposed.] — CLIFFORD *v.* FRANCIS (1679), Freem. Ch. 330 ; 22 E. R. 1235.

Annotation :—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36.

1977. —— —— ——.]—A.-G. *v.* HERRICK (1772), Amb. 712 ; 27 E. R. 461, L. C.

Annotations :—**Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Refd.** A.-G. *v.* Bristol (1820), 2 Jac. & W. 294. **Mentd.** Townsend *v.* Carus (1844), 13 L. J. Ch. 169.

1978. —— —— ——.]—MOGGRIDGE *v.* THACKWELL (1803), 7 Ves. 36 ; 32 E. R. 15, L. C. ; *affd.* (1807), 13 Ves. 416, H. L. ; *affg.* (1792), 1 Ves. 464, L. C.

Annotations :—**Consd.** Mills *v.* Farmer (1815), 1 Mer. 55 ; A.-G. *v.* Ironmongers' Co. (1833), 3 L. J. Ch. 11. **Foll.** Reeve *v.* A.-G. (1843), 3 Hare, 191. **Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Apld.** *Re* Pyne, Lilley *v.* A.G., [1903] 1 Ch. 83. **Consd.** *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44. **Refd.** Corbyn *v.* French (1799), 4 Ves. 418 ; Cary *v.* Abbot (1802), 7 Ves. 490 ; Paice *v.* Canterbury (1807), 14 Ves. 364 ; Ommanney *v.* Butcher (1823), Turn. & R. 260 ; Martin *v.* Margham (1844), 14 Sim. 230 ; Nightingale *v.* Goulbourn (1848), 2 Ph. 594 ; Marsh *v.* Means (1857), 30 L. T. O. S. 89 ; Lyons *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91 ; Pocock *v.* A.-G. (1876), 3 Ch. D. 342 ; Biscoe *v.* Jackson (1887), 56 L. T. 753 ; *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373 ; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876 ; *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353. **Mentd.** Morice *v.* Durham (1804), 9 Ves. 399 ; Benyon *v.* Benyon (1810), 17 Ves. 34 ; Ellis *v.* Selby (1836), 5 L. J. Ch. 214 ; Lee *v.* Pain (1844), 4 Hare, 201 ; Tatham *v.* Drummond (1864), 3 New Rep. 706 ; Wilson *v.* O'Leary (1871), L. R. 12 Eq. 525 ; Bourne *v.* Keane, [1919] A. C. 815.

1979. —— —— ——.]—PAICE *v.* CANTERBURY (ARCHBP.) (1807), 14 Ves. 364 ; 33 E. R. 560, L. C.

Annotations :—**Apld.** *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 83. **Mentd.** Doe d. Crutchfield *v.* Pearce (1815), 1 Price, 353 ; Pocock *v.* Lincoln (1821), 3 Brod. & Bing. 27 ; Bridge *v.* Brown (1843), 2 Y. & C. Ch. Cas. 181 ; Mapp *v.* Elcock (1849), 2 Ph. 793.

1980. —— —— ——.]—Where property is bequeathed to exors. or trustees for charitable purposes, & the objects are not specified or indefinite, the proper mode of carrying out the general charitable intention of testator is by a scheme under the ct. ; but where there is a general charitable intention without any trust interposed,

Sect. 1.—*The Crown: Sub-sects.* 1, 2 & 3. *Sect.* 2: *Sub-sect.* 1, *A. & B.* (*a*) & (*b*).]

the disposition of the gift is in the King by Sign Manual.—*Re* PYNE, LILLEY *v.* A.-G., [1903] 1 Ch. 83; 72 L. J. Ch. 72; 87 L. T. 730; 51 W. R. 283.

1981. —— Indefinite gift to poor—Extending to poor of all England—Land conveyed to corporation as governors of hospitals.]—A.-G. *v.* PEACOCK (1676), Cas. *temp.* Finch, 245; 23 E. R. 135; *sub nom.* A.-G. *v.* MATTHEWS, 2 Lev. 167.

Annotations:—**Follo.** A.-G. *v.* Syderfen (1683), 1 Vern. 224; A.-G. *v.* Herrick (1772), Amb. 712. **Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Refd.** Morice *v.* Durham (1805), 10 Ves. 522; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

1982. —— —— Granted to poor relations of testatrix.]—WARE *v.* A.-G. (1824), 3 Hare, 194, n.; 67 E. R. 353.

See, generally, cases in Part III., Sect. 4, sub-sect. 3, C., *ante*.

1983. —— Gift for such charity as testator had by writing appointed—No writing found.]—A.-G. *v.* SYDERFEN (1683), 1 Vern. 224; 23 E. R. 430.

Annotations:—**Consd.** White *v.* White (1778), 1 Bro. C. C. 12; Moggridge *v.* Thackwell (1803), 7 Ves. 36; Mills *v.* Farmer (1815), 1 Mer. 55; *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44. **Refd.** Anon. (1702), Freem. Ch. 261; *Re* White, White *v.* White, [1893] 2 Ch. 41.

1984. —— Gift for charities selected by trustees—Death of trustees before power exercised.]—A.-G. *v.* BERRYMAN (1755), Dick. 168; 21 E. R. 234, L. C.

Annotation:—**Mentd.** Alexander *v.* Alexander (1755), 2 Ves. Sen. 640.

1985. —— —— ——.]—A.-G. *v.* LONDONDERRY (1825), 3 Hare, 195, n.; Shelford's Law of Mortmain, 272; 67 E. R. 353.

See, also, cases in Part IV., Sect. 2, sub-sect. 2, D., *ante*.

1986. Disposition not in Crown—Objects too indefinite—"Private charity"—Next of kin entitled.]—OMMANNEY *v.* BUTCHER (1823), Turn. & R. 260; 37 E. R. 1098.

Annotations:—**Consd.** Williams *v.* Williams, Williams *v.* Kershaw (1835), 5 L. J. Ch. 84. **Mentd.** Douglas *v.* Congreve (1836), 1 Keen, 410; Dowson *v.* Gaskoin (1837), 2 Keen, 14; Briggs *v.* Penny (1849), 3 De G. & Sm. 525; Lowe *v.* Thomas (1854), 23 L. J. Ch. 453; Patrick *v.* Yeatherd (1854), 3 New Rep. 367; Larner *v.* Larner (1857), 26 L. J. Ch. 668.

Ascertainment of objects.]—*See* Part III., Sect. 4, *ante*.

Effectuation of trust—By schemes & the cy-près doctrine.]—*See* Part IV., *ante*.

SUB-SECT. 2.—ON FAILURE OF OBJECTS.

1987. Disposition in Crown—Gift to superstitious uses—Applied to other charitable uses.]—R. *v.* PORTINGTON (LADY) (1692), 1 Salk. 162; 91 E. R. 151.

Annotations:—**Consd.** Cary *v.* Abbot (1802), 7 Ves. 490. **Refd.** Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Addlington *v.* Cann (1744), 3 Atk. 141.

1988. —— —— ——.]—JONES' CASE (1690), [1893] 2 Ch. 49, n.; *sub nom.* GATES *v.* JONES cited in 7 Ves. 496; 2 Vern. 266; 23 E. R. 773, H. L.

Annotations:—**Consd.** Mills *v.* Farmer (1815), 1 Mer. 55; Bourne *v.* Keane, [1919] A. C. 815. **Refd.** A.-G. *v.* Guise (1692), 2 Vern. 266; Anon. (1702), Freem. Ch. 261; Cary *v.* Abbot (1802), 7 Ves. 490.

1989. —— —— ——.]—DE GARCIN *v.* LAWSON (1708), 4 Ves. 433, n.; 31 E. R. 222, L. C.

Annotations:—**Refd.** Cary *v.* Abbot (1802), 7 Ves. 490; West *v.* Shuttleworth (1835), 2 My. & K. 684; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Smart *v.* Prujean (1801), 6 Ves. 560.

1990. —— —— ——.]—A.-G. *v.* TODD (1837), 1 Keen, 803; 6 L. J. Ch. 205; 48 E. R. 516.

Annotations:—**Refd.** *Re* Blundell's Trusts (1861), 30 Beav. 360; Bourne *v.* Keane, [1919] A. C. 815.

1991. —— —— Next of kin not entitled.]—CARY *v.* ABBOT (1802), 7 Ves. 490; 32 E. R. 198.

Annotations:—**Disid.** West *v.* Shuttleworth (1835), 2 My. & K. 684. **Refd.** Bourne *v.* Keane, [1919] A. C. 815.

1992. —— —— —— Not when fund not subject to general charitable trust.]—DE THEMMINES *v.* DE BONNEVAL (1828), 5 Russ. 288; 7 L. J. O. S. Ch. 35; 38 E. R. 1035.

Annotations:—**Consd.** Carter *v.* Green (1857), 3 K. & J. 591. **Refd.** Warren *v.* Rudall (1858), 4 K. & J. 603; Bowman *v.* Secular Soc., [1917] A. C. 406; Bourne *v.* Keane, [1919] A. C. 815. **Mentd.** Barton *v.* Muir (1874), L. R. 6 P. C. 134.

1993. —— Gift void under Mortmain Acts—Applied to other uses.]—A.-G. *v.* WHORWOOD (1750), 1 Ves. Sen. 534; 27 E. R. 1188, L. C.

Annotations:—**Consd.** Cary *v.* Abbot (1802), 7 Ves. 490. **Refd.** Morice *v.* Durham (1805), 10 Ves. 522; A.-G. *v.* Haberdashers' Co. (1834), 1 My. & K. 420.

—— —— Undisposed-of personalty.]—*See* CONSTITUTIONAL LAW.

1994. —— Gift in support of Jesuba—Applied to other charitable uses.]—DA COSTA *v.* DE PAS (1754), Amb. 228; Dick. 258; 3 Hare, 194, n.; 27 E. R. 150; *sub nom.* DE COSTA *v.* DE PAZ 2 Swan. 487, n., L. C.

Annotations:—**Consd.** A.-G. *v.* Herrick (1772), Amb. 712. **Apid.** Cary *v.* Abbot (1802), 7 Ves. 490. **Consd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36. **Distd.** *Re* Bedford Charity (1810), 2 Swan. 470; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Refd.** A.-G. *v.* Cock (1751), 2 Ves. Sen. 273; A.-G. *v.* Downing (1767), Wilm. 1; Hereford *v.* Adams (1802), 7 Ves. 324; A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294; Bowman *v.* Secular Soc., [1917] A. C. 406; Bourne *v.* Keane, [1919] A. C. 815.

See, further, Part IV., Sect. 2, sub-sect. 2, B., *ante*.

Validity of gifts in support of Roman Catholics, Nonconformists, Jews, etc., *see* Part I., Sect. 4, sub-sects. 6–10, *ante*.

1995. —— Charity not existing—Eo nomine—Description applying equally to two charities.]—SIMON *v.* BARBER (1829), Taml. 14; 3 Hare, 195, n.; 48 E. R. 7.

1996. —— —— Granted to poor relation, legatee under testator's will.]—SANFORD *v.* GIBBONS (1829), 3 Hare, 195, n.; 67 E. R. 353.

1997. —— —— Applied to other charity benefited under testator's will.]—THORLEY *v.* BYRNE (1830), 3 Hare, 195, n.; 67 E. R. 353.

See, generally, Part III., Sect. 4, sub-sect. 3, G., *ante*.

1998. —— —— After death of testator—Before legacy paid—Applied to other charitable uses.]—A charitable bequest to an institution which comes to an end after the death of the testator, but before the legacy is paid, does not fall into residue, but falls to be administered by the Crown, & will ordinarily be applied for charitable purposes.

Among testator's "charitable" legacies was a gift to a private orphanage. Before the assets could be distributed the orphanage had ceased to exist:—*Held:* the property in the legacy became applicable by the Crown for charitable purposes.—*Re* SLEVIN, SLEVIN *v.* HEPBURN, [1891] 2 Ch. 236; 60 L. J. Ch. 439; 64 L. T. 311; 39 W. R. 578; 7 T. L. R. 394, C. A.

Annotations:—**Consd.** *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19. **Apid.** *Re* Soley, Grover *v.* Drapers' Co. (1900), 17 T. L. R. 118; *Re* Gelkie, Robson *v.* Paterson (1911), 27 T. L. R. 484. **Consd.** *Re* Cunningham, Dulcken *v.* Cunningham, [1914] 1 Ch. 427. **Refd.** *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

1984 i. *Disposition in Crown—Gift for charities selected by trustees—Death before power exercised.*] FELAN *v.* RUSSELL (1842), 4 I. Eq. R. 701; Long. & T. 671.—IR.

See, generally, Part IV., Sect. 2, sub-sect. 2, C. (b), *ante*.

1999. —— Refusal of governors & trustees to accept trust—Applied to other charitable uses.]—DENYER *v.* DRUCE (1829), Taml. 32; 3 Hare, 194, n.; 48 E. R. 14.

2000. —— Executors renouncing probate—Failure of testator to appoint to charity—Applied to other charitable uses.]—A.-G. *v.* FLETCHER (1835), 5 L. J. Ch. 75.

Annotation :—**Refd.** Crawford *v.* Forshaw, [1891] 2 Ch. 261.

See, generally, Part. IV., Sect. 2, sub-sect. 2, D., *ante*.

Ascertainment of objects.]—*See* Part III., Sect. 4, *ante*.

Effectuation of trust—By schemes & the cy-près doctrine.]—*See* Part IV., *ante*.

SUB-SECT. 3.—OTHER CASES.

2001. Disposition in Crown—Bequest of stock to government—In exoneration of National Debt.]—NEWLAND *v.* A.-G. (1809), 3 Mer. 684; 36 E. R. 262, L. C.

Annotation :—**Refd.** Nightingale *v.* Goulbourn (1848), 2 Ph. 594.

2002. Disposition not in Crown—Bequest for specific charitable object—Fund more than sufficient for purpose—Disposition in court.]—A.-G. *v.* IRONMONGERS' CO. (1834), 2 My. & K. 576; 3 L. J. Ch. 11; 39 E. R. 1064, L. C.; *subsequent proceedings* (1840), 2 Beav. 313; (1841), Cr. & Ph. 208, L. C.; *sub nom.* IRONMONGERS' CO. *v.* A.-G. (1844), 10 Cl. & Fin. 908, H. L.

Annotations :—**Refd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236. **Mentd.** *Re* Prison Charities (1873), L. R. 16 Eq. 129; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91.

SECT. 2.—**THE VISITOR.**

SUB-SECT. 1.—NATURE AND EXTENT OF JURISDICTION.

A. In General.

2003. Visitor of college—Is visitor also of engrafted foundation—Unless special visitor appointed.]—ST. JOHN'S COLLEGE, CAMBRIDGE *v.* TODINGTON (1757), 1 Burr. 158; 1 Keny. 441; 97 E. R. 245; *sub nom.* R. *v.* ELY (BP.), 1 Wm. Bl. 71.

Annotations :—**Consd.** R. *v.* Hertford College (1878), 3 Q. B. D. 693. **Refd.** *Re* Catharine Hall, Cambridge, *Ex p.* Inge (1831), 2 Russ. & M. 590. **Mentd.** R. *v.* St. Catherine's Hall, Cambridge (1791), 4 Term Rep. 233; R. *v.* Lincoln, Remington *v.* Dalby (1844), 8 Jur. 1135; Remington *v.* Dolby (1844), 9 Q. B. 176; Worthington *v.* Jeffries (1875), L. R. 10 C. P. 379.

2004. Office of visitor has become merely nominal.]—A.-G. *v.* ST. CROSS HOSPITAL (1853), 17 Beav, 435; 1 Eq. Rep. 585; 22 L. J. Ch. 793; 22 L. T. O. S. 188; 1 W. R. 525; 51 E. R. 1103; *subsequent proceedings*, (1854), 18 Beav 475, 601; (1856), 8 De G. M. & G. 38, L. JJ.

B. Matters within Jurisdiction of Visitor—Ouster of Jurisdiction of Court.

(a) In General.

2005. Jurisdiction of court ousted—Application for mandamus to inferior officer of college—College subject to visitor—Refused.]—WALKER'S CASE (1736), Lee *temp.* Hard. 212; 95 E. R. 137.

2006. —— On appointment of local visitors—Right in visitor & heirs.]—A.-G. *v.* PRICE (1744), 3 Atk. 108; 26 E. R. 866, L. C.

Annotations :—**Consd.** A.-G. *v.* Lock (1744), 3 Atk. 164. **Refd.** A.-G. *v.* Smythies (1836), 2 My. & Cr. 135. **Mentd.** A.-G. *v.* Cross (1817), 3 Mer. 524; A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

2007. —— Either by commission within 43 Eliz. c. 4—Or ordinary jurisdiction.]—A.-G. *v.* HARROW SCHOOL (GOVERNORS), No. 1877, *ante*.

2008. —— In matters of management—Except in cases of gross abuse.]—A.-G. *v.* FOUNDLING HOSPITAL (1793), 4 Bro. C. C. 165; 2 Ves. 42; 29 E. R. 833.

Annotations :—**Mentd.** *Re* Chertsey Market, *Ex p.* Walthew (1819), 6 Price, 261; Soltau *v.* De Held (1851), 2 Sim. N. S. 133.

2009. —— —— Where Crown is visitor—Application by petition to Great Seal.]—A.-G. *v.* CLARENDON (EARL) (1810), 17 Ves. 491; 34 E. R. 190.

Annotation :—**Mentd.** A.-G. *v.* Stamford (1842), 1 Ph. 737.

2010. —— —— Special visitor not declining to act—Distribution & application of college revenues.]—A.-G. *v.* DULWICH COLLEGE (1841), 4 Beav. 255; 5 Jur. 814; 49 E. R. 337.

Annotations :—**Mentd.** A.-G. *v.* Roose (1846), 7 L. T. O. S. 175; R. *v.* Dulwich College (1851), 17 Q. B. 600.

2011. —— —— Matters within exclusive jurisdiction of visitor—Validity of ordinances made by school governors.]—A.-G. *v.* SHERBORNE GRAMMAR SCHOOL (GOVERNORS, ETC.) (1854), 18 Beav. 256; 2 Eq. Rep. 917; 24 L. J. Ch. 74; 23 L. T. O. S. 326; 18 J. P. 312; 18 Jur. 636; 2 W. R. 396; 52 E. R. 101.

Annotations :—**Consd.** *Re* Chelmsford Grammar School (1855), 1 K. & J. 543. **Expld. & Folld.** *Re* Stafford Charities (1857), 25 Beav. 28. **Mentd.** *Re* Campden Charities (1881), 18 Ch. D. 310; *Re* Weir Hospital, [1910] 2 Ch. 124.

2012. —— —— —— Application to restrain university from awarding medal—Construction of examination regulations.]—THOMSON *v.* UNIVERSITY OF LONDON (1864), 33 L. J. Ch. 625; 10 L. T. 403; 10 Jur. N. S. 669; 12 W. R. 733.

Annotations :—**Refd.** McCormac *v.* Queen's University (1867), 15 W. R. 733. **Mentd.** Rooke *v.* Dawson (1895), 43 W. R. 313.

Jurisdiction of courts over charities.]—*See, generally*, Sect. 3, *post*.

(b) Admission and Removal of Officers, Ministers, Fellows, etc.

2013. Jurisdiction of court ousted—Appeal from sentence of deprivation—Not entertained—In Chancery.]—COVENEY'S CASE (1561), 2 Dyer, 209 a; 73 E. R. 461.

Annotations :—**Consd.** R. *v.* Patrick (1667), 2 Keb. 164; Philips *v.* Bury (1694), Holt, K. B. 715. **Refd.** Parish-Clerk's Case (1610), 13 Co. Rep. 70.

2014. —— —— —— In common law courts.]—PHILIPS *v.* BURY (1694), Carth. 180, 319; Comb. 265, 314; Holt, K. B. 715; 4 Mod. Rep. 106; 1 Ld. Raym. 5; 1 Show. 360; Show. Parl. Cas. 35; Skin. 447; 2 Term Rep. 346; 90 E. R. 198, H. L.

Annotations :—**Consd.** R. *v.* Chester (1747), 1 Wm. Bl. 22; R. *v.* Ely (1757), 1 Wm. Bl. 71; St. John's College, Cambridge *v.* Todington (1757), 1 Burr. 158. **Expld.** R. *v.* Ely (1794), 5 Term Rep. 475. **Consd.** *Re* York (1841), 2 Q. B. 1. **Refd.** Birmingham School Case (1726), Gilb. Ch. 178; Walker's Case (1736), Lee *temp.* Hard. 212; Whiston *v.* Rochester (1849), 7 Hare, 532; *Ex p.* Buller (1855), 25 L. T. O. S. 102; McGeath *v.* Geraghty (1866), 15 W. R. 127; Phillpotts *v.* Boyd (1875), L. R. 6 P. C. 435; Combe *v.* De La Bere (1881), 6 P. D. 157. **Mentd.** Hartop *v.* Holt (1695), 1 Salk. 263; Bentley *v.* Ely (1729), Fitz-G. 305; Selwood *v.* Methlyn (1729). 1 Barn. K. B. 254; Kent *v.* Kent (1734), 2 Barn. K. B. 441; Broadbent *v.* Wilks (1742), Willes, 360; Green *v.*

p. *Disposition in Crown—Grant of tolls for specific object—Fund more than sufficient for purpose.*]—A.-G. *v.* GALWAY CORPN. (1829), 1 Mol. 95.—IR.

Sect. 2.—*The visitor: Sub-sect.* 1, *B.* (*b*), (*c*) & (*d*); *sub-sect.* 2, *A.* & *B.*]

Rutherforth (1750), 1 Ves. Sen. 462; Young *v.* Lynch (1753), Say. 84; A.-G. *v.* York (1831), 2 Russ. & M. 461; R. *v.* Chester (1850), 15 Q. B. 513.

2015. —— Mandamus to restore fellow refused.] —ROBERT'S CASE (1666), 2 Keb. 102; 84 E. R. 65.

Annotations :—**Consd.** Parkinson's Case (1688), Comb. 143; Philips *v.* Bury (1694), Skin. 447. **Refd.** R. *v.* Apleford (1672), 2 Keb. 861; R. *v.* Alsop (1681), 2 Show. 170.

2016. —— ——.]—R. *v.* APLEFORD (1672), 2 Keb. 861; 84 E. R. 545; *sub nom.* APPLEFORD'S CASE, 1 Mod. Rep. 82; *sub nom.* R. *v.* NEW COLLEGE, OXFORD, 2 Lev. 14.

Annotations :—**Consd.** Philips *v.* Bury (1694), Skin. 447; R. *v.* Chester (1748), 1 Wm. Bl. 22. **Refd.** R. *v.* All Souls College, Oxford (1681), T. Jo. 174; Parkinson's Case (1688), Comb. 143; R. *v.* Chester (1850), 15 Q. B. 513. **Mentd.** Snape *v.* Lincoln (1728), 1 Barn. K. B. 122.

2017. —— ——.]—PARKINSON'S CASE (1689), Carth. 92; Comb. 143; Holt, K. B. 143; 3 Mod. Rep. 265; 1 Show. 74; 90 E. R. 658.

Annotation :—**Mentd.** Reed *v.* Doltery (1733), 2 Barn. K. B. 392.

2018. —— —— Remedy by appeal to visitor.]—WIDDRINGTON'S CASE (1662), T. Raym. 31, 68; 1 Lev. 23; 1 Keb. 458; 83 E. R. 17, 38; *sub nom.* WITHERINGTON *v.* CHRIST COLLEGE, CAMBRIDGE, 1 Sid. 71.

Annotations :—**Consd.** R. *v.* Patrick (1663), 1 Keb. 551, 610; (1667), 2 Keb. 164. **Foll.** R. *v.* All Souls College, Oxford (1681), Skin. 12. **Consd.** Parkinson's Case (1688), Comb. 143. **Refd.** R. *v.* Lambert (1697), 12 Mod. Rep. 154; R. *v.* Heathcote (1711), 10 Mod. Rep. 48.

2019. —— —— ——.]—PROHURST'S CASE (1691), Carth. 168; 90 E. R. 702

2020. —— Mandamus to admit to fellowship refused—Appeal to visitor essential.]—R. *v.* ALL-SOULS COLLEGE, OXFORD (1681), T. Jo. 174; Skin. 12; 84 E. R. 1203; *sub nom.* R. *v.* ALSOP, 2 Show. 170.

Annotations :—**Foll.** Parkinson's Case (1689), Carth. 92. **Refd.** Green *v.* Rutherforth (1750), 1 Ves. Sen. 462; R. *v.* Chester (1850), 15 Q. B. 513; R. *v.* Hertford College (1878), 3 Q. B. D. 693.

2021. —— Mandamus to declare fellowship vacant & to elect refused.]—R. *v.* ST. CATHERINE'S HALL, CAMBRIDGE (1791), 4 Term Rep. 233; 100 E. R. 991.

Annotations :—**Consd.** R. *v.* Hertford College (1878), 3 Q. B. D. 693. **Refd.** A.-G. *v.* Dixie (1805), 13 Ves. 519; R. *v.* Mousley (1846), 11 Jur. 56.

2022. —— Mandamus to examine candidate for fellowship refused—Remedy by appeal to visitor.]—R. *v.* HERTFORD COLLEGE (1878), 3 Q. B. D. 693; 47 L. J. Q. B. 649; 39 L. T. 18; 42 J. P. 772; 27 W. R. 347, C. A.

2023. —— Mandamus to restore president refused.]—R. *v.* PATRICK (1667), 2 Keb. 164; 1 Sid. 346; 84 E. R. 103; *sub nom.* QUEEN'S COLLEGE CASE, *alias* PATRICK'S CASE, 1 Lev. 65; *sub nom.* PATRICK'S CASE, T. Raym. 101.

Annotations :—**Foll.** R. *v.* All Souls College, Oxford (1681), Skin. 12. **Expld.** Philips *v.* Bury (1694), Skin. 447. **Refd.** Anon. (1698), 12 Mod. Rep. 232; R. *v.* Whaley (1740), 7 Mod. Rep. 308. **Mentd.** Appleford's Case (1672), 1 Mod. Rep. 82; R. *v.* Blythe (1698), 5 Mod. Rep. 404.

2024. —— As to election of members of college—Or application of funds.]—A.-G. *v.* TALBOT (1748), 1 Ves. Sen. 78; 3 Atk. 662; 27 E. R. 903, L. C.

Annotations :—**Consd.** St. John's College, Cambridge *v.* Todington (1757), 1 Burr. 158. **Refd.** Derby *v.* Athol (1749), 1 Ves. Sen. 202; *Re* Catharine Hall, Cambridge, *Ex p.* Inge (1831), 2 Russ. & M. 590. **Mentd.** A.-G. *v.* Powis (1853), Kay, 186.

2025. —— Mandamus to restore sister of hospital refused.]—R. *v.* WHEELER (1674), 3 Keb. 360; 84 E. R. 766.

2026. —— Mandamus to restore cathedral schoolmaster refused—Removal of master by dean & chapter—Appeal to bishop as visitor essential.]—R. *v.* ROCHESTER (DEAN & CHAPTER) (1851), 17 Q. B. 1; 20 L. J. Q. B. 467; 17 L. T. O. S. 73; 15 Jur. 920; 15 J. P. Jo. 305; 117 E. R. 1181.

Annotations :—**Mentd.** R. *v.* Bradford JJ. (1866), 30 J. P. Jo. 131; R. *v.* Rand (1866), L. R. 1 Q. B. 230; Hayman *v.* Rugby School Governors (1874), L. R. 18 Eq. 28; R. *v.* Deal Corpn. & JJ., *Ex p.* Curling (1881), 45 L. T. 439; R. *v.* Sunderland JJ., [1901] 2 K. B. 357.

2027. Jurisdiction of court not ousted—Mandamus to restore member of university to academical degrees granted—Where no visitor.]—R. *v.* UNIVERSITY OF CAMBRIDGE (1723), 1 Stra. 557; Fortes. Rep. 202; 2 Ld. Raym. 1334; 8 Mod. Rep. 148; 93 E. R. 698.

Annotations :—**Consd.** R. *v.* Lincoln's Inn Benchers (1825), 7 Dow. & Ry. K. B. 351. **Refd.** Whiston *v.* Rochester (1849), 18 L. J. Ch. 473. **Mentd.** *Ex p.* Kinning (1847), 4 C. B. 507; *Re* Hammersmith Rent Charge (1849), 4 Exch. 87; Abley *v.* Dale (1850), 10 C. B. 62; Bonaker *v.* Evans (1850), 16 Q. B. 162; Cooper *v.* Wandsworth District Board of Works (1863), 14 C. B. N. S. 180; *Re* Brook & Delcomyn (1864), 16 C. B. N. S. 403; Osgood *v.* Nelson (1869), 10 B. & S. 119; R. *v.* Cheshire Lines Committee (1873), 42 L. J. M. C. 100.

2028. —— Nomination of schoolmaster—Town compelled to nominate—Visitatorial power in Crown.] —A.-G. *v.* SHREWSBURY TOWN (1726), Bunb. 215; 145 E. R. 652.

Appointment & removal of schoolmasters.]—*See, generally*, EDUCATION.

See, generally, Part VI., Sects. 1, 5, *ante*.

(*c*) *Performance of Duties by Officers.*

2029. Jurisdiction of court ousted—Improper performance of spiritual duty attached to office of corporator—Remedy by application to visitor or spiritual authority.]—A.-G. *v.* CROOK (1836), 1 Keen, 121; 5 L. J. Ch. 239; 48 E. R. 252.

Annotation :—**Mentd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

2030. —— Due performance of duties by master of hospital — Within province of visitor.]—A.-G. *v.* SMYTHIES (OR SMITHIES) (1836), 2 My. & Cr. 135; 6 L. J. Ch. 35; 40 E. R. 592, L. C.

Annotation :—**Refd.** A.-G. *v.* Magdalen College (1847), 11 Jur. 681.

(*d*) *Breach of Trust.*

2031. Jurisdiction of court not ousted—Misapplication of revenues—Control by court.]—*Ex p.* BERKHAMPSTEAD FREE SCHOOL (1813), 2 Ves. & B. 134; 35 E. R. 270, L. C.

Annotations :—**Consd.** A.-G. *v.* Browne's Hospital (1849), 17 Sim. 137. **Refd.** A.-G. *v.* Middleton (1751), 2 Ves. Sen. 327; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135; A.-G. *v.* St. Cross Hospital (1853), 17 Beav. 435. **Mentd.** *Re* Chelmsford Grammar School (1855), 3 Eq. Rep. 517.

2032. —— Court will compel due performance of trust.]—A.-G. *v.* ST. CROSS HOSPITAL (1853), 17 Beav. 435; 1 Eq. Rep. 585; 22 L. J. Ch. 793; 22 L. T. O. S. 188; 1 W. R. 525; 51 E. R. 1103.

2033. —— ——.]—A visitor visits the corpn. with respect to corporate matters, but that circumstance does not remove from the ct. the jurisdiction or obligation to exercise its functions of inquiring whether the duties, so far as there is a trust to perform, have been properly exercised. —DAUGARS *v.* RIVAZ (1860), 28 Beav. 233; 29 L. J. Ch. 685; 3 L. T. 109; 24 J. P. 373; 6 Jur. N. S. 854; 54 E. R. 355.

Annotation :—**Refd.** Hayman *v.* Rugby School (1874), L. R. 18 Eq. 28.

2034. ——.]—A.-G. *v.* DEDHAM SCHOOL (1857), 23 Beav. 350; 26 L. J. Ch. 497; 29 L. T. O. S. 45; 21 J. P. 308; 3 Jur. N. S. 325; 5 W. R. 395; 53 E. R. 138.

2035. Jurisdiction of court ousted—Breach of duty or obligation not amounting to trust—Abuses in management of school established by founder of

Magdalen College—Proper remedy through visitor.] —A.-G. *v.* MAGDALEN COLLEGE, OXFORD (1847), 10 Beav. 402; 7 Hare, 564, n.; 16 L. J. Ch. 391; 10 L. T. O. S. 85; 11 Jur. 681; 50 E. R. 637.

Annotation :—**Follď.** Whiston *v.* Rochester (1849), 7 Hare, 532.

General jurisdiction of court to interfere.]—*See* Sect. 3, *post.*

SUB-SECT. 2.—CONSTITUTION OF VISITOR.

A. Who is Visitor.

2036. The Crown—Of lay corporation—In default of heirs of founder.]—The visitation belongs to the founder & his heirs & if he die without heir the visitation goes to the King & he may grant to whom he pleases to be visitor for a time.—ANON. (1698), 12 Mod. Rep. 232; 88 E. R. 1284.

2037. —— —— ——.]—A.-G. *v.* CLARENDON (EARL) (1810), 17 Ves. 491; 34 E. R. 190.

Annotation :—**Refd.** A.-G. *v.* Stamford (1842), 1 Ph. 737.

2038. —— —— —— **& no special visitor appointed.]**—R. *v.* ST. CATHERINE'S HALL, CAMBRIDGE (1791), 4 Term Rep. 233; 100 E. R. 991.

Annotations :—**Distd.** R. *v.* Mousley (1846), 11 Jur. 56. **Consd.** R. *v.* Hertford College (1878), 3 Q. B. D. 693. **Refd.** A.-G. *v.* Dixie (1805), 13 Ves. 519.

2039. —— **Of charity founded by King.]**—EDEN *v.* FOSTER (1726), 2 P. Wms. 325; Cas. *temp.* King 36; 24 E. R. 750; *sub nom.* BIRMINGHAM SCHOOL CASE, Gilb. Ch. 178, L. C.

Annotation :—**Refd.** A.-G. *v.* Middleton (1751), 2 Ves. Sen. 327.

2040. —— ——.]—A.-G. *v.* DEDHAM SCHOOL (1857), 23 Beav. 350; 26 L. J. Ch. 497; 29 L. T. O. S. 45; 21 J. P. 308; 3 Jur. N. S. 325; 5 W. R. 395; 53 E. R. 138.

2041. —— **Foundation by lord of manor—Manor vesting in Crown on attainder of the lord.]**—A.-G. *v.* EWELME HOSPITAL (1853), 17 Beav. 366; 1 Eq. Rep. 563; 22 L. J. Ch. 846; 23 L. T. O. S. 4; 1 W. R. 523; 51 E. R. 1075.

Annotations :—**Refd.** A.-G. *v.* Boucherett (1858), 25 Beav. 116. **Mentd.** A.-G. *v.* Windsor (1860), 30 L. J. Ch. 529.

—— **Jurisdiction over charities.]**—*See, generally,* Sect. 1, *ante.*

2042. Bishop of diocese—Of spiritual corporation.]—PARKINSON'S CASE (1689), Carth. 92; Comb. 143; Holt, K. B. 143; 3 Mod. Rep. 265; 1 Show. 74; 90 E. R. 658.

Annotation :—**Mentd.** Reed *v.* Doltery (1733), 2 Barn. K. B. 392.

2043. —— ——.]—PHILIPS *v.* BURY (1694), Carth. 180, 319; Comb. 265, 314; Holt, K. B. 715; 4 Mod. Rep. 106; 1 Ld. Raym. 5; 1 Show. 360; Show. Parl. Cas. 35; Skin. 447; 2 Term Rep. 346; 90 E. R. 198, H. L.

Annotations :—**Consd.** Green *v.* Rutherforth (1750), 1 Ves. Sen. 462; A.-G. *v.* York (1831), 2 Russ. & M. 461. **Refd.** Birmingham School Case (1725), Gilb. Ch. 178; Snape *v.* Lincoln (1728), 1 Barn. K. B. 122; Bentley *v.* Ely (1729), Fitz-G. 107, 305; Walker's Case (1736), Lee *temp.* Hard 212; R. *v.* Chester (1747), 1 Wils. 206; St. John's College *v.* Todington (1757), 1 Burr. 153; R. *v.* Ely (1794), 5 Term Rep. 475; *Re* York (1841), 2 Q. B. 1; Whiston *v.* Rochester (1849), 7 Hare, 532; R. *v.* Chester (1850), 15 Q. B. 513; *Ex p.* Buller (1855), 25 L. T. O. S. 102; Phillpotts *v.* Boyd (1875), L. R. 6 P. C. 435; Combe *v.* De La Bere (1881), 6 P. D. 157. **Mentd.** Hartop *v.* Holt (1695), 1 Salk. 263; Ratcliffe's Case (1719), 1 Stra. 267; Selwood *v.* Methlyn (1729), 1 Barn. K. B. 254; Kent *v.* Kent (1734), 2 Barn. K. B. 441; Broadbent *v.* Wilks (1742), Willes, 360; Young *v.* Lynch (1753), Say. 84.

2044. —— **Not of royal foundations.]**—DUBLIN (DEAN) *v.* DUBLIN (ARCHBP.) (1725), Fortes. Rep. 329; 92 E. R. 875.

2045. —— —— **Bishop interested as a party.]**—R. *v.* CHESTER (BP.) (1728), 1 Barn. K. B. 52; 2 Stra. 797; 94 E. R. 36.

Annotations :—**Follď.** Green *v.* Rutherforth (1750), 1 Ves. Sen. 462. **Consd.** R. *v.* Ely (1788), 2 Term Rep. 290; R. *v.* St. Catherine's Hall (1791), 4 Term Rep. 233; R. *v.* Rochester (1851), 17 Q. B. 1. **Refd.** St. John's College *v.* Todington (1757), 1 Burr. 158; R. *v.* Gregory (1772), 4 Term Rep. 240, n.; Whiston *v.* Rochester (1849), 18 L. J. Ch. 473.

2046. —— **Of cathedral school—Notwithstanding dean & chapter authorised to remove master—Construction of statutes.]**—R. *v.* ROCHESTER (DEAN & CHAPTER) (1851), 17 Q. B. 1; 20 L. J. Q. B. 467; 17 L. T. O. S. 73; 15 Jur. 920; 15 J. P. Jo. 305; 117 E. R. 1181.

Annotations :—**Refd.** Hayman *v.* Rugby School (1874), L. R. 18 Eq. 28. **Mentd.** R. *v.* Rand (1866), L. R. 1 Q. B. 230; R. *v.* Deal Corpn. & JJ., *Ex p.* Curling (1881), 45 L. T. 439; R. *v.* Sunderland JJ., [1901] 2 K. B. 357.

2047. Founder & heirs—Of colleges in universities.]—PARKINSON'S CASE (1689), Carth. 92; Comb. 143; Holt, K. B. 143; 3 Mod. Rep. 265; 1 Show. 74; 90 E. R. 658.

Annotation :—**Mentd.** Reed *v.* Doltery (1733), 2 Barn. K. B. 392.

2048. —— ——.]—ANON., No. 2036, *ante.*

2049. —— **Of charity founded by private persons—By implication of law—Visitatorial rights assignable.]**—EDEN *v.* FOSTER (1726), 2 P. Wms. 325; Cas. *temp.* King, 36; 24 E. R. 750; *sub nom.* BIRMINGHAM SCHOOL CASE, Gilb. Ch. 178, L. C.

Annotation :—**Refd.** A.-G. *v.* Middleton (1751), 2 Ves. Sen. 327.

2050. Lord Chancellor—Visitor a lunatic & no governors—Order vacating irregular appointments of governors & schoolmaster made by Lord Chancellor as visitor.]—A.-G. *v.* DIXIE, *Ex p.* BOSWORTH SCHOOL (1805), 13 Ves. 519; 33 E. R. 388, L. C.

Annotations :—**Refd.** A.-G. *v.* Clarendon (1810), 17 Ves. 491; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135. **Mentd.** A.-G. *v.* Hartley (1820), 2 Jac. & W. 353; A.-G. *v.* Newbury Corpn. (1834), 3 My. & K. 647.

2051. "Governor"—Visitatorial power not implied by word.]—EDEN *v.* FOSTER (1726), 2 P. Wms. 325; Cas. *temp.* King, 36; 24 E. R. 750; *sub nom.* BIRMINGHAM SCHOOL CASE, Gilb. Ch. 178, L. C.

Annotation :—**Consd.** A.-G. *v.* Middleton (1751), 2 Ves. Sen. 327.

2052. —— **Not excluded by vesting of legal estate in—Unless receipt of revenue entailed.]**—A.-G. *v.* MIDDLETON (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.

Annotations :—**Refd.** A.-G. *v.* Smythies (1836), 2 My. & Cr. 135. **Mentd** A.-G. *v.* Foundling Hospital (1793), 4 Bro. C. C. 165.

B. Appointment and Removal of Visitor.

2053. Court has no jurisdiction—To elect or remove governors specially appointed visitors.]—CHELMSFORD (POOR) *v.* MILDMAY (1649), Duke, 83.

Jurisdiction of court over charities generally, *see* Sect. 3, *post.*

Control of court over visitors.]—*See* Sect. 3, sub-sect. 3, *post.*

2054. Mode of appointment—Technical words not necessary—If intention of founder manifest.]—A.-G. *v.* TALBOT (1748), 1 Ves. Sen. 78; 3 Atk. 662; 27 E. R. 903, L. C.

Annotations :—**Consd.** St. John's College, Cambridge *v.* Todington (1757), 1 Burr. 158; *Re* Catharine Hall, *Ex p.* Inge (1831), 2 Russ. & M. 590. **Mentd.** Derby *v.* Athol (1749), 1 Ves. Sen. 202; A.-G. *v.* Powis (1853), Kay, 186.

2055. —— —— —— **Visitatorial power not extended.]**—A.-G. *v.* MIDDLETON (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.

Annotations :—**Refd.** A.-G. *v.* Foundling Hospital (1793), 4 Bro. C. C. 165. **Mentd.** A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

2056. —— —— ——.]—A.-G. *v.* YORK (ARCHBP.) (1831), 2 Russ. & M. 461; 39 E. R. 469, L. C.

2057. —— **Special powers of a visitatorial nature—Insufficient to create general visitor—Powers to interpret statutes to appoint, punish &**

Sect. 2.—The visitor: Sub-sect. 2, B.: sub-sect. 3, A., B. & C. Sect. 3: Sub-sects. 1 & 2, A. & B.]

remove master not sufficient.]—KIRKBY RAVENSWORTH HOSPITAL CASE (1807), 8 East, 221; 103 E. R. 326; *subsequent proceedings* (1808), 15 Ves. 305, L. C.

2058. —— —— —— Power to revise laws of foundation not sufficient.]—A.-G. *v.* BROWNE'S HOSPITAL (1849), 17 Sim. 137; 19 L. J. Ch. 73; 14 L. T. O. S. 266; 60 E. R. 1080.

SUB-SECT. 3.—POWERS AND DUTIES OF VISITOR.

A. Power to settle Questions.

2059. Powers uncontrolled in practice—Of removal & new appointment—Variation & alteration.]—A.-G. *v.* YORK (ARCHBP.) (1831), 2 Russ. & M. 461; 39 E. R. 469, L. C.

2060. To examine & pass accounts.]—GUNSTON *v.* DARE (1738), West *temp.* Hard. 573; 25 E. R. 1091, L. C.

2061. To call master of hospital into residence—& hear & judge his excuses for non-residence.]—A.-G. *v.* SMYTHIES (OR SMITHIES) (1836), 2 My. & Cr. 135; 6 L. J. Ch. 35; 40 E. R. 592, L. C.

Annotations :—**Refd.** A.-G. *v.* Magdalen College (1847), 11 Jur. 681. **Mentd.** A.-G. *v.* Limerick (1870), 18 W. R. 1192.

2062. To decide whether election of fellow to college valid—Admission of new fellow.]—Petition to the Lord Chancellor as visitor of Trinity-hall, Cambridge, there being no heir of the founder, to declare the election of a Fellow void, & to order the petitioner to be admitted; the Ct. of King's Bench having in a similar case declined jurisdiction, the Lord Chancellor heard the petition; & upon the construction of the statutes dismissed it.—*Ex p.* WRANGHAM (1795), 2 Ves. 609; 30 E. R. 803, L. C.

Annotations :—**Consd.** R. *v.* Hertford College (1878), 3 Q. B. D. 693. **Refd.** *Re* University College, Oxford (1848), 2 Ph. 521. **Mentd.** A.-G. *v.* Powis (1853), Kay, 186.

——.]—*See, generally,* Sect. 2, sub-sect. 1, B. (b), *ante.*

2063. To exempt master of hospital from residing in unsuitable house—Master undertaking to give up residence for his curate—& to reside within mile of hospital—Exempted by Lord Chancellor.]—*Re* ST. MARY MAGDALEN HOSPITAL, COLCHESTER (1843), 12 L. J. Ch. 375; 1 L. T. O. S. 74, 142; 7 Jur. 456, L. C.

2064. To appropriate part of revenues—To augment stipend of professorship—Appropriation sanctioned by Lord Chancellor—Representing Queen as visitor of college.]—*Re* CHRIST CHURCH (1866), 1 Ch. App. 526; 14 L. T. 719; 12 Jur. N. S. 537, L. C.

To settle matters of internal arrangement—Jurisdiction of visitor exclusive.]—*See* Sect. 2, sub-sect. 1, B. (a), *ante.*

Control of court over visitors.]—*See* Sect. 3, sub-sect. 4, *post.*

B. Time of Visitation.

2065. Time of visitations fixed—May visit at other times upon private appeal—Unless direct negative words in statute.]—Where a general visitor is appointed, & his time for visiting is prescribed to particular stated times, the ct. will always construe that to be understood of his visiting *ex officio*, & not to hinder his coming in at other times upon a private appeal, unless there are direct negative words to that effect.—SNAPE *v.* LINCOLN (BP.) (1728), 1 Barn. K. B. 93, 122; 94 E. R. 64, 84.

C. Restrictions on Power of Visitor.

2066. No jurisdiction over stranger to foundation—Nominee to scholarship before admission.]—R. *v.* ST. JOHN'S COLLEGE, OXFORD (1694), Comb. 238; Holt, K. B. 437; 4 Mod. Rep. 368; 87 E. R. 448.

Annotation :—**Consd.** R. *v.* Hertford College (1878), 3 Q. B. D. 693.

2067. —— Commoner of a college.]—*Ex p.* DAVISON (1772), cited in 1 Cowp. 319; 98 E. R. 1107, L. C.

Annotation :—**Consd.** R. *v.* Grundon (1775), 1 Cowp. 315.

2068. Cannot compel specific performance of agreement—Between corporation & third parties.]—R. *v.* WINDHAM (1776), 1 Cowp. 377; 98 E. R. 1139.

Annotations :—**Refd.** R. *v.* Beeston (1789), 3 Term Rep. 592; Mill *v.* Hawker (1874), L. R. 9 Exch. 309. **Mentd.** *Re* Queen's College, Cambridge (1828), 5 Russ. 64.

2069. Cannot be judge in his own cause—Unless power expressly given—Right of appointment of master of college in general visitor—Visitor cannot fnquire into propriety of election.]—R. *v.* ELY (BP.) (1788), 2 Term Rep. 290; 100 E. R. 157.

Annotations :—**Consd.** R. *v.* Rochester (1851), 17 Q. B. 1. **Refd.** *Ex p.* Buller (1855), 3 W. R. 447.

2070. Cannot alter general constitution of trust—Although given summary power to vary provisions relative to trust.]—*Ex p.* BOLTON (1789), 2 Bro. C. C. 662; 29 E. R. 367, L. C.

SECT. 3.—THE COURTS.

SUB-SECT. 1.—IN GENERAL.

2071. Administration not disturbed—Unless clear & serious grievance to be corrected.]—*Re* ETWALL HOSPITAL & REPTON FREE SCHOOL (1852), 18 L. T. O. S. 251.

Observance of founder's intention—Effectuating trusts by schemes cy-près.]—*See* Part IV., *ante.*

2072. Court will not interfere—In matters not within jurisdiction—Particular powers given by charter—School.]—A.-G. *v.* BEDFORD CORPN. (1754), 2 Ves. Sen. 505; 28 E. R. 323, L. C.

Annotation :—**Refd.** *Re* Bedford Charity (1833), 5 Sim. 578.

2073. —— —— Disposal of surplus—Mandamus to compel increased payment to beneficiaries refused.]—*Ex p.* RUGBY CHARITY TRUSTEES (1827), 9 Dow. & Ry. K. B. 214.

Annotation :—**Consd.** R. *v.* Abrahams (1843), 4 Q. B. 157.

2074. —— —— —— Bequest exclusively for specific charitable purpose—Application to legislature necessary.]—A.-G. *v.* IRONMONGERS' CO. (1834), 2 My. & K. 576; 3 L. J. Ch. 11; 39 E. R. 1064, L. C.; *subsequent proceedings* (1840), 2 Beav. 313; (1841), Cr. & Ph. 208, L. C.; *sub nom.* IRONMONGERS' CO. *v.* A.-G. (1844), 10 Cl. & Fin. 908, H. L.

Annotations :—**Mentd.** Lyons Corpn. *v.* East India Co. (1836), 1 Moo. P. C. C. 175; *Re* Prison Charities (1873), L. R. 16 Eq. 129; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91; *Re* Slevin, Slevin *v.* Hepburn, [1891] 2 Ch. 236.

Application of surplus income generally, *see* Part III., Sect. 6, sub-sect. 5, *ante.*

PART IX. SECT. 2, SUB-SECT. 3.—A.

q. *To appoint person to represent heir of founder—Where heir cannot be found.*]—A.-G. *v.* TOTTENHAM (1866), 18 Ir. Jur. 107.—IR.

PART IX. SECT. 3, SUB-SECT. 1.

r. *Court will not interfere—To carry out special directions as to audit.*]—DUNDAS (1869), 7 Macph. (Ct. of Sess.) 670; 41 Sc. Jur. 343.—SCOT.

s. —— *To permit trustees to divert surplus funds—For similar objects.*]—A charitable society, in possession of funds in excess of the requirements of the objects, resolved to apply

Application of surplus income *cy-près*, *see* Part IV., Sect. 2, sub-sect. 2, E., *ante*.

2075. —— —— Proper performance of ecclesiastical duties—Enjoined under charitable foundation—Belongs to cognisance of ecclesiastical authorities.]—A.-G. *v.* SMITHIES (OR SMYTHIES) (1836), 1 Keen, 289; 48 E. R. 317; *affd.* 2 My. & Cr. 135, L. C.

Annotations :—**Mentd.** A.-G. *v.* Magdalen College (1847), 11 Jur. 681; A.-G. *v.* Limerick (1870), 18 W. R. 1192.

See, generally, ECCLESIASTICAL LAW.

2076. —— If interference not beneficial to charity—Injury occasioned to objects of charity.]—In charity cases, the ct. will withhold its interference in the execution of the trusts thereof, where such interference would be otherwise than beneficial to the charities; & such a course is of great importance in deterring persons from bringing cases forward, which cannot by any possibility have in view the benefit of the charities. Although the ct. holds a strict hand over charity trusts, to prevent their being the subjects of abuse, it is still its first duty to take care that in carrying out that principle, injury is not occasioned to the objects of the charity.—A.-G. *v.* BOSANQUET (1841), 11 L. J. Ch. 43, L. C.

2077. —— —— Application of funds to erection of monument of donor—Mandamus to churchwardens to assemble parishioners for purpose of—Not granted.]—R. *v.* ST. SAVIOUR'S, SOUTHWARK (CHURCHWARDENS) (1834), 1 Ad. & El. 380; 3 Nev. & M. K. B. 878; 2 Nev. & M. M. C. 414; 110 E. R. 1252.

2078. —— If injustice caused thereby—Mandamus to turn out fellow—Fellow not party to writ having no opportunity of being heard.]—R. *v.* GOWER (1694), 3 Salk. 230; 91 E. R. 794.

Whether mandamus lies to restore fellow.]—*See* Sect. 2, sub-sect. 1, B. (b), *ante*.

Jurisdiction of court over visitors by mandamus.]—*See* Sub-sect. 4 B., *post*.

2079. Payment out of fund in court—Court will not order payment to one of several trustees—Though so requested by all.]—A.-G. *v.* BARNARD (1843), 1 L. T. O. S. 311.

SUB-SECT. 2.—AS REGARDS TRUSTS.

A. Enforcement of Trusts.

2080. Trust to provide priest for chapel—Enforced by Court of Chancery.]—WAKERYNG *v.* BAYLE (*circa* 1422–70), 1 Calendar of Proceedings in Chancery lvii.

2081. —— ——.]—LYON *v.* HEWE (*circa* 1465–83), 2 Calendar of Proceedings in Chancery xliv.

2082. Gift to poor of parish—Of small amount—Enforced.]—PARROT *v.* PAWLET (1579), Cary, 103; 21 E. R. 55.

Annotation :—**Mentd.** Hoskins *v.* Holland (1875), 44 L. J. Ch. 273.

2083. Gift for preaching minister—Executrix refusing to perform trust—Ordered by court to perform trust.]—PENSTERD *v.* PAVIER (1639), Toth. 34; Duke, 82; 21 E. R. 115.

2084. Trust to present senior fellow being divine to rectory—Jurisdiction not in visitor—Enforced by court.]—GREEN *v.* RUTHERFORTH (1750), 1 Ves. Sen. 462; 27 E. R. 1144, L. C.

Annotations :—**Refd.** St. John's College, Cambridge *v.* Todington (1757), 1 Burr. 158; R. *v.* Windham (1776), 1 Cowp. 377; A.-G. *v.* St. Cross Hospital (1853), 17 Beav. 435. **Mentd.** Whiston *v.* Rochester (1849), 7 Hare, 532.

2085. Court will not interfere to regulate voluntary charity supported by contributions—Where some trustees complain of acts of majority—But conduct of acting trustees is free from imputation—Terms of trust deed not varied.]—*Re* MACCLESFIELD SCHOOL, *Ex p.* PEARSON (1818), 6 Price, 214; 146 E. R. 789.

See, further, Part IV., Sect. 1, sub-sect. 1, C. (a), *ante*.

2086. Trust too indefinite—"Private charity"—Not executed by court.]—OMMANNEY *v.* BUTCHER (1823), Turn. & R. 260; 37 E. R. 1098.

Annotations :—**Refd.** Briggs *v.* Penny (1851), 21 L. J. Ch. 265. **Mentd.** Williams *v.* Kershaw (1835), 5 Cl. & Fin. 111; Douglas *v.* Congreve (1836), 1 Keen, 410; Dowson *v.* Gaskoin (1837), 2 Keen, 14; Lowe *v.* Thomas (1854), 23 L. J. Ch. 453; Larner *v.* Larner (1857), 26 L. J. Ch. 668; Patrick *v.* Yeatherd (1864), 3 New Rep. 367.

2087. Mandamus to trustees to deliver key to churchwardens—Trust directing funds to be kept in box & churchwardens to have one of three keys—Scheme decreed regulating trust but omitting any mention of box or keys thereof.]—R. *v.* ABRAHAMS (1843), 4 Q. B. 157; 114 E. R. 857; *sub nom.* R. *v.* OTTERY ST. MARY, DEVON, 3 Gal. & Dav. 382; 12 L. J. Q. B. 118; 7 J. P. 68; 7 Jur. 129; *subsequent proceedings*, 7 J. P. 433; 8 J. P. Jo. 789.

Annotation :—**Distd.** R. *v.* Orton Vicarage Trustees (1849), 18 L. J. Q. B. 321.

2088. Jurisdiction over ecclesiastical property—As over lay property.]—A.-G. *v.* ST. JOHN'S HOSPITAL, BEDFORD (1865), 2 De G. J. & Sm. 621; 34 L. J. Ch. 441; 12 L. T. 714; 11 Jur. N. S. 629; 13 W. R. 955; 46 E. R. 516, L. JJ.

Annotation :—**Refd.** *Re* Thompson's Settlmt. Trusts, Thompson *v.* Alexander, [1905] 1 Ch. 229.

2089. Mandamus to compel governors to nominate to council—Granted—No discretion given to governors.]—Clause 19 of the scheme made under Endowed Schools Act, 1869 (c. 56), for the management of Christ's Hospital provides that a certain number of the Council of Almoners shall be appointed by the governors "on the recommendation of," among other bodies, the Lord Mayor & Aldermen of the City of London. The governors who contended that they had a discretion as to appointing a person so recommended, refused to appoint a person recommended by the Lord Mayor & Aldermen:—*Held*: (1) the word "recommendation" in clause 19 must be construed as a nomination upon which the governors were bound to act; (2) in the circumstances, *mandamus* was the proper remedy to compel the governors to perform the duty of appointing the person recommended.—R. *v.* CHRIST'S HOSPITAL (GOVERNORS), *Ex p.* DUNN, [1917] 1 K. B. 19; 85 L. J. K. B. 1494; 115 L. T. 545; 80 J. P. 423; 32 T. L. R. 594; 14 L. G. R. 975.

Jurisdiction of court over trustees with discretionary powers.]—*See* Part VII., Sect. 5, sub-sect. 2, D., *ante*.

B. Redressing of Breach of Trust.

2090. Locality of jurisdiction—Depends on situation of lands—Not on situation of objects of charity.]—RUGBY SCHOOL CASE (1626), Duke, 80.

2091. Court has jurisdiction—Misapplication of the excess funds to similar & cognate objects. The original objects had not ceased to exist. On an application for authority to act accordingly:—*Held*: the ct. had no jurisdiction to authorise such diversion of funds.—*Ex p.* WITWATERSRAND DEEP, ETC., MEDICAL SOCIETY, [1918] W. L. D. 13.—S. AF.

t. —— *To adjudicate between conflicting claims of different charities depending on construction of same deed.*]—*Re* HOSPITAL FOR INCURABLES (1884), 13 L. R. Ir. 361.—IR.

a. *Court cannot distribute fund given for charitable purposes generally—Without letters missive from Crown.*]—KANE *v.* COSGRAVE (1873), I. R. 10 Eq. 211.—IR.

Sect. 3.—*The courts: Sub-sect.* 2, *B. & C.; sub-sects.* 3 & 4, *A., B. & C.; sub-sect.* 5. *Sect.* 4: *Sub-sects.* 1 & 2, *A., B. & C.* (*a*).]

revenues.]—A.-G. *v.* BEDFORD CORPN. (1754), 2 Ves. Sen. 505; 28 E. R. 323, L. C.

Annotation:—**Mentd.** *Re* Bedford Charity (1833), 5 Sim. 578.

2092. —— ——.]—GORT (VISCOUNT) *v.* A.-G. (1817), 6 Dow. 136; 3 E. R. 1424, H. L.

2093. —— **When objects of founder prevented or neglected.**]—A.-G. *v.* SHERBORNE GRAMMAR SCHOOL (GOVERNORS, ETC.) (1854), 18 Beav. 256; 2 Eq. Rep. 917; 24 L. J. Ch. 74; 23 L. T. O. S. 326; 18 J. P. 312; 18 Jur. 636; 2 W. R. 396; 52 E. R. 101.

Annotations:—**Folld.** *Re* Stafford Charities (1857), 25 Beav. 28. **Refd.** *Re* Campden Charities (1881), 18 Ch. D. 310; *Re* Weir Hospital, [1910] 2 Ch. 124.

—— **Breach of trust by visitor acting as trustee.**]—*See* Part VII., Sect. 6, sub-sect. 1, C., *ante.*

Where visitor appointed.]—*See* Sect. 2, sub-sect. 1, B. (c), *ante.*

Liability of trustees for breach of trust.]—*See* Part VII., Sect. 6, sub-sect. 1, *ante.*

—— **Liability to account.**] — *See* Part VII., Sect. 6, sub-sect. 3, *ante.*

C. Appointment of Trustees.

See Part VII., Sect. 2, sub-sect. 5; Sect. 3, sub-sect. 1, *ante.*

SUB-SECT. 3.—CHARITIES OF ROYAL FOUNDATION.

2094. Court has no general jurisdiction—Perpetual charity founded by Crown—Established by higher authority than court.]—A.-G. *v.* SMART (1748), 1 Ves. Sen. 72; 27 E. R. 898, L. C.

Annotations:—**Consd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 596. **Refd.** A.-G. *v.* Foundling Hospital Governors (1793), 2 Ves. 42.

2095. —— **Free school founded by charter—With proper powers.**]—A.-G. *v.* MIDDLETON (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.

Annotations:—**Refd.** A.-G. *v.* Foundling Hospital (1793), 4 Bro. C. C. 165; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

2096. Court has jurisdiction to interfere—Misapplication of funds of parish charity by trustees—Petition by inhabitant householders under Charities Procedure Act, 1812 (c. 101)—Application not extending to regulation, alteration or execution of charity.]—*Re* CHERTSEY MARKET, *Ex p.* WALTHEW (1819), 6 Price, 261; Dan. 174; 146 E. R. 803.

2097. —— **Due application of funds—Charity for public & general purposes—For benefit of town.**]—A.-G. *v.* SHREWSBURY CORPN. (1843), 6 Beav. 220; 12 L. J. Ch. 465; 1 L. T. O. S. 106; 7 J. P. 703; 7 Jur. 757; 49 E. R. 810.

What are public purposes.]—*See* Part I., Sect. 5, *ante.*

SUB-SECT. 4.—CONTROL OF COURT OVER VISITORS.

A. Prohibition.

2098. When granted—Visitor's acts not within jurisdiction—Not for mere irregularity in proceedings—Or informality of acts.]—Visitors of colleges are not tied up to any particular forms, nor to be prohibited for irregularity in their proceedings, or informality in their acts, but only for want of jurisdiction.—ELY (BP.) *v.* BENTLEY (1732), 2 Bro. Parl. Cas. 220; 1 E. R. 898; *sub nom.* BENTLY *v.* ELY (BP.), 2 Barn. K. B. 9; Fortes. Rep. 298; 2 Stra. 912, H. L.

Annotation:—**Mentd.** R. *v.* **Ely (1757),** 1 Wm. Bl. 71.

2099. —— —— **Bishop claiming to present as visitor to office of canon residentiary—Right of election in Dean & Chapter.**]—CHICHESTER (BP.) *v.* HARWARD & WEBBER (1787), 1 Term Rep. 650; 99 E. R. 1300.

2100. When refused—To appeal to Archbishop as visitor—On suggestion that Bishop visitor—Visitatorial powers always exercised by Archbishop.]—MARTYN *v.* CANTERBURY (ARCHBP.) (1738), Andr. 258; 95 E. R. 388.

B. Mandamus.

2101. Mandamus will lie—To determine disputed election—Election to be by master & majority of fellows—Different candidates elected by master & fellows.]—R. *v.* BLYTHE (1698), 5 Mod. Rep. 404; 87 E. R. 732.

Annotation:—**Refd.** *Re* Queen's College, Cambridge (1828), 5 Russ. 64.

2102. —— **To receive & hear appeal—Upon expulsion of fellow—Mandamus to Vice-Chancellor of Oxford.**]—USHER'S CASE (1699), 5 Mod. Rep. 452; 87 E. R. 759.

2103. —— —— **Visitor bound to interpret statutes—Compelled by court to hear parties.**]—R. *v.* LINCOLN (BP.) (1785), 2 Term Rep. 338, n.; 100 E. R. 182.

Annotations:—**Refd.** A.-G. *v.* Catherine Hall, Cambridge (1820), Jac. 381; Ferguson *v.* Kinnoull (1842), 9 Cl. & Fin. 251.

2104. —— —— **Visitor of college in university.**]—R. *v.* ELY (BP.) (1794), 5 Term Rep. 475; 101 E. R. 267.

Annotations:—**Consd.** *Ex p.* Buller (1855), 25 L. T. O. S. 102. **Distd.** R. *v.* Canterbury (1859), 1 E. & E. 545. **Refd.** Ferguson *v.* Kinnoull (1842), 4 State Tr. N. S. 786. **Mentd.** *Ex p.* Buller (1857), 21 J. P. Jo. 84.

2105. —— **To proceed & determine appeal—Visitor declining to act after hearing evidence—Appeal properly brought.**]—R. *v.* WORCESTER (BP.) (1815), 4 M. & S. 415; 105 E. R. 887.

2106. —— **To swear in chaplain—Mandamus to Bishop—Bishop disqualified from acting as visitor.**]—R. *v.* CHESTER (BP.) (1728), 1 Barn. K. B. 52; 2 Stra. 797; 94 E. R. 36.

Annotations:—**Consd.** Green *v.* Rutherforth (1750), 1 Ves. Sen. 462; R. *v.* Gregory (1772), 4 Term Rep. 240, n.; R. *v.* St. Catherine's Hall, Cambridge (1791), 4 Term Rep. 233. **Refd.** St. John's College, Cambridge *v.* Toddington & Ely (1757), 1 Keny. 441; Whiston *v.* Rochester (1849), 18 L. J. Ch. 473. **Mentd.** R. *v.* Ely (1788), 2 Term Rep. 290; R. *v.* Rochester (1851), 17 Q. B. 1.

2107. Mandamus will not lie—To restore fellow—Doubt in whom visitatorial power vested.]—BRIDEOAK'S CASE (1714), cited in 1 Wm. Bl. 58; 96 E. R. 31.

Annotations:—**Consd.** R. *v.* Ely (1750), 1 Wm. Bl. 52. **Refd.** R. *v.* Chester (1747), 1 Wm. Bl. 22.

2108. —— —— ——.]—R. *v.* ELY (BP.) (1750), 1 Wils. 266; 1 Wm. Bl. 52; 95 E. R. 610.

2109. —— **To restore canon—Expelled by visitor.**]—R. *v.* CHESTER (BP.) (1747), 1 Wm. Bl. 22; 1 Wils. 206; 96 E. R. 12.

Annotations:—**Distd.** R. *v.* York (1842), 2 Gal. & Dav. 202. **Refd.** Whiston *v.* Rochester (1849), 7 Hare, 532; McGeath *v.* Geraghty (1866), 15 W. R. 127.

2110. —— **To bishop as general visitor—To execute sentence by him as special visitor.**]—R. *v.* ELY (BP.) (1738), Andr. 176; 95 E. R. 351.

—— **Where jurisdiction of court ousted—Matters within visitor's jurisdiction.**]—*See* Sect. 2, sub-sect. 1, B. (b), *ante.*

C. Other Cases.

2111. Judgment delivered by visitor after hearing appeal—Court cannot examine legality of.]—R. *v.* ELY (BP.) (1794), 5 Term Rep. 475; 101 E. R. 267.

Annotations:—**Consd.** *Ex p.* Buller (1855), 25 L. T. O. S. 102. **Refd.** Ferguson *v.* Kinnoull (1842), 9 Cl. & Fin. 251; R. *v.* Canterbury (1859), 1 E. & E. 545.

Procedure of visitors.]—*See* Part X., *post.*

SUB-SECT. 5.—COUNTY COURTS.

2112. 1853 Act, s. 41—County court has jurisdiction in action for money received—Recovery of sum of money in collector's hands.]—CHRISTIE *v.* SANDBERG, [1880] W. N. 159.

2113. —— Recovery of arrears of rentcharge not within.]—Pltfs., trustees of a charity, sued in the county ct. to recover arrears of a rentcharge of £10 a year issuing out of defts.' land. The summons referred to 1853 Act, & leave to proceed had been obtained under that Act:—*Held:* the action was not "proceedings under [1853] Act." within s. 41 & the jurisdiction of the county ct. was not excluded by that sect.—BASSANO *v.* BRADLEY, [1896] 1 Q. B. 645; 65 L. J. Q. B. 479; 74 L. T. 553; 44 W. R. 576; 40 Sol. Jo. 481, D. C.

SECT. 4.—THE CHARITY COMMISSIONERS.

SUB-SECT. 1.—IN GENERAL.

2114. Jurisdiction once invoked cannot be terminated—By withdrawal of application.]—When once the trustees of a charity make formal application to the Comrs. for a scheme, the jurisdiction of the Comrs. attaches absolutely to the charity, & cannot be put an end to by the withdrawal of the application before the scheme is completed.—*Re* POOR'S LANDS CHARITY, BETHNAL GREEN, [1891] 3 Ch. 400; 60 L. J. Ch. 742; 65 L. T. 666; 40 W. R. 151; 7 T. L. R. 705.

Schemes, generally, *see* Part IV., Sect. 1, *ante*.

2115. Enforcement of orders of commissioners—Party not complying with order guilty of contempt.]—CHARITABLE USES COMRS. *v.* HICKS (1731), Dick. 61; 21 E. R. 190.

SUB-SECT. 2.—WHAT CHARITIES WITHIN OR EXEMPT FROM JURISDICTION.

A. In General.

2116. Within jurisdiction—Charities founded & endowed in England or Wales—Revenues applied abroad.]—The authority of the Charity Comrs. extends to charities founded & endowed in England or Wales, although the revenues are applied abroad. (2) *Semble:* their authority also extends to charities which are founded & endowed abroad, if their revenues are applied in England or Wales.—*Re* DUNCAN, *Re* TAYLOR'S TRUSTS (1867), 2 Ch. App. 356; 36 L. J. Ch. 513; 31 J. P. 467; 15 W. R. 526, L. JJ.

2117. —— Charities founded or endowed abroad—Revenues applied in England or Wales.]—*Re* DUNCAN, *Re* TAYLOR'S TRUSTS, No. 2116, *ante*.

Application by exempted charity to have benefit of Charitable Trusts Acts.]—*See* No. 2152, *post*.

B. Unendowed Charities—Charities "wholly maintained by Voluntary Contributions."

See 1853 Act, s. 62.

2118. Exemption—Legacy given generally to unendowed charitable institution—Supported in part by voluntary contributions.]—*Re* WILSON'S WILL (1854), 19 Beav. 594; 52 E. R. 481.

2119. —— Land purchased by voluntary association—Out of money arising from members' subscriptions.]—ROYAL SOCIETY OF LONDON & THOMPSON (1881), 17 Ch. D. 407; 50 L. J. Ch. 344; 44 L. T. 274; 29 W. R. 838.

Annotations:—**Consd.** *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618. **Reid.** *Re* Poor Widows Charity & Skinner (1892), 62 L. J. Ch. 148; *Re* Clergy Orphan Corpn. (1894), 64 L. J. Ch. 66; A.-G. *v.* Foundling Hospital (1914), 110 L. T. 894.

2120. —— Land purchased by City ward—Out of funds derived wholly from voluntary contributions—Used for purposes of ward charity school.]—FINNIS & YOUNG TO FORBES & POCHIN (No. 2) (1883), 24 Ch. D. 591; 53 L. J. Ch. 141; 48 L. T. 814.

Annotation:—**Consd.** *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618.

2121. —— Fund for relief of miners suffering from particular accident.]—PEASE *v.* PATTINSON (1886), 32 Ch. D. 154; 55 L. J. Ch. 617; 54 L. T. 209; 34 W. R. 361; 2 T. L. R. 306.

Annotations:—**Mentd.** *Re* Amos, Carrier *v.* Price (1891), 39 W. R. 550; Cunnack *v.* Edwards, [1896] 2 Ch. 679.

2122. —— Society supported by voluntary contributions—Payments by or on behalf of scholars—Grants from Board of Education & school board.]—*Re* SOCIETY FOR TRAINING TEACHERS OF THE DEAF & WHITTLE'S CONTRACT, No. 1553, *ante*.

2123. Not exempt—Charity supported by voluntary contributions—Government grants—Contributions by school boards, boards of guardians & other public authorities.]—*Re* STOCKPORT RAGGED, INDUSTRIAL & REFORMATORY SCHOOLS, No. 1664, *ante*.

2124. —— Charity with freehold premises used for its purposes—Although freehold producing no income.]—A.-G. *v.* MATHIESON, *Re* WILKINSON & FELL'S CONTRACT, No. 1545, *ante*.

2125. —— Charity supported by donations, legacies & subscriptions.]—*Re* ORPHAN WORKING SCHOOL & ALEXANDRA ORPHANAGE'S CONTRACT, No. 1555, *ante*.

2126. —— Charity wholly maintained by proceeds of sale of lands—& income of property originally contributed for foundation.]—*Re* RICHARD MURRAY HOSPITAL, No. 1939, *ante*.

C. Endowed Charities.

(*a*) *What is an "Endowment."*

See 1853 Act, ss. 62, 66.

2127. Not property held in trust for general purposes of charity.]—*Held:* upon the construction of 1853 Act, ss. 62, 66 taken together, an "endowment" is property, whether real or personal, devoted to some specific or particular purpose or trust, & does not embrace property devoted to the general purposes of a charity.—CHARITY FOR THE RELIEF OF POOR WIDOWS, ETC., OF CLERGYMEN (GOVERNORS) *v.* SUTTON (1860), 27 Beav. 651; 54 E. R. 258; *sub nom.* SONS OF THE CLERGY CORPN. *v.* SUTTON, 29 L. J. Ch. 393; 1 L. T. 386; *sub nom.* SONS OF THE CLERGY CORPN. *v.* STOCK EXCHANGE (TRUSTEES), 24 J. P. 180; 6 Jur. N. S. 84; 8 W. R. 167.

Annotations:—**Consd.** Royal Soc. of London & Thompson (1881), 17 Ch. D. 407; *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618; Sons of the Clergy Corpn. & Skinner, [1893] 1 Ch. 178; *Re* Clergy Orphan Corpn., [1894] 3 Ch. 145. "The test whether the property of a charity is an endowment within the Act is not whether it is applicable to the general purposes of the charity or only to some specific purpose in connection with it although this circumstance may be important in considering whether the endowment is exempt from the provisions of the Act in the case of a charity falling within the description in s. 66" (DAVEY, L.J.): *Re* Church Army, *Re* Edgware Road Premises (1905), 93 L. T. 230.

2128. —— No particular trust distinct from general objects.]—CHARITY FOR THE RELIEF OF THE POOR WIDOWS & CHILDREN OF CLERGYMEN

COMRS. (1849), 13 L. T. O. S. 249; 2 H. L. Cas. 440.—IR.

Sect. 4.—The charity commissioners: Sub-sect. 2, C. (a) & (b), i., ii. & iii., D., E. & F.; sub-sect. 3, A., B. & C. (a), (b) & (c); sub-sect. 4, A. (a) & (b).]

(COMMONLY CALLED SONS OF THE CLERGY CORPN.) (GOVERNORS) & SKINNER, No. 1557, *ante*.

2129. —— Voluntary subscriptions not treated as capital.]—*Re* CHURCH ARMY, No. 1552, *ante*.

2130. ——.]—*Re* SOCIETY FOR TRAINING TEACHERS OF THE DEAF & WHITTLE'S CONTRACT, No. 1553, *ante*.

2131. Fund devoted to charity with power of revocation—"Endowment" till power exercised.]—*Re* PEEL'S (SIR ROBERT) SCHOOL, TAMWORTH, *Ex p.* CHARITY COMRS. (1868), 3 Ch. App. 543; 32 J. P. 707; *sub nom. Re* CHARITABLE TRUSTS ACT, 1853, & CHARITABLE TRUSTS AMENDMENT ACT, 1855, *Ex p.* CHARITY COMRS., TAMWORTH SCHOOL CASE, 37 L. J. Ch. 473; *sub nom. Re* CHARITY COMRS., *Re* TAMWORTH SCHOOL, 18 L. T. 541; *sub nom. Re* TAMWORTH SCHOOL, *Ex p.* CHARITY COMRS., 16 W. R. 773, L. JJ.

Annotations:—**Folld.** *Re* Gilchrist Educational Trust, [1895] 1 Ch. 367. **Refd.** *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618. **Mentd.** Jarmain *v.* Chatterton (1882), 20 Ch. D. 493.

2132. Property subject to particular & specific trust.]—*Re* ST. JOHN STREET WESLEYAN METHODIST CHAPEL, CHESTER, No. 1936, *ante*.

2133. Trust funds in absolute discretion of trustees.]—*Re* GILCHRIST EDUCATIONAL TRUST, No. 1937, *ante*.

2134. Freehold house purchased by founder of mission—Out of money not appropriated to particular charity.]—A.-G. *v.* MATHIESON, *Re* WILKINSON & FELL'S CONTRACT, No. 1545, *ante*.

2135. Proper mode of determining question of endowment—By information & not by motion to commit.]—*Re* CHARITY COMRS., *Ex p.* TAMWORTH SCHOOL (1868), 18 L. T. 233; *sub nom. Re* TAMWORTH SCHOOL, *Ex p.* CHARITY COMRS., 16 W. R. 574; *revsd.* on other grounds *sub nom. Re* PEEL'S (SIR ROBERT) SCHOOL, TAMWORTH, *Ex p.* CHARITY COMRS., 3 Ch. App. 543, L. JJ.

(b) "Mixed" Charities.

i. *"Income arising from any Endowment."*

See 1853 Act, s. 62.

2136. Meaning of.]—*Re* CLERGY ORPHAN CORPN., No. 1549, *ante*.

ii. *Gifts for General Purposes of.*

See 1853 Act, s. 62.

2137. Exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]—A piece of land within the area of Land Transfer Acts was conveyed to trustees of a deed which had been entered into with a view to the establishment of a trust for charitable purposes generally. An application for the registration of the land was made to the Acting Chief Registrar, who decided that registration must be refused, unless the consent of the Charity Comrs. was obtained, & that if such consent was obtained a restriction must be entered that no disposition be registered without the consent of the Charity Comrs.:—*Held*: (1) at the time when the question was under consideration by the ct. (that being the time for determining the nature of the charity) the charity was a charity which was being maintained partly by subscriptions & partly by income arising from endowment (*i.e.*, a "mixed" charity); (2) the gift of land was a donation "unto or in trust for any such charity as last aforesaid," within the proviso contained in 1853 Act, s. 62, & was not subject to the jurisdiction of the Charity Comrs.; (3) the transfer ought to be registered without the restriction suggested.—VILLIERS *v.* A.-G. (1921), 38 T. L. R. 81; 66 Sol. Jo. 170.

iii. *Appropriation and Investment for Definite Objects of Gifts and Voluntary Subscriptions.*

See 1853 Act, s. 62.

2138. Exempt—Land purchased out of voluntary subscriptions—Applicable as income for general purposes of charity.]—*Re* CLERGY ORPHAN CORPN., No. 1549, *ante*.

2139. —— —— —— Acquisition of leaseholds by charitable society registered under Companies Acts.]—*Re* CHURCH ARMY, No. 1552, *ante*.

2140. —— —— —— Construction of private Act.]—*Re* ORPHAN WORKING SCHOOL & ALEXANDRA ORPHANAGE'S CONTRACT, No. 1555, *ante*.

2141. —— —— —— Income from yearly rentals, donations & small subscriptions.] — A.-G. *v.* FOUNDLING HOSPITAL, No. 1556, *ante*.

2142. —— Land purchased partly out of voluntary contributions & partly out of proceeds of bazaar —Applicable as income for general purposes of charity.]—*Re* SOCIETY FOR TRAINING TEACHERS OF THE DEAF & WHITTLE'S CONTRACT, No. 1553, *ante*.

2143. —— Erection of buildings out of loans & voluntary contributions—Proceeds of sale applicable as income.]—*Re* HARDING & WELSH CALVINISTIC METHODIST CONNEXION TRUSTEES, No. 1550, *ante*.

2144. —— —— —— Debts paid off by voluntary subscriptions.]—*Re* PARRY & HORTON'S CONTRACT, PARRY *v.* HORTON (1905), 49 Sol. Jo. 500.

2145. —— —— ——.]—*Re* WESLEYAN METHODIST CHAPEL, SOUTH STREET, WANDSWORTH, No. 1554, *ante*.

2146. Not exempt—Property no longer applicable as income—Trustees directed to invest proceeds as capital.]—A.-G. *v.* MATHIESON, *Re* WILKINSON & FELL'S CONTRACT, No. 1545, *ante*.

D. "Any Cathedral or Collegiate Church."

See 1853 Act, s. 62.

2147. Not exempt—Endowment for minor canons of cathedral church—Not part of capitular estates or under control of dean & chapter—But giving indirect relief from payment of statutory stipends of minor canons.]—*Re* DOD'S CHARITY, [1905] 1 Ch. 442; 74 L. J. Ch. 260; 92 L. T. 260; 53 W. R. 314; 21 T. L. R. 242; *subsequent proceedings*, 21 T. L. R. 452.

E. "Any Cathedral, Collegiate, Chapter or other School."

See 1853 Act, s. 62.

2148. Proviso excluding above schools from exemption in 1853 Act, s. 62, does not extend to all schools—Only to schools mentioned or of similar character.]—*Re* STOCKPORT RAGGED, INDUSTRIAL & REFORMATORY SCHOOLS, No. 1664, *ante*.

F. "Any Building Registered as Place of Meeting for Religious Worship."

See 1853 Act, s. 62, 1869 Act, s. 15, 1894 Act, s. 4.

2149. Chapel erected on land conveyed to trustees exempt—Other buildings on additional land purchased not exempt.]—*Re* ST. JOHN STREET WESLEYAN METHODIST CHAPEL, CHESTER, No. 1936, *ante*.

See, now, 1894 Act, s. 4.

SUB-SECT. 3.—NATURE OF JURISDICTION.

A. Inquisitorial.

Power to require accounts from trustees.]—*See* Part VII., Sect. 6, sub-sect. 3, *ante*.

B. Administrative.

Necessity for consent of Charity Commissioners—To leases exceeding specified length of term.]—*See* Part V., Sect. 3, sub-sect. 3, B., *ante*.

—— **To sales.]**—*See* Part V., Sect. 3, sub-sect. 2, C., *ante*.

—— **To mortgages.]**—*See* Part V., Sect. 2, sub-sect. 6, *ante*.

—— **To legal proceedings.]**—*See* Sub-sect. 4, *post*.

2150. Exercise of jurisdiction—Decision on question submitted by chairman of parish council—Letter from Charity Commissioners—Not appealed against—"Determination" within Local Government Act, 1894 (c. 73).]—A question having arisen as to whether the income of a local charity was, or was not exclusively applicable for church purposes, a letter was sent to the Charity Comrs. by the chairman of the parish council setting forth his contention upon the subject. The Comrs., after receiving a report, wrote a letter in which they gave their opinion upon the question raised:—*Held:* the letter constituted a determination within Local Government Act, 1894, s. 70 (2), which not having been appealed from within three months, was conclusive.—A.-G. *v.* HUGHES (1899), 81 L. T. 679; 48 W. R. 150.

C. Judicial.

(*a*) *In General.*

See 1860 Act, ss. 2, 5, 10, 1862 Act, s. 1.

2151. Same commissioners need not be present at decree as were at inquiry.]—SUTTON COLEFIELD CASE (1635), Duke, 68.

Annotations:—**Mentd.** A.-G. *v.* Coventry Corpn. (1700), 3 Madd. 353; A.-G. *v.* Bristol Corpn. (1820), 2 Jac. & W. 294.

2152. No jurisdiction to admit exempted charity to benefits of Charitable Trusts Acts—On petition by improperly constituted governing body—Application must be made to Court of Chancery.]—HAMILTON *v.* SPOTTISWOODE (1866), 36 L. J. Ch. 51; 15 W. R. 118.

See, now, 1869 Act, s. 14.

What charities within or exempt from jurisdiction.]—*See* Sub-sect. 2, *ante*.

See, also, No. 2150, *ante*.

(*b*) *What Orders may be made.*

See 1860 Act, ss. 2, 4, 6, 1869 Act, s. 15, 1894 Act, s. 4.

2153. Vesting order—Vesting legal estate in Official Trustee of Charities—Not when land vested in churchwardens & overseers as corporation.]—*Re* HACKNEY CHARITIES (1864), 4 New Rep. 530; 34 L. J. Ch. 169; 11 L. T. 35; 28 J. P. 692; 10 Jur. N. S. 941; 12 W. R. 1129; *on appeal*, (1865), 4 De G. J. & Sm. 588, L. JJ.

Annotation:—**Mentd.** *Re* Burnham National Schools (1873), L. R. 17 Eq. 241.

(*c*) *Rehearing and Appeals.*

See 1860 Act, ss. 8, 9, 1869 Act, s. 10.

2154. Right to appeal—By two inhabitants of parish—Not when charity estate under £50—1860 Act, s. 8.]—*Re* HACKNEY CHARITIES, *Ex p.* NICHOLLS (1865), 4 De G. J. & Sm. 588; 5 New Rep. 295; 34 L. J. Ch. 169; 11 L. T. 758; 11 Jur. N. S. 126; 46 E. R. 1047; *sub nom. Re* POOLE'S & WHITE'S CHARITIES, HACKNEY CHARITIES, 13 W. R. 398, L. JJ.

Annotation:—**Mentd.** *Re* Burnham National Schools (1873), L. R. 17 Eq. 241.

See, now, 1869 Act, s. 10.

2155. Grounds for granting appeal—Against selection of new trustees—Only in cases of gross & palpable miscarriage.]—The Ct. of Ch. will not interfere with the discretion of the Charity Comrs. in selecting new trustees unless in cases of gross & palpable miscarriage.—*Re* BURNHAM NATIONAL SCHOOLS (1873), L. R. 17 Eq. 241; 43 L. J. Ch. 340; 29 L. T. 495; 38 J. P. 116; 22 W. R. 198.

Annotation:—**Refd.** *Re* Campden Charities (1881), 18 Ch. D. 310.

Appointment & removal of trustees.]—*See, generally*, Part VII., *ante*.

SUB-SECT. 4.—CONSENT TO LEGAL PROCEEDINGS.

A. Necessity for.

(*a*) *In General.*

2156. Consent necessary — Although trustees given power by private Act to apply at once to judge in chambers.]—*Re* BINGLEY FREE SCHOOL (1854), 2 Drew. 283; 2 Eq. Rep. 635; 23 L. J. Ch. 672; 23 L. T. O. S. 139; 18 J. P. 646; 18 Jur. 668; 2 W. R. 433; 61 E. R. 728.

Annotations:—**Refd.** *Re* Jarvis' Charity (1859), 23 J. P. 548; Rendall *v.* Blair (1890), 45 Ch. D. 139.

2157. —— Although matter pressing.]—*Re* WATFORD BURIAL BOARD (1856), 27 L. T. O. S. 316; 2 Jur. N. S. 1045; *sub nom. Re* BURIAL ACT, *Ex p.* WATFORD BURIAL BOARD, 20 J. P. 741.

2158. —— —— Provisions as to necessity for notice must be strictly adhered to.]—THOMAS *v.* HARFORD (1883), 48 L. T. 262.

2159. Time for consent—Need not be obtained before beginning of action.]—The master of a charity school founded under School Sites Act, 1841 (c. 38), brought an action in the Ch. Div. against the managers of the school for an injunction to restrain them from dismissing him from his office, & from appointing any other person to such office, & from ejecting him from the schoolhouse. The managers had purported to dismiss pltf. under the discretionary power conferred upon them under s. 17 of the Act, & the question raised by the action was whether the managers had been properly appointed. Pltf. had not obtained, under 1853 Act, s. 17, the leave of the Charity Comrs. to bring the action:—*Held:* (1) although the action might incidentally involve the consideration of the deed of trust of the charity, it was not such an action as required the consent of the Charity Comrs.; (2) even if the consent of the Charity Comrs. were necessary, it was not necessary to obtain it before the commencement of the action, & it would not be right to dismiss the action without giving pltf. the opportunity of ascertaining whether the Comrs. would give their consent.—RENDALL *v.* BLAIR (1890), 45 Ch. D. 139; 59 L. J. Ch. 641; 63 L. T. 265; 38 W. R. 689; 6 T. L. R. 386, C. A.

Annotations:—*As to* (1) **Apld.** Fisher *v.* Jackson, [1891] 2 Ch. 84. **Consd.** Rooke *v.* Dawson, [1895] 1 Ch. 480. **Refd.** Llanbadarnfawr School Board *v.* Charitable Funds Official Trustees (1900), 45 Sol. Jo. 45.

See, also, No. 2171, *post*, &, *generally*, EDUCATION.

(*b*) *Applications "in any Suit or Matter actually pending."*

See 1853 Act, s. 17.

2160. Petition for payment out of court—& reinvestment of capital—Money paid in under Lands

PART IX. SECT. 4, SUB-SECT. 4.—A. (*a*).

c. Notice to Commissioners of Charitable Donations.]—Before any suit, petition or other proceeding for any relief, order, or direction concerning or relating to any charity shall be commenced, notice in writing containing the particulars required by 30 & 31 Vict. c. 54, s. 4, should be transmitted to the Comrs. of Charitable Donations & Bequests in Ireland.—M'CLEMENT *v.* BENNETT (1909), 43 I. L. T. 242.—IR.

Sect. 4.—*The charity commissioners: Sub-sect.* 4, *A.* (*b*), (*c*) & (*d*), *B. & C. Sect.* 5. *Part X. Sect.* 1: *Sub-sect.* 1.]

Clauses Consolidation Act, 1845 (c. 18)—Consent necessary.]—*Re* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1854), 18 Beav. 608; 23 L. T. O. S. 36; 52 E. R. 239.

Annotations:—**Refd.** Rendall *v.* Blair (1890), 45 Ch. D. 139. **Mentd.** *Re* Bethlem Hospital (1875), L. R. 19 Eq. 457; *Re* Gaselee, [1901] 1 Ch. 923.

2161. —— —— —— ——.]—*Re* CHELSEA WATERWORKS ACT & SKEAT'S CHARITY (1855), 25 L. J. Ch. 49; 26 L. T. O. S. 67; 4 W. R. 28.

Annotation:—**Refd.** Rendall *v.* Blair (1890), 45 Ch. D. 139.

See, also, No. 1558, *ante*.

2162. —— —— —— **Consent not necessary.**]—(1) The assent of the Charity Comrs. is not requisite to an application for the disposal of money paid into ct. by a railway co. on the purchase of land belonging to a charity.

(2) The words "in any suit or matter actually pending" in 1853 Act, s. 17, refer to a suit or matter actually pending at the time of the application.—*Re* LISTER'S HOSPITAL (1855), 6 De G. M. & G. 184; 26 L. T. O. S. 192; 4 W. R. 156; 43 E. R. 1203, L. C. & L. JJ.

Annotations:—*As to* (1) **Folld.** *Re* St. Giles Volunteer Corps (1858), 25 Beav. 313. **Distd.** Braund *v.* Devon (1868), 3 Ch. App. 800. *Generally*, **Refd.** *Re* Jarvis' Charity (1859), 23 J. P. 548; Holme *v.* Guy (1877), 5 Ch. D. 901.

2163. —— —— —— ——.]—*Re* CHESHUNT COLLEGE, *Re* NEW RIVER COMPANY'S ACT, 1852 (1855), 1 Jur. N. S. 995; 3 W. R. 638.

Annotation:—**Mentd.** Dixon *v.* Jackson (1856), 27 L. T. O. S. 53.

2164. —— —— —— ——.]—*Re* WILLIAM OF KYNGESTON CHARITY (1881), 30 W. R. 78.

——.]—*See, generally*, Part V., Sect. 3, sub-sect. 7, C., *ante*.

2165. Payment into court—Under Trustee Relief Act, 1847 (c. 96)—Consent to subsequent application necessary.]—*Re* MARKWELL'S LEGACY (1854), 17 Beav. 618; 23 L. J. Ch. 502; 2 W. R. 217; 51 E. R. 1175.

Annotations:—**N.F.** *Re* St. Giles Volunteer Corps (1858), 25 Beav. 313. **Refd.** Rendall *v.* Blair (1890), 45 Ch. D. 139.

2166. —— —— **Consent not necessary—Nor for subsequent application of fund.**]—The sanction of the Charity Comrs. is not necessary to enable a trustee of a charity fund to pay it into ct. under Trustee Relief Act, &, when paid in, the ct. may proceed to deal with it & direct a scheme without the certificate of the Comrs.—*Re* ST. GILES VOLUNTEER CORPS (1858), 25 Beav. 313; 27 L. J. Ch. 560; 31 L. T. O. S. 112; 23 J. P. 547; 4 Jur. N. S. 297; 6 W. R. 434; 53 E. R. 656.

Annotations:—**Consd.** *Re* Shum's Trusts, Prichard *v.* Richardson (1904), 91 L. T. 192. **Refd.** *Re* Jarvis' Charity (1859), 23 J. P. 548.

See, also, No. 2178, *post*.

2167. Meaning of "matter pending"—Continuation of something already directed by court—Not totally new matter.]—A "matter pending" means, within 1853 Act, a continuation of something already directed by the ct., not a matter totally new.—FORD'S CHARITY (1855), 3 Drew. 324; 61 E. R. 927.

2168. —— **Matter must be actually pending at time of application.**]—*Re* LISTER'S HOSPITAL, No. 2162, *ante*.

2169. —— **Matter no longer pending when final order made on petition—Appointment of new trustee under scheme settled by court on petition—Consent necessary.**]—When a final order has been made on a petition, it can no longer be said to be a matter "actually pending" for the purposes of 1853 Act, s. 17.

A petition was presented for the appointment of a new trustee under a scheme ordered & settled by the ct. upon a petition presented in 1854:—*Held*: the certificate of the Charity Comrs. was necessary to such petition.—*Re* JARVIS' CHARITY (1859), 1 Drew. & Sm. 97; 23 J. P. 548; 5 Jur. N. S. 724; 7 W. R. 606; 62 E. R. 315.

Annotation:—**Mentd.** Rendall *v.* Blair (1890), 59 L. J. Ch. 641.

(*c*) *Proceedings relating to Charities exempted from Charitable Trusts Acts.*

2170. Estate given partly to college & partly to school—Consent unnecessary for application relating to college—Although necessary as regards school.]—*Re* MEYRICK'S CHARITY (1855), 3 Eq. Rep. 1010; 24 L. J. Ch. 669; 1 Jur. N. S. 438; 3 W. R. 435; *sub nom.* A.-G. *v.* HOARE, *Re* MEYRICK'S CHARITY, 25 L. T. O. S. 92.

Annotations:—**Apld.** A.-G. *v.* Manchester (1881), 18 Ch. D. 596. **Consd.** *Re* Dod's Charity, [1905] 1 Ch. 442.

2171. Information against college or hall—Consent necessary.]—A.-G. *v.* SIDNEY SUSSEX COLLEGE, CAMBRIDGE (1866), 21 Ch. D. 514, n.; 15 L. T. 518; 15 W. R. 162, L. C.

Annotations:—**Folld.** A.-G. *v.* Manchester (1881), 18 Ch. D. 596. **Consd.** Glen *v.* Gregg (1882), 21 Ch. D. 513; Rendall *v.* Blair (1890), 45 Ch. D. 139.

See, also, No. 2159, *ante*.

What charities within or exempt from jurisdiction.]—*See* Sub-sect. 2, *ante*.

(*d*) *Other Proceedings.*

See 1853 Act, s. 17.

2172. Consent necessary—Suit to establish charity.]—BRAUND *v.* DEVON (EARL) (1868), 3 Ch. App. 800; 19 L. T. 181; 16 W. R. 1180, L. JJ.

Annotations:—**Consd.** Holme *v.* Guy (1877), 5 Ch. D. 901; Rooke *v.* Dawson, [1895] 1 Ch. 480. **Refd.** London Sewers Comrs. *v.* Gellatly (1876), 3 Ch. D. 610. **Mentd.** *Re* City & County Bank (1875), 10 Ch. App. 473, n.

2173. —— **Action to compel transfer of funds to new churchwardens.**]—HODGSON *v.* FORSTER, [1877] W. N. 74.

2174. —— **Action for account—Mandamus is "proceeding" within 1853 Act, s. 17.**]—A.-G. *v.* MANCHESTER (DEAN & CANONS) (1881), 18 Ch. D. 596; 50 L. J. Ch. 562; 45 L. T. 184, C. A.

Annotations:—**Refd.** Rendall *v.* Blair (1890), 45 Ch. D. 139; *Re* Dod's Charity, [1905] 1 Ch. 442.

2175. —— **Action to restrain removal of medical officer—If brought with any object beyond preventing plaintiff from being excluded.**]—Pltf. had been appointed in pursuance of certain rules framed by the committee of a hospital established by a trust deed of Mar. 1879, under the powers conferred by the deed, resident medical superintendent of the institution for life, subject to his removal on three months' notice by the committee on proof to them of neglect of duty; & he was let into possession of a house which was annexed to the office. The funds of the hospital not being sufficient to maintain a resident medical officer, the committee gave pltf. three months' notice of removal, no charge of neglect of duty being brought against him. The committee gave the notice with the intention of applying for a new scheme which would render the office unnecessary. Pltf. commenced an action against the committee for a declaration that he was entitled to hold his office during good behaviour, & for an injunction to restrain them from ejecting him from his residence & from otherwise interfering with the tenure of his office:—*Held*: if the object of the action was anything beyond preventing defts. from excluding pltf., it required the sanction of the Charity Comrs.—BENTHALL *v.* KILMOREY (EARL) (1883), 25 Ch. D. 39; 53 L. J. Ch. 298; 50 L. T. 137; 32 W. R. 69, C. A.

2176. —— Action claiming scholarship by candidate—Involving partial execution or administration of trusts of charity.]—An action claiming that a person was entitled to the possession & enjoyment of a scholarship involves the partial execution or administration of the trusts of the charity deed establishing the scholarship & consequently the consent of the Charity Comrs. is necessary before the action can be proceeded with.—ROOKE *v.* DAWSON, [1895] 1 Ch. 480; 64 L. J. Ch. 301; 72 L. T. 248; 59 J. P. 231; 43 W. R. 313; 11 T. L. R. 189; 39 Sol. Jo. 232; 13 R. 270.

2177. —— Action by school board against official trustees—To whom charity endowments transferred under Elementary Education Act, 1870 (c. 75).]—The buildings & the income of the endowments of a national school were leased by the managers to a school board under the powers given by Elementary Education Act, 1870 (c. 75), s. 23, for a term of years. At a subsequent date the then trustee of the endowments transferred them to the Charity Comrs. & defts. as Official Trustees of Charitable Trusts received the income arising from the funds. The school board brought an action against defts. to recover the sums so received by them & for an inquiry as to the trust funds:—*Held:* the claim of pltfs. was under the trusts affecting the endowments & not a relief sought adversely to a charity & they were not entitled to bring the action without the consent of the Charity Comrs. under 1853 Act, s. 17.—LLANBADARNFAWR SCHOOL BOARD *v.* CHARITABLE TRUSTS OFFICIAL TRUSTEES, [1901] 1 K. B. 430; 70 L. J. K. B. 307; 84 L. T. 311; 49 W. R. 363, C. A.

2178. Consent not necessary—Payment of funds into court—Under Trustee Relief Act, 1847 (c. 96)—No power in trustees to present subsequent petition for administration of funds.]—*Re* POPLAR & BLACKWALL FREE SCHOOL (1878), 8 Ch. D. 543; 39 L. T. 88; 42 J. P. 678; 26 W. R. 827.

2179. —— Action to administer trusts of deed—Regulating mode of worship at chapel.]—An action will lie to administer the trusts of a deed regulating the mode of worship at a building duly registered & *bonâ fide* used as a place of meeting for religious worship without the consent of the Charity Comrs. being first obtained.—GLEN *v.* GREGG (1882), 21 Ch. D. 513; 51 L. J. Ch. 783; 47 L. T. 285; 31 W. R. 149, C. A.

Annotation:—**Consd.** Rendall *v.* Blair (1890), 45 Ch. D. 139.

2180. —— Action to recover rent of trust estates—Received by prior managers.]—ALEXANDER *v.* DREWETT (1886), 2 T. L. R. 762, D. C.

2181. —— Application to decide whether land held on charitable trusts or not.]—Where there is a question as to lands, whether they are held upon charitable trusts or not, the trustee may apply to the ct. to have the question determined without first obtaining the consent of the Charity Comrs.—*Re* SHUM'S TRUSTS, PRICHARD *v.* RICHARDSON (1904), 91 L. T. 192.

2182. —— Application to retain land under 1891 Act, s. 8.]—*Re* CHURCH PATRONAGE TRUST, LAURIE *v.* A.-G., No. 158, *ante*.

Actions by & against schoolmasters.]—*See* EDUCATION.

B. Nature of Consent.

See 1853 Act, s. 17.

2183. Approval of application being made—Not approval of application being granted.]—*Re* WATFORD BURIAL BOARD (1856), 27 L. T. O. S. 316; 2 Jur. N. S. 1045; *sub nom. Re* BURIAL ACT, *Ex p.* WATFORD BURIAL BOARD, 20 J. P. 741.

C. Sufficiency of Consent.

2184. Consent necessary—Letter signed by secretary insufficient.]—THOMAS *v.* HARFORD (1883), 48 L. T. 262.

SECT. 5.—THE BOARD OF EDUCATION.

See EDUCATION.

Part X.—Practice.

SECT 1.—ACTIONS.

SUB-SECT. 1.—FORM AND INSTITUTION OF.

2185. Formerly by information or bill—Now by action.]—In an action by the A.-G. at the relation of a pltf. the title "Information" should no longer be used.—A.-G. *v.* SHREWSBURY BRIDGE CO. (1880), 42 L. T. 79.

2186. —— Suit in name of Attorney-General—Could be brought by dissenters—For charity estates belonging to them.]—A.-G. *v.* DUDLEY (LORD) (1815), Coop. G. 146; 35 E. R. 510.

Annotation:—**Mentd.** Baker *v.* Peck (1860), 3 L. T. 656.

2187. —— When information was not necessary—Legacy to rector, churchwardens & overseers upon trust for poor parishioners—Bill filed for payment.]—MAYOR *v.* NIXON (1827), 2 Y. & J. 60; 148 E. R. 831.

Annotation:—**Consd.** Milligan *v.* Mitchell (1835), 4 L. J. Ch. 281.

2188. —— —— Bill by trustee against co-trustee & next of kin—To have disputed charitable gift executed.]—NASH *v.* MORLEY (1842), 5 Beav. 177; 11 L. J. Ch. 336; 6 Jur. 520; 49 E. R. 545.

Annotation:—**Mentd.** Thomas *v.* Howell (1874), L. R. 18 Eq. 198.

2189. —— When information was necessary—Suit to administer funds of charity.]—CHRIST'S HOSPITAL (GOVERNORS) *v.* A.-G. (1846), 5 Hare, 257; 67 E. R. 909.

2190. —— Homogeneous charities vested in same trustees—Could be comprised in one information.]—A.-G. *v.* GOLDSMITHS' CO. (1833), Coop. Pr. Cas. 292; 47 E. R. 510.

Annotations:—**Mentd.** A.-G. *v.* Fishmongers' Co. (1837), 1 Keen. 492; A.-G. *v.* Kerr (1841), 4 Beav. 297.

2191. —— Information got up by public meetings & supported by public subscriptions—Disapproved of by court.]—A.-G. *v.* WORCESTER (BP.) (1851), 9 Hare, 328; 21 L. J. Ch. 25; 16 Jur. 3; 68 E. R. 530.

Annotations:—**Refd.** A.-G. *v.* Stewart (1872), L. R. 14 Eq. 17; *Re* Browne's Hospital *v.* Stamford (1889), 60 L. T. 288. **Mentd.** *Re* Port's Hospital & Free School (1852), 16 J. P. 196; *Re* Manchester New College (1853), 16 Beav. 610; *Re* Chelmsford Grammar School (1855), 3 Eq. Rep.

2187 i. *Formerly by information or bill—When information was not necessary—Disputed ownership—R. S. O., c. 95, s. 19.*]—DOUGLAS *v.* HAWES (1875), R. E. D. 147.—CAN.

Sect. 1.—Actions: Sub-secis. 1, 2 & 3, *A., B. & C.; sub-sect.* 4, *A.* (*a*) & (*b*).]

517; *Re* Bristol Free Grammar School (1860), 28 Beav. 161; A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92; Manchester School Case (1867), 2 Ch. App. 497; *Re* Betton's Charity, [1908] 1 Ch. 205.

2192. Amendment—Of bill—Into bill & information or information alone—Allowed.]—ST. MARY MAGDALEN COLLEGE, OXFORD *v.* SIBTHORP (1826), 1 Russ. 154; 2 Y. & J. 64, n.; 38 E. R. 61, L. C.

Annotation:—**Refd.** Watts *v.* Hyde (1847), 2 Ph. 406.

2193. —— Of information & bill—Into information alone—Allowed.]—A.-G. *v.* EAST INDIA CO. (1840), 11 Sim. 380; 10 L. J. Ch. 110; 59 E. R. 920.

Annotation:—**Distd.** Braund *v.* Devon (1868), 37 L. J. Ch. 463.

2194. —— Of action—Into information & action—Allowed—On consent of Attorney-General.]—CALDWELL *v.* PAGHAM HARBOUR RECLAMATION CO. (1876), 2 Ch. D. 221; 45 L. J. Ch. 796; 24 W. R. 690; 3 Char. Pr. Cas. 119.

Annotation:—**Refd.** Ward *v.* Sheffield Corpn. (1887), 19 Q. B. D. 22.

—— Necessity for consent of Attorney-General.]—*See* Sub-sect. 2, *post.*

Recovery of property not exceeding £20 annual value.]—*See* Charitable Trusts (Recovery) Act, 1891 (c. 17), s. 3; R. S. C. (Charitable Trusts Recovery), 1892, r. 2.

When Attorney-General a necessary party.]—*See* Sub-sect. 4, A., *post.*

Necessity for consent of Charity Commissioners.]—*See* Part IX., Sect. 4, sub-sect. 3, B., *ante.*

SUB-SECT. 2.—CONTROL BY ATTORNEY-GENERAL.

2195. Attorney-General not bound to contend for strict rights—Should act with forbearance in cases of hardship.]—The ct. does not consider it the duty of the A.-G. to contend for his strict rights in charity informations; in cases of hardship it sanctions acting with forbearance towards the parties, & will postpone its decision, to give the parties an opportunity of entering into an arrangement with the A.-G.—A.-G. *v.* BRETTINGHAM (1840), 3 Beav. 91; 49 E. R. 35.

Annotation:—**Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395.

2196. Has entire dominion over all informations—Instituted in his name—Whether filed ex officio or at instance of relator.]—A.-G. *v.* HABERDASHERS' CO. (1852), 15 Beav. 397; 20 L. T. O. S. 58; 16 Jur. 717; 51 E. R. 591.

2197. Award not acted upon without consent of Attorney-General.]—A.-G. *v.* HEWITT (1804), 9 Ves. 232; 32 E. R. 591, L. C.

Proceedings for recovery of property not exceeding £20 annual value.]—*See* Charitable Trusts (Recovery) Act, 1891, s. 3.

2198. Amendment of information—Without consent of Attorney-General—Taken off file.]—A.-G. *v.* FELLOWS (1820), 1 Jac. & W. 254; 37 E. R. 372, L. C.

2199. —— Attorney-General may amend as of right—When suit instituted by Crown.]—A.-G. *v.* RAY (1843), 11 M. & W. 464; 1 Dow. & L. 278; 12 L. J. Ex. 352; 7 Jur. 561; 152 E. R. 887.

2200. Notice of motion—Must be on behalf of Attorney-General—Not of relator.]—A.-G. *v.* WRIGHT (1841), 3 Beav. 447; 10 L. J. Ch. 234; 49 E. R. 176.

Attorney-General as a party.]—*See* Sub-sect. 4, A., *post.*

References to Attorney-General.]—*See* Sub-sect. 7, A., *post.*

Compromise of actions requiring sanction of Attorney-General.]—*See* Sub-sect. 8, *post.*

SUB-SECT. 3.—THE RELATOR.

A. Necessity for.

2201. Is necessary—For securing costs—Attorney-General may proceed without relator.]—*Re* BEDFORD CHARITY (MASTERS, ETC.) (1819), 2 Swan. 470; 36 E. R. 696, L. C.

Annotations:—**Mentd.** *Re* Woodburn's Will (1857), 1 De G. & J. 333; Bowman *v.* Secular Soc., [1917] A. C. 406.

2202. —— —— Where case doubtful—Even if certified by Charity Commissioners.]—A.-G. *v.* BOUCHERETT (1858), 25 Beav. 116; 23 J. P. 660; 53 E. R. 580.

B. Who may be.

2203. Any person—Though remote in contemplation of the charity.]—A.-G. *v.* BUCKNALL (1742), 2 Atk. 328; 26 E. R. 600, L. C.

Annotations:—**Consd.** A.-G. *v.* Vivian (1826), 1 Russ. 226. **Refd.** A.-G. *v.* Green (1789), 2 Bro. C. C. 492.

2204. Person with no interest in administration of charity.]—A.-G. *v.* VIVIAN (1826), 1 Russ. 226; 38 E. R. 88.

Annotation:—**Mentd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

2205. Charity trustees—Cannot be made relators—Without their authority & consent.]—A.-G. *v.* MARYATT (1838), 2 Jur. 1060.

C. Appointment of New Relator.

2206. Consent of Attorney-General necessary.]—ANON. (1726), Cas. *temp.* King, 69; 25 E. R. 228, L. C.

2207. When appointed—On death of original relator.]—A.-G. *v.* POWEL (1763), Dick. 355; 21 E. R. 306.

2208. —— —— Before further proceedings taken.]—In case of the death of all the relators in an information, new relators ought to be appointed before any further proceedings are taken, & the ct. will restrain, as irregular & improper, all further proceedings till the new relators are appointed.—A.-G. *v.* HABERDASHERS' CO. (1852), 15 Beav. 397; 20 L. T. O. S. 58; 16 Jur. 717; 51 E. R. 591.

2209. —— Original relator becoming lunatic.]—A.-G. *v.* TYLER (1764), 2 Eden, 230; 28 E. R. 886, L. C.; *subsequent proceedings* (1765), 1 Dick. 378.

2210. —— Original relator going abroad on private business—New relator of sufficient means to pay costs.]—Where a relator, at whose instance a *quo warranto* had been obtained, had to leave England on private business, the ct. allowed another person to be substituted as relator, on the ground that deft. could not be aggrieved if the substituted party had sufficient means to pay costs, if any.—R. *v.* QUAYLE (1841), 9 Dowl. 548; Arn. & H. 174; 10 L. J. Q. B. 99.

2211. By whom application for appointment made—On death of original relator—Attorney-General.]—A.-G. *v.* PLUMPTREE (1820), 5 Madd. 452; 56 E. R. 968.

PART X. SECT. 1, SUB-SECT. 2.

d. Consent to proceedings—Charitable Corporation—Charitable Trusts Act, 1853, s. 17.]—An incorporated charitable society have, by their Act of incorporation, the right to sue without obtaining leave of A.-G. under Charitable Trusts Act, 1853, s. 17.—SISTERS OF CHARITY *v.* FORBEST (1910), 16 W. L. R. 58.—CAN.

PART X. SECT. 1, SUB-SECT. 3.—A

e. Attorney-General may proceed without relator—To set aside conveyance of charity premises.]—A.-G. *v.* M'CARTHY (1885), 11 V. L. R. 517.—AUS.

2212. —— —— After decree—By new relator with consent of Attorney-General.] — A.-G. *v.* HARVEY (1855), 3 Eq. Rep. 992; 26 L. T. O. S. 68; 1 Jur. N. S. 1062.

SUB-SECT. 4.—PARTIES.

A. The Attorney-General.

(a) In General.

2213. General rule stated—Represents all absent charities—When general gift to charity—Presence not always necessary when charities specified.]—It is difficult to lay down any general rule, which shall be adapted to every case; there must be a great deal of discretion in these matters. The general principle which regulates them I take to be something of this description: the A.-G. represents all absent charities, & it is sufficient to have him here to represent all absent charities. But absent charities may obviously be of two different characters: they may either be under gifts to specified individual charities, or to charity generally. In case the gift is for charity generally, no one can represent it but the A.-G., & he must be here to represent such general charities. When there are specified individual charities, then the A.-G.'s presence is not universally necessary; but it is required by the ct. upon various occasions, as, for instance, where any rules are required for the regulation of the internal conduct of the charity itself, such as the establishment of a scheme & the like; there the A.-G. is necessary for the purpose of aiding & assisting the ct. in directing & sanctioning the general system & principle that ought to govern charities of those descriptions. But there are other cases where there is no question as to the conduct or management of the charities, but only whether the charity is entitled to a particular legacy or not. In those cases, the A.-G. is rather in the nature of a trustee for those charities, & the ct. prefers having before it the charities beneficially interested, for the purpose of putting their interests before the ct. in the light which they consider most favourable to them. In those cases I think it preferable that the charity itself should appear, rather than that the A.-G. should represent it. There may be mixed cases in which it is impossible to lay down a rule beforehand, & in which the ct. must act on the matter before it in such manner as, according to the best exercise of its discretion & judgment, it may think best calculated to promote justice (ROMILLY, M.R.).—WARE *v.* CUMBERLEGE (1855), 20 Beav. 503; 3 Eq. Rep. 656; 52 E. R. 697.

Annotations:—**Consd.** *Re* King, Jackson *v.* A.-G., [1917] 2 Ch. 420. **Mentd.** Edwards *v.* Hall (1855), 6 De G. M. & G. 74; Holdsworth *v.* Davenport (1876), 3 Ch. D. 185.

2214. Protector of interests of all parties beneficially interested in charity.] — *Re* SEKEFORD'S CHARITY (1861), 5 L. T. 488.

2215. May be made defendant—By trustees claiming account of charity—& personal discharge.]—CHRIST'S HOSPITAL (GOVERNORS) *v.* A.-G. (1846), 5 Hare, 257; 67 E. R. 909.

2216. When not party to proceedings by beneficiaries—Attorney-General not bound.]—SAUNDERS *v.* HOWES (1857), cited in Tudor's Law of Charities & Mortmain, 4th ed., 1043.

Annotation:—**Consd.** A.-G. *v.* Leage (1881), Tudor's Law of Charities & Mortmain, 4th ed., 1041.

2217. —— ——.]—A.-G. *v.* LEAGE (1881), *Times*, Dec. 13; Tudor's Law of Charities & Mortmain, 4th ed., 1041.

Effect of joinder as party.]—*See* No. 2220, *post*.

Whether suit by Attorney-General for recovery of trust property barred by Statutes of Limitation.]—*See* Part V., Sect. 1, sub-sect. 4, *ante*.

(b) When a Necessary Party.

2218. General rule—In all charity suits.]—WELLBELOVED *v.* JONES (1822), 1 Sim. & St. 40; 1 L. J. O. S. Ch. 11; 57 E. R. 16.

Annotation:—**Consd.** Milligan *v.* Mitchell (1835), 4 L. J. Ch. 281.

2219. —— ——.]—A.-G. *v.* BRODIE (1846), 6 Moo. P. C. C. 12; 4 Moo. Ind. App. 190; 11 Jur. 137; 13 E. R. 586, P. C.

2220. —— —— All beneficiaries bound if Attorney-General made party.]—SAUNDERS *v.* HOWES (1857), cited in Tudor's Law of Charities & Mortmain, 4th ed., 1043.

Annotation:—**Consd.** A.-G. *v.* Leage (1881), Tudor's Law of Charities & Mortmain, 4th ed., 1041.

See, also, No. 2213, *ante*.

2221. Suit to ascertain whether charity entitled to benefit—Construction of will & codicil—Claim by heir to resulting trust.]—COOK *v.* DUCKENFIELD (1743), 2 Atk. 562; 26 E. R. 737, L. C.

Annotations:—**Folld.** A.-G. *v.* Herrick (1772), Amb. 712. **Expld.** Moggridge *v.* Thackwell (1803), 7 Ves. 36.

2222. Suit to retransfer funds to settlor—After trusts in nature of superstitious uses declared void.]—DE THEMMINES *v.* DE BONNEVAL (1828), 5 Russ. 288; 7 L. J. O. S. Ch. 35; 38 E. R. 1035.

Annotations:—**Consd.** Carter *v.* Green (1857), 3 K. & J. 591; Warren *v.* Rudall (1858), 4 K. & J. 603. **Mentd.** Barton *v.* Muir (1874), L. R. 6 P. C. 134; Bowman *v.* Secular Soc., [1917] A. C. 406; Bourne *v.* Keane, [1919] A. C. 815.

2223. Charity with different name claiming legacy—Legacy not given upon trusts similar to those of claimants.]—SONS OF THE CLERGY CORPN. *v.* MOSE (1839), 9 Sim. 610; 59 E. R. 493.

2224. Action by members of church building committee—On behalf of themselves & all subscribers to fund—Against former members of committee for accounts.]—STRICKLAND *v.* WELDON (1885), 28 Ch. D. 426; 54 L. J. Ch. 452; 52 L. T. 247; 33 W. R. 545.

2225. Action to decide whether gift applicable cy-près—Voluntary conveyance executed within

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PART X. SECT. 1, SUB-SECT. 4.—A. (a).

f. *Advocate-General has right to appear & represent Crown.*]—A.-G. *v.* BRODIE (1846), 6 Moo. P. C. C. 12; 13 E. R. 586.—**IND.**

g. *Notice of proceedings necessary—Whether against charity or Crown.*]—POTTS *v.* TURNLEY (1848), 1 Ir. Jur. 57.—**IR.**

h. *Breach of trust—Locus standi of Attorney-General.*]—The Attorney-General has a *locus standi* to inform the ct. of a breach of a charitable trust.—A.-G. *v.* TRY (1890–1), 12 N. S. W. Eq. 23.—**AUS.**

k. *Recognised as only plaintiff—Represented by relator's solicitor.*]—In an information at suit of A.-G. he alone is recognised by the ct. as pltf., & the relator must issue the writ & deliver the statement of claim by a solicitor, who, though in accordance with recognised practice he may be selected by the relator, is treated as solicitor for the A.-G.—A.-G. (HUMPHREYS) *v.* ERASMUS SMITH'S SCHOOLS (GOVERNORS), [1910] 1 I. R. 325.—**IR.**

PART X. SECT. 1, SUB-SECT. 4.—A. (b).

2221 i. *Suit to ascertain whether charity entitled to benefit—Construction of will.*]—LONG *v.* WILMOTTE (1863), 2 Ch. Ch. 87.—**CAN.**

2221 ii. —— ——.]—DAVIDSON *v.* BOOMER (1868), 15 Gr. 1.—**CAN.**

l. *Suit to sanction application of funds to build school—Attorney-General of Province—Not of Canada.*]—A.-G. OF NOVA SCOTIA *v.* AXFORD (1884), 13 S. C. R. 294.—**CAN.**

m. *Suit to recover money lent—Public charity.*]—Money was advanced to deft. by a committee of a relief fund contributed by the public for the relief of sufferers from a fire. Deft. agreed with the committee to repay to them the amount advanced, &, failing so to do, the committee sued him for the amount:—*Held:* (1) the charity was a public one, & the administration of a charitable fund was in question; (2) the A.-G. was a necessary party, & the only person who could be pltf.—FERNIE DISTRICT FIRE RELIEF COMMITTEE *v.* BRUCE (1911), 17 W. L. R. 425.—**CAN.**

Sect. 1.—*Actions: Sub-sect.* 4, *A.* (*b*) & (*c*) & *B.* (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) & (*g*); *sub-sects.* 5 & 6, *A.*]

twelve months of testator's death—Void under Mortmain Acts.]—*Re* TAYLOR, MARTIN *v.* FREEMAN, No. 765, *ante*.

2226. —— **Charity existing at testator's death—Termination before death of tenant for life.**]—*Re* THOMPSON, THOMPSON *v.* PHILLIPS (1889), *Times*, Mar. 22.

2227. Proceedings for purpose of sanctioning compromise—Terms agreed to between charity & next of kin.]—Where a testator devised a large portion of his real estate to a charity of somewhat undefined character, to the exclusion of a niece who had strong moral claims upon him, the estate in question having come from her mother, & terms of compromise had been agreed to between the parties to a probate action in respect of the will, the A.-G. was cited to see proceedings for the purpose of sanctioning the compromise.—BOUGHEY *v.* MINOR, [1893] P. 181; 62 L. J. P. 104.

Compromises generally *see* Sub-sect. 8, *post*.

Petition.]—*See* Sect. 2, sub-sects. 2, D., 4, *post*.

(c) When not a Necessary Party.

2228. Institution a private charity—Voluntary society providing for necessitous members & widows—By weekly subscriptions.]—ANON. (1745), 3 Atk. 277; 26 E. R. 962, L. C.

2229. Institution not charitable—School not free school.]—A.-G. *v.* HEWER (1700), 2 Vern. 387; 1 Eq. Cas. Abr. 94, pl. 1; 23 E. R. 848.

Annotations :—**Consd.** Milligan *v.* Mitchell (1835), 4 L. J. Ch. 281; *Re* St. Stephen, Coleman Street, *Re* St. Mary the Virgin, Aldermanbury (1888), 39 Ch. D. 492. **Refd.** A.-G. *v.* Newcombe (1807), 14 Ves. 1.

2230. —— **Suit relating to dissenter's chapel—Supported by pew rents.**]—MILLIGAN *v.* MITCHELL (1835), 4 L. J. Ch. 281.

2231. Action to compel performance of trusts—Objects of charity capable of suing or being sued.]—MONILL *v.* LAWSON (1719), 2 Eq. Cas. Abr. 167, pl. 13; 22 E. R. 142, L. C.

2232. Action to recover legacy—Referred to master to take accounts.]—CHITTY *v.* PARKER (1792), 4 Bro. C. C. 38; 29 E. R. 766.

2233. —— **Given to officer of established institution—As part of its general funds.**]—WELLBELOVED *v.* JONES (1822), 1 Sim. & St. 40; 1 L. J. O. S. Ch. 11; 57 E. R. 16.

Annotation :—**Consd.** Milligan *v.* Mitchell (1835), 4 L. J. Ch. 281.

2234. Foreign charity—Although persons within jurisdiction possibly objects—Suit to administer estate.] — THOMPSON *v.* THOMPSON (1843), 1 L. T. O. S. 106.

Petition.]—*See* Sect. 2, sub-sects. 2, D., 4, *post*.

B. Parties other than Attorney-General.

(a) Parties Interested.

2235. Necessary parties—Executor or administrator—Suit to ascertain profits of land—On which legacy charged.]—A.-G. *v.* TWISDEN (1678), Cas. *temp.* Finch, 336; 23 E. R. 184, L. C.

2236. —— **Heir of private founder—No visitor appointed—Information for regulating charity.**]—A.-G. *v.* GAUNT (1790), 3 Swan. 148, n.; 36 E. R. 811, L. C.

2237. —— **Vestry clerk—Information against churchwardens & vestry clerk to establish charity—No relief prayed against vestry clerk.**]—A.-G. *v.* ST. MARGARET'S, WESTMINSTER (CHURCHWARDENS) (1832), 1 L. J. Ch. 127.

2238. —— **Corporation—Information against corporation to establish trusts—One trust subject to payment to another corporation—Beneficiary corporation necessary party.**]—A.-G. *v.* MERCHANT TAILORS' CO. (1832), 1 My. & K. 189; 2 L. J. Ch. 22; 39 E. R. 652, L. C.

Annotation :—**Consd.** Campbell *v.* Mackay (1836), 1 My. & Cr. 603.

2239. —— —— **Not if membership not kept up for many years.**]—DAUGARS *v.* RIVAZ (1860), 28 Beav. 233; 29 L. J. Ch. 685; 3 L. T. 109; 6 Jur. N. S. 854; 8 W. R. 225; 54 E. R. 355.

Annotations :—**Mentd.** A.-G. *v.* Daugars (1864), 33 Beav. 621; Hayman *v.* Rugby School Governors (1874), L. R. 18 Eq. 28.

2240. —— **Charity trustees—Not without their authority & consent—As relators or plaintiffs.**]—A.-G. *v.* MARYATT (1838), 2 Jur. 1060.

—— —— **Property not exceeding £20 annual value.**]—*See* Charitable Trusts (Recovery) Act, 1891, ss. 4, 6; R. S. C. (Charitable Trusts Recovery), 1892, r. 3.

2241. —— **Purchaser—Not when charity lands improperly sold—Decree against holders of purchase money.**]—A.-G. *v.* KELL (1840), 2 Beav. 575; 9 L. J. Ch. 389; 48 E. R. 1305.

2242. —— —— **Of lands subject to charge in favour of charity—Information against donees of estate.**]—SOUTHMOLTON CORPN. *v.* A.-G. (1854), 5 H. L. Cas. 1; 23 L. J. Ch. 567; 23 L. T. O. S. 117; 10 E. R. 796, H. L.; *revsg.* S. C. *sub nom.* A.-G. *v.* SOUTHMOLTON CORPN. (1851), 14 Beav. 357.

Annotations :—**Mentd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310; A.-G. *v.* Windsor (1860), 8 H. L. Cas. 369; Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512; A.-G. *v.* Wax Chandlers Co. (1873), L. R. 6 H. L. 1.

2243. —— **Governors of charity—Property vested in corporation—Supplemental information to carry on accounts.**]—A.-G. *v.* EXETER CORPN. (1846), 10 J. P. 186.

2244. —— **All men subscribers to chapel—Trustees authorised to mortgage by majority of men subscribers—Action to recover surplus on sale by mortgagee.**]—MINN *v.* STANT (1851), 15 Beav. 49; 20 L. J. Ch. 614; 17 L. T. O. S. 290; 15 Jur. 1095; 51 E. R. 454.

—— **All owners—Not in actions for recovery of rentcharges out of lands belonging to several owners.**]—*See* Part V., Sect. 1, sub-sect. 3, *ante*.

2245. May sue by representative plaintiffs—Action by two members of congregation on behalf of themselves & all others interested—Chapel used for different form of worship in breach of trust.]—MILLIGAN *v.* MITCHELL (1837), 3 My. & Cr. 72; 7 L. J. Ch. 37; 1 Jur. 888; 40 E. R. 852, L. C.

Annotation :—**Mentd.** Free Church of Scotland *v.* Overtoun, Macalister *v.* Young, [1904] A. C. 515.

2246. May be represented by single defendant—To whom leases granted—Representing all parties interested under direction to lease.] — A.-G. *v.* GREENHILL (1863), 33 Beav. 193; 3 New Rep. 236; 33 L. J. Ch. 208; 9 L. T. 500; 9 Jur. N. S. 1307; 12 W. R. 188; 55 E. R. 341.

Annotation :—**Mentd.** A.-G. *v.* Sidney Sussex College, Cambridge (1866), 15 L. T. 518.

(b) Persons with Contingent Interests.

2247. Legacy in trust for minister of college—Contingent gift to trustees of college—Trustees of college not necessary parties—To information & bill

2236 i. *Necessary parties—Next of kin or heir.*]—A. by will directed his exor. to distribute his residue amongst churches & charities, or otherwise as he might think fit. The exor. advertised for heirs & next of kin of the testator without result, & then paid into ct. the money representing the residue. Upon a petition under R. S. O., 1887, c. 110, s. 37, for the advice of the ct. as to the construction of the will & as to further advertising for next of kin :—*Held* : the heirs or next of kin were necessary parties.—*Re* HARLEY'S ESTATE (1897), 17 P. R. 483.—CAN.

to establish charity for chapel.]—A.-G. *v.* GODDARD (1823), Turn. & R. 348 ; 37 E. R. 1134.
Annotation :—**Mentd.** Martin *v.* Wellstead (1854), 23 L. J. Ch. 927.

2248. Right to nominate in master & fellows of college—Archbishop to appoint in default—Archbishop necessary party—To information seeking accounts & reference for schemes.]—A.-G. *v.* ST. JOHN'S COLLEGE (1835), 7 Sim. 241 ; 4 L. J. Ch. 73 ; 58 E. R. 829.

(c) Strangers to Charitable Funds.

2249. Not necessary parties—Original subscribers to charity—If parties in other characters.]—A.-G. *v.* MUNRO (1848), 2 De G. & Sm. 122 ; 11 L. T. O. S. 348 ; 12 Jur. 210 ; 64 E. R. 55 ; *affd.* on other grounds, 13 L. T. O. S. 521, L. C.
Annotations :—**Mentd.** A.-G. *v.* Murdoch (1852), 1 De G. M. & G. 86 ; A.-G. *v.* Murdoch (1856), 2 K. & J. 571 ; Westwood *v.* McKie (1869), 21 L. T. 165.

2250. —— —— ——.] —A.-G. *v.* GARDNER (1848), 2 De G. & Sm. 102 ; 10 L. T. O. S. 459 ; 12 Jur. 67 ; 64 E. R. 46.
Annotation :—**Mentd.** Power *v.* Banks (1901), 70 L. J. Ch. 700.

2251. Suit not maintainable by—Bill by ecclesiastical synod for removal of minister & trustees—Members of synod strangers to trust.]—LANG *v.* PURVES (1862), 15 Moo. P. C. C. 389 ; 5 L. T. 809 ; 8 Jur. N. S. 523 ; 10 W. R. 468 ; 15 E. R. 541, P. C.

2252. —— Action by some agents against others —Action by some members of church building committee on behalf of themselves & other members—Claiming account against former member.]—STRICKLAND *v.* WELDON (1885), 28 Ch. D. 426 ; 54 L. J. Ch. 452 ; 52 L. T. 247 ; 33 W. R. 545.

(d) Unincorporated Bodies.

2253. Cannot be made parties to information—As corporate body—Master, brethren & sisters of hospital.]—A.-G. *v.* CHESTER CORPN. (1849), 1 H. & Tw. 46 ; 13 L. T. O. S. 397 ; 47 E. R. 1320, L. C.

2254. As defendant—Suit brought against responsible officer—"On behalf of" charity.]—*Re* PRITT, MORTON *v.* NATIONAL CHURCH LEAGUE, No. 873, *ante*.

2255. —— Cannot be sued by registered name—Under War Charities Act, 1916 (c. 43).]—The provisions of War Charities Act, 1916, under which alone subscriptions & donations may be collected from the public, has not altered the rule that an action will not lie against an unincorporated body.

An action brought against deft. charitable federation in its registered name :—*Held :* not maintainable, as the federation was an unincorporated body, & was not, by the provisions of the Act, put in a position analogous to that either of a trade union or a partnership.—BLOOM *v.* NATIONAL FEDERATION OF DISCHARGED & DEMOBILISED SAILORS & SOLDIERS (1918), 35 T. L. R. 50 ; 63 Sol. Jo. 54, C. A.

(e) Proceedings against Trustees.

2256. General rule—Suit to remedy breach of trust—Not every person participating in breach necessary party.]—A.-G. *v.* LEICESTER CORPN. (1844), 7 Beav. 176 ; 49 E. R. 1031.

2257. Trustees being corporate body—Information in respect of charity land against churchwardens —By name & not by office—Order nevertheless made.]—A.-G. *v.* SALKELD (1853), 16 Beav. 554 ; 22 L. J. Ch. 741 ; 21 L. T. O. S. 30 ; 17 Jur. 173 ; 51 E. R. 893.

2258. Who not necessary parties—Trustee abroad & not amenable to process—Bill to compel performance of trust.]—MONILL *v.* LAWSON (1719), 2 Eq. Cas. Abr. 167, pl. 13 ; 22 E. R. 142, L. C.

2259. —— Personal representative of solicitor & agent for trustee—Charity money received in capacity of agent.]—A.-G. *v.* CHESTERFIELD (EARL) (1854), 18 Beav. 596 ; 23 L. T. O. S. 153 ; 18 Jur. 686 ; 2 W. R. 499 ; 52 E. R. 234.
Annotations :—**Refd.** Maw *v.* Pearson (1860), 28 Beav. 196. **Mentd.** Brown *v.* Wales (1872), 27 L. T. 410.

2260. Who necessary parties—All trustees or their representatives—Charges against some only as acting trustees—Not entertained by court.]—*Re* CHERTSEY MARKET, *Ex p.* WALTHEW (1819), 6 Price, 261 ; Dan. 174 ; 146 E. R. 803.

2261. —— —— New trustees appointed pendente lite not made parties—Not bound by former proceedings.]—A.-G. *v.* FOSTER (1842), 2 Hare, 81 ; 12 L. J. Ch. 44 ; 6 Jur. 1032 ; 67 E. R. 33.

2262. —— —— —— ——.]—A.-G. *v.* FOSTER (1843), 13 Sim. 282 ; 12 L. J. Ch. 257 ; 7 Jur. 185 ; 60 E. R. 110.

2263. —— Claim against one tenant in common in possession on behalf of charity—Other tenant in common necessary party.]—A.-G. *v.* FLINT (1844), 4 Hare, 147 ; 67 E. R. 597.

2264. —— Person acting in collusion with trustees—Conveyance of charity estates in exchange for other estates—Information to set aside exchange & for accounts.]—A.-G. *v.* CRADOCK (1837), 3 My. & Cr. 85 ; 1 Jur. 556 ; 40 E. R. 857, L. C.
Annotations :—**Refd.** Lloyd *v.* Douglas (1841), 10 L. J. Ex. Eq. 34 ; Lund *v.* Blanshard (1844), 4 Hare, 9 ; Marshall *v.* Gilliard (1866), 14 L. T. 618.

(f) Official Trustees.

When necessary parties—To originating summons.]—*See* Sect. 3, sub-sect. 2, *post*.

(g) Charity Commissioners.

Whether necessary or proper parties—To originating summons.]—*See* Sect. 3, sub-sect. 2, *post*.

Right to bring proceedings to recover property not exceeding £20 per annum—Recovery of arrears of rentcharge.]—*See* Charitable Trusts (Recovery) Act, 1891 (c. 17), s. 3 ; R. S. C. (Charitable Trusts Recovery), 1892, r. 3.

Jurisdiction of Charity Commissioners.]—*See* Part IX., Sect. 4, *ante*.

SUB-SECT. 5.—INTERLOCUTORY PROCEEDINGS.

2265. Corporation as trustees—Not obliged to produce books.]—A.-G. *v.* COVENTRY (1730), Bunb. 290 ; 145 E. R. 677.
Annotation :—**Mentd.** South Molton Corpn. *v.* A.-G. (1854), 23 L. T. O. S. 117.

2266. ——— Churchwardens & overseers of parish—Ordered to produce books—Although defendants swore that the books did not relate to matters in question.]—A.-G. *v.* BERRY (1845), 2 Coll. 33 ; 5 L. T. O. S. 35 ; 9 Jur. 224 ; 63 E. R. 623.

See, generally, DISCOVERY, INSPECTION, & INTERROGATORIES.

2267. Order on corporation to pay into court sums charged on it by order—Extension of time for payment granted if due diligence shown.]—A.-G. *v.* EAST RETFORD CORPN. (1844), 8 J. P. 453.

See, also, No. 1928, *ante*.

SUB-SECT. 6.—THE HEARING.

A. Who may be heard.

2268. Relator—Cannot be heard in person.]—A.-G. *v.* BARKER (1838), 4 My. & Cr. 262 ; 41 E. R. 103, L. C.

2269. Attorney-General—As party prosecuting

Sect. 1.—*Actions: Sub-sect.* 6, *A. & B.* (*a*) & (*b*); *sub-sect.* 7, *A. & B.*; *sub-sect.* 8.]

cause—Counsel for relator cannot be heard—Except as counsel for Attorney-General.]—In an information, the Attorney-General, & not the relator, is the party prosecuting the cause: &, therefore, the Court will not allow counsel for the relator to be heard in any other character than as counsel for the Attorney-General.—A.-G. *v.* IRONMONGERS' Co. (1841), Cr. & Ph. 208; 10 L. J. Ch. 201; 41 E. R. 469, L. C.; *affd.* on other grounds *sub nom.* IRONMONGERS' Co. *v.* A.-G. (1844), 10 Cl. & Fin. 908, H. L.

Annotations:—**Mentd.** *Re* Ashton's Charity (1859), 27 Beav. 115; *Re* Prison Charities (1873), L. R. 16 Eq. 129; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91; Biscoe *v.* Jackson (1887), 56 L. J. Ch. 540; *Re* Betton's Charity (1907), 77 L. J. Ch. 193; *Re* Weir Hospital, [1910] 2 Ch. 124.

2270. —— & relator cannot support conflicting views.]—A.-G. *v.* SHERBORNE GRAMMAR SCHOOL (GOVERNORS, ETC.) (1854), 18 Beav. 256; 2 Eq. Rep. 917; 24 L. J. Ch. 74; 23 L. T. O. S. 326; 2 W. R. 396; 52 E. R. 101.

Annotations:—**Mentd.** *Re* Chelmsford Grammar School (1855), 1 K. & J. 543; *Re* Stafford Charities (1857), 25 Beav. 28; *Re* Campden Charities (1881), 18 Ch. D. 310; *Re* Weir Hospital, [1910] 2 Ch. 124.

2271. —— May appear as counsel for defendant—To information filed by relators in his name.]—SHORE *v.* WILSON (1842), 9 Cl. & Fin. 355; 8 E. R. 450, H. L.; *affg.* S. C. *sub nom.* A.-G. *v.* SHORE (1833), 7 Sim. 309, n.; *subsequent proceedings, sub nom.* A.-G. *v.* SHORE (1843), 11 Sim. 592.

Annotations:—**Refd.** Natal *v.* Gladstone (1866), L. R. 3 Eq. 1. **Mentd.** *Re* Scarborough Corpn. (1837), 1 J. P. 19; A.-G. *v.* Wilson (1848), 16 Sim. 310; A.-G. *v.* Lawes (1849), 14 Jur. 77; A.-G. *v.* Murdoch (1849), 7 Hare, 445; Drummond *v.* A.-G. (1849), 2 H. L. Cas. 837; A.-G. *v.* Clapham (1855), 4 De G. M. & G. 591; A.-G. *v.* Calvert (1857), 23 Beav. 248; A.-G. *v.* Etheridge (1862), 32 L. J. Ch. 161; A.-G. *v.* Bunce (1868), L. R. 6 Eq. 563; Menzies *v.* Lightfoot (1871), L. R. 11 Eq. 459; A.-G. *v.* St. John's Hospital, Bath (1876), 2 Ch. D. 554; Neale *v.* Neale (1898), 79 L. T. 629; *Re* Perry Almhouses, *Re* Ross' Charity, [1899] 1 Ch. 21; *Re* Johnson, Greenwood *v.* Greenwood & Robinson (1903), 89 L. T. 520; *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643; *Re* Rayner, Rayner *v.* Rayner, [1904] 1 Ch. 176; Camden *v.* I. R. Comrs., [1914] 1 K. B. 641; Bowman *v.* Secular Soc., [1917] A. C. 406; G. W. Ry. & Mid. Ry. *v.* Bristol Corpn. (1918), 87 L. J. Ch. 414.

See, also, No. 2381, *post.*

2272. Trustees of charity—Contending against corporation—Charity represented by Attorney-General—Court may decline to hear trustees unless bonâ fide differing from relators.]—*Semble*: in cases of information against trustees of a charity, who are contending hostilely against a corpn., where the charity is represented by the A.-G., the ct. will not hear the trustees unless they *bonâ fide* differ from the relators.—SOLICITOR-GENERAL *v.* BATH CORPN., A.-G. *v.* BLAIR (1849), 18 L. J. Ch. 275; 13 Jur. 866.

B. Powers and Duties of Court.

(a) In General.

2273. To determine finally without directing issue—Where no material fact disputed—Nor point of law which court of equity might not determine—Most expeditious & least expensive methods to be adopted.]—ROCHESTER (BP.) *v.* A.-G. (1721), 4 Bro. Parl. Cas. 643; 2 E. R. 438, H. L.

2274. To see to proper application of charity—If such charity appears—Though no information brought for purpose.]—A.-G. *v.* GARDNER (1741), Barn. Ch. 483; 27 E. R. 729, L. C.

2275. Expediency of proceedings—Court cannot consider—But can visit its displeasure by its absolute control over costs.]—A.-G. *v.* MERCHANT TAILORS' Co. (1834), 5 L. J. Ch. 62.

Costs generally, *see* Sect. 6, *post.*

2276. Strict rights of charity—Discretion of court to limit.]—A.-G. *v.* PRETYMAN (1841), 4 Beav. 462; 49 E. R. 418.

(b) As to Improper and Defective Informations.

2277. Court will give proper directions—Notwithstanding impropriety in prayer of information.]—A.-G. *v.* JEANES (1737), 1 Atk. 355; West *temp.* Hard. 208; 26 E. R. 227, L. C.

Annotations:—**Refd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389. **Mentd.** Field *v.* Mostin (1778), Dick. 543.

2278. —— —— Only where proper for court to interfere at all.]—A.-G. *v.* MIDDLETON (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.

Annotations:—**Mentd.** A.-G. *v.* Foundling Hospital (1793), 4 Bro. C. C. 165; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

2279. —— Though no specific prayer in information.]—A.-G. *v.* BROOKE (1811), 18 Ves. 319; 34 E. R. 338, L. C.; *subsequent proceedings* (1812), 18 Ves. 496, L. C.

Annotations:—**Distd.** A.-G. *v.* Moses (1816), 2 Madd. 294. **Refd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395; Lang *v.* Purves (1862), 15 Moo. P. C. C. 389. **Mentd.** Scarisbrick *v.* Skelmersdale (1840), 4 Y. & C. Ex. 78; Jones *v.* Creswicke, Booth *v.* Creswicke (1841), 5 Jur. 763.

2280. Court will establish charity—Not established by commission or decree—Though information improperly brought—No misapplication of trust funds.]—A.-G. *v.* STAMFORD CORPN. (1747), 2 Swan. 591; 36 E. R. 741, L. C.

Annotations:—**Refd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389. **Mentd.** *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

2281. When court will dismiss information—Where no charitable funds in question—& no proof entered into as to alleged right of election—Not when clear right is to be settled.]—A.-G. *v.* PARKER (1747), 3 Atk. 576; 1 Ves. Sen. 43; 27 E. R. 879, L. C.

Annotations:—**Consd.** Davis *v.* Jenkins (1814), 3 Ves. & B. 151; *Re* St. Stephens, Coleman Street, *Re* St. Mary the Virgin, Aldermanbury (1888), 39 Ch. D. 492. **Refd.** A.-G. *v.* Forster (1805), 10 Ves. 335; A.-G. *v.* Newcombe (1807), 14 Ves. 1; Milligan *v.* Mitchell (1835), 4 L. J. Ch. 281; Shaw *v.* Thompson (1876), 3 Ch. D. 233. **Mentd.** Withnell *v.* Gartham (1795), 6 Term Rep. 388; Carter *v.* Cropley (1857), 26 L. J. Ch. 246; Waterpark *v.* Fennell (1859), 7 H. L. Cas. 651; Etherington *v.* Wilson (1875), 1 Ch. D. 160.

2282. —— Not necessarily when court does not interpose—Not when desirable to retain control over trustees.]—A.-G. *v.* HARROW SCHOOL (GOVERNORS) (1754), 2 Ves. Sen. 551; 28 E. R. 351, L. C.

Annotation:—**Mentd.** A.-G. *v.* Foyster (1794), 1 Anst. 116.

2283. —— When defect in substance—Relator having no title.]—A.-G. *v.* OGLENDER (1790), 1 Ves. 246; 30 E. R. 324, L. C.

See, also, No. 2285, *post.*

2284. —— —— Relief prayed founded on untrue statements.]—A.-G. *v.* GROCERS' Co. (1837), 1 Keen, 506; 1 Jur. 133; 48 E. R. 401.

2285. —— Not where occasion for regulation in management of charity—Although record is both information & bill—& whole relief prayed is in respect of groundless interest of relator in property.]—A.-G. *v.* VIVIAN (1826), 1 Russ. 226; 38 E. R. 88.

Annotation:—**Refd.** Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

See, also, No. 2283, *ante.*

2286. Court cannot refuse decree on useless & improper information—But will first communicate with Attorney-General—For Attorney-General to consider whether proceeding should be continued.]—A.-G. *v.* MERCHANT TAILORS' Co. (1834), 5 L. J. Ch. 62.

SUB-SECT. 7.—REFERENCES.

A. To Attorney-General.

2287. When ordered—Information & petition proceeding together under Charities Procedure Act, 1812 (c. 101)—Including same or part of same

objects—To consider which should proceed.]—A.-G. *v.* GREEN (1820), 1 Jac. & W. 303; 37 E. R. 391, L. C.

Annotations :—**Consd.** A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172. **Refd.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85.

2288. —— To certify whether charity should accept less sum than found by master's report.]—A.-G. *v.* EXETER CORPN. (1827), 2 Russ. 362; 38 E. R. 372, L. C.

Annotations :—**Consd.** Ludlow Corpn. *v.* Greenhouse (1827), 1 Bli. N. S. 45. **Apld.** A.-G. *v.* Brettingham (1840), 3 Beav. 91. **Consd.** A.-G. *v.* St. Mary Magdalen College, Oxford (1854), 2 Eq. Rep. 1007. **Refd.** A.-G. *v.* Carlisle Corpn. (1831), 4 Sim. 275; A.-G. *v.* Newbury Corpn. (1831), Coop. Pr. Cas. 75; A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85; A.-G. *v.* Eastlake (1853), 2 Eq. Rep. 145.

B. To Master.

2289. When ordered—With consent of Attorney-General—In suit by Attorney-General respecting breach of trust—Not on construction of will.]—A.-G. *v.* FEA (1819), 4 Madd. 274; 56 E. R. 707.

Annotation :—**Refd.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85.

—— To consider compromise.]—*See* Nos. 2292, 2295, 2296, *post.*

—— On petition—Under Charities Procedure Act, 1812 (c. 101).]—*See* Sect. 2, sub-sect. 6, *post.*

—— To settle scheme.]—*See* Sect. 4, sub-sect. 2, *post.*

2290. Who may intervene—Lessee of charity land—On inquiry as to propriety of taking proceedings to set aside lease—Lessee not party to cause.]—A.-G. *v.* PRETYMAN (1845), 8 Beav. 316; 50 E. R. 124.

2291. —— Not persons interested—On inquiry whether beneficial to charity that almshouses should be sold & rebuilt on other land—Public sufficiently represented by Attorney-General.]—IRONMONGERS' CO. *v.* ROBERTS (1909), *Times*, June 24.

SUB-SECT. 8.—COMPROMISE OF ACTIONS.

2292. When sanctioned by court—Division of property between trustees of charity & next of kin—After report from master that arrangement beneficial to charity.]—A.-G. *v.* LAUNDERFIELD (or LANDERFIELD) (1743), 3 Swan. 416, n.; 9 Mod. Rep. 286; 36 E. R. 930, L. C.

Annotation :—**Mentd.** *Re* Thompson's Settlmt. Trusts, Thompson *v.* Alexander, [1905] 1 Ch. 229.

2293. —— —— Attorney-General consenting.]—ANDREW *v.* MERCHANT TAYLORS' CO. (MASTER & WARDENS) (1802), 7 Ves. 223; 32 E. R. 90.

Annotation :—**Refd.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85.

See, also, No. 2295, *post.*

2294. —— Impossibility of giving effect to gift in form intended—Arrangement with next of kin entitled in default.]—*Re* SIMPSON'S WILL (*circa* 1786), cited in 5 Ves. 304; 31 E. R. 600.

2295. —— Court may refer compromise to master—Although sanctioned by Attorney-General—Court not satisfied that compromise beneficial.]—*Re* LUDLOW CHARITIES (1845), 6 L. T. O. S. 65; 9 J. P. 265, L. C.

See, also, No. 2292, *ante.*

2296. Consent of Attorney-General—Necessity for—Report of master confirmed by court without consent—Referred back with liberty for Attorney-General to intervene.]—A.-G. *v.* LUDLOW CORPN. (1842), 7 J. P. 111; 6 Jur. 1003.

See, also, Nos. 2292, 2295, *ante.*

2297. —— When power to consent exercised—Proposal more beneficial than litigation—Though not giving interest.]—A.-G. *v.* BOUCHERETT (1858), 25 Beav. 116; 53 E. R. 580.

2298. —— —— Exclusion of next of kin with strong claim—Charity entitled to.]—Testator by his will bequeathed the residue of his real & personal estate for the establishment of an agricultural college. The will was disputed by one of his next of kin who was also heiress-at-law; but a compromise was agreed to, by which the will was to be proved in solemn form without opposition. The A.-G., as interested in the disposal of the residue, was cited, & appeared at the hearing to give his sanction to the compromise.—BOUGHEY *v.* MINOR, [1893] P. 181; 62 L. J. P. 104.

2299. Effect of compromise—Decreed with consent of Attorney-General—Binding on next of kin.]—ANDREW *v.* TRINITY HALL, CAMBRIDGE (1804), 9 Ves. 525; 32 E. R. 706.

Annotations :—**Refd.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85. **Mentd.** Warren *v.* Rudall (1860), 1 John. & H. 1.

2300. —— Sanctioned by Attorney-General—Court will not set aside as improvident—On application of individual member of charity body.]—VINCE *v.* WALSH (1854), 24 L. T. O. S. 89; 3 W. R. 7.

2301. —— —— Binding on charities voluntarily absent.]—Testator by codicil, admitted to probate in circumstances hereinafter stated, bequeathed a number of legacies to charities & the residue of his estate upon trust for division among institutions to be selected by his trustees. On Mar. 21, 1908 he was found lunatic by inquisition & the Official Solr. was appointed committee of his person. Shortly afterwards he was removed to an establishment maintained for him under the authority of the Master in Lunacy & O. was appointed by the committee of the person to have charge of the establishment. Testator died in 1915, & shortly after his death one of defts. commenced an action in the Probate Div. claiming as heir-at-law & sole next of kin that the ct. should pronounce against the codicil & for the will & five earlier codicils under which the residue would be undisposed of. The A.-G. was a party to the proceedings, & a citation was issued to the charities, which, however, did not appear. Ultimately a compromise signed by the A.-G. & other counsel was arrived at between the parties present at the hearing under which the sixth codicil was admitted to probate on the terms that the will & six codicils were to be admitted to probate; that the beneficiaries under the sixth codicil were to relinquish in favour of pltf. in that action one-third of their legacies under that codicil; & that pltf. was to receive one-third of the residue of the estate in addition to the amounts relinquished in his favour. The charities were at once informed of the compromise & no complaint was ever made: —*Held :* the compromise having been assented to by the A.-G. on behalf of the charities absent by their own choice they were bound by it; but, even if they were not bound, yet, as they claimed to stand by the probate of the sixth codicil, not to set it aside, & as it was only admitted to probate as part of the compromise, they must if they wished to take advantage of the agreement, bear their portion of the burden of it.—*Re* KING, JACKSON *v.* A.-G., [1917] 2 Ch. 420; 87 L. J. Ch. 3; 117 L. T. 529; 33 T. L. R. 535; 62 Sol. Jo. 9.

2302. Terms of compromise not carried out—Parties revert to original position—Fresh inquiry.]—A.-G. *v.* TREVELYAN (1847), 16 L. J. Ch. 521; 8 L. T. O. S. 407.

n. *When ordered—To inquire whether for benefit of charity to let premises.*]—*Re* SUIR ISLAND FEMALE CHARITY SCHOOL (1846), 3 Jo. & Lat. 171.—IR.

Sect. 1.—*Actions: Sub-sects.* 8, 9 & 10. *Sect.* 2: *Sub-sect.* 1, *A. & B.*]

General control of actions by Attorney-General.] —*See* Sect. 1, sub-sect. 2, *ante*.

SUB-SECT. 9.—REHEARING AND APPEALS.

2303. Rehearing—Decree on default setting aside lease & directing account of rent—On payment of costs—Proceedings before master to draft report of what due not disturbed.]—A.-G. *v.* BROOKE (1811), 18 Ves. 319 ; 34 E. R. 338, L. C. ; *subsequent proceedings* (1812), 18 Ves. 496, L. C.

Annotations :—**Consd.** Scarisbrick *v.* Skelmersdale (1840), 4 Y. & C. Ex. 78. **Refd.** Jones *v.* Creswicke, Booth *v.* Creswicke (1841), 5 Jur. 763 ; Lang *v.* Purves (1862), 15 Moo. P. C. C. 389. **Mentd.** A.-G. *v.* Moses (1817), 2 Madd. 294 ; A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395.

2304. Appeal by Attorney-General—As defendant but taking no part in hearing—Heard—But course adopted by Attorney-General condemned.]—CHRIST'S HOSPITAL *v.* GRAINGER (1849), 1 Mac. & G. 460 ; 1 H. & Tw. 533 ; 19 L. J. Ch. 33 ; 15 L. T. O. S. 497 ; 13 J. P. 778 ; 14 Jur. 339 ; 41 E. R. 1343, L. C. ; *affg.* (1848), 16 Sim. 83.

Annotations :—**Mentd.** R. *v.* East Mark Tithing (1848), 12 Jur. 332 ; Braund *v.* Devon (1868), 16 W. R. 1180 ; Chamberlayne *v.* Brockett (1872), 8 Ch. App. 206 ; *Re* Tyler, Tyler *v.* Tyler, [1891] 3 Ch. 252 ; *Re* Bowen, Lloyd Phillips *v.* Davis, [1893] 2 Ch. 491 ; Worthing Corpn. *v.* Heather, [1906] 2 Ch. 532 ; *Re* Da Costa, Clarke *v.* Church of England Collegiate School of St. Peter, [1912] 1 Ch. 337.

Attorney-General party to action.]—*See* Sect. 1, sub-sect. 4, A., *ante*.

SUB-SECT. 10.—COSTS.

See Sect. 6, *post*.

SECT. 2.—**PETITIONS.**

SUB-SECT. 1.—JURISDICTION ON PETITION.

A. Matters within Jurisdiction.

See Charities Procedure Act, 1812 (c. 101).

2305. Discretion of court.]—It is within the discretion of the ct., if it thinks the case requires it, to decline making an order on petition under Charities Procedure Act, 1812, & to require the parties to proceed by information.—A.-G. *v.* STAMFORD (EARL), *Re* BLUNDELL'S CHARITY (1841), 10 L. J. Ch. 172 ; 10 Jur. 1070, n., L. C.

2306. Regulation of charity.]—*Ex p.* BERKHAMPSTEAD FREE SCHOOL (1813), 2 Ves. & B. 134 ; 35 E. R. 270, L. C.

Annotations :—**Refd.** A.-G. *v.* St. Cross Hospital (1853), 17 Beav. 435. **Mentd.** A.-G. *v.* Smythies (1836), 2 My. & Cr. 135 ; A.-G. *v.* Browne's Hospital (1849), 17 Sim. 137 ; *Re* Chelmsford Grammar School (1855), 3 Eq. Rep. 517.

2307. Administration of funds — Even when charity founded by royal charter.]—*Re* CHERTSEY MARKET, *Ex p.* WALTHEW (1819), 6 Price, 261 ; Dan. 174 ; 146 E. R. 803.

2308. Persons entitled to benefit—Whether court can determine.]—*Re* BEDFORD CHARITY (MASTERS, ETC.) (1819), 2 Swan. 470 ; 36 E. R. 696, L. C.

Annotations :—**Consd.** *Re* Woodburn's Will (1857), 1 De G. & J. 333. **Refd.** Bowman *v.* Secular Soc., [1917] A. C. 406.

2309. Confined to questions of breach of trust—As between trustees & objects of charity.]—*Ex p.* REES (1814), 3 Ves. & B. 10 ; 35 E. R. 382, L. C.

Annotation :—**Consd.** A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172.

2310. —— Committed by persons in their character of trustees.]—*Re* LAWFORD CHARITY, *Ex p.* SKINNER (1817), 2 Mer. 453 ; 35 E. R. 1013, L. C. ; *subsequent proceedings* (1818), 1 Wils. Ch. 14, L. C.

Annotation :—**Mentd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

2311. —— Court may decree account of profits.] —LUDLOW CORPN. *v.* GREENHOUSE (1827), 1 Bli. N. S. 17 ; 4 E. R. 780, H. L. ; *revsg.* S. C. *sub nom. Ex p.* GREENHOUSE (1815), 1 Madd. 92.

Annotations :—**Consd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312 ; *Re* Upton Warren (1833), 1 My. & K. 410. **Refd.** *Re* Newark Charities (1837), Donnelly. 248 ; *Re* West Retford Church Lands (1839), 10 Sim. 101. **Mentd.** *Re* Dean Clarke's Charity (1836), 8 Sim. 34 ; A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85 ; A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172 ; A.-G. *v.* Haberdashers' Co. (1852), 15 Beav. 397 ; *Re* Harden Wesleyan Chapel (1853), 1 W. R. 212 ; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223.

2312. Conflicting claims of different charities—Question of law depending on construction of instrument.]—*Re* UPTON WARREN (PARISH) (1833), 1 My. & K. 410 ; 39 E. R. 736, L. C.

2313. Sale of charity estate—If for benefit of charity.]—*Re* PARKE'S CHARITY (1842), 12 Sim. 329 ; 59 E. R. 1158.

Annotations :—**Folld.** *Re* Ecclesall (1852), 16 Beav. 297. **Refd.** *Re* Newton's Charity (1848), 12 Jur. 1011. **Mentd.** *Re* Christchurch Inclosure Act, Meyrick *v.* A.-G., [1894] 3 Ch. 209.

2314. —— ——.]—*Re* ECCLESALL OVERSEERS (1852), 16 Beav. 297 ; 21 L. J. Ch. 729 ; 51 E. R. 793.

Annotation :—**Mentd.** *Re* Christchurch Inclosure Act, Meyrick *v.* A.-G., [1894] 3 Ch. 209.

2315. —— —— Order made by court reluctantly.] —*Re* LYFORD'S CHARITY (1852), 16 Beav. 297, n. ; 51 E. R. 793.

2316. —— —— Jurisdiction of Court of Chancery.]—The Ct. of Ch. has jurisdiction to alien the real estate of a charity, & it can do so upon an application under Charities Procedure Act, 1812.—*Re* ASHTON CHARITY (1856), 22 Beav. 288 ; 52 E. R. 1119.

Annotations :—**Consd.** Cullen *v.* O'Meara (1867), 15 W. R. 1174. **Apld.** *Re* Stockport Ragged Industrial & Reformatory School (1897), 77 L. T. 425. **Refd.** *Re* North Shields Old Meeting House (1859), 7 W. R. 541. **Mentd.** *Re* Christchurch Inclosure Act (1894), 42 W. R. 614.

2317. —— —— ——.]—*Re* NORTH SHIELDS OLD MEETING HOUSE (1859), 7 W. R. 541.

2318. —— On failure of object—Petition certified by Attorney-General.]—*Re* BRADFORD SCHOOL OF INDUSTRY, [1893] W. N. 60.

Annotation :—**Folld.** *Re* Stockport Ragged Industrial & Reformatory School (1897), 77 L. T. 425.

Sale of charity lands generally, *see* Part V., Sect. 3, sub-sect. 2, *ante*.

2319. Exchange of charity lands — Enquiry whether exchange beneficial directed—Without deciding whether arrangement could be ultimately carried out.]—*Re* NEWTON'S CHARITY (1848), 13 L. T. O. S. 21 ; 12 Jur. 1011, L. C.

Annotation :—**Mentd.** *Re* Christchurch Inclosure Act, Meyrick *v.* A.-G., [1894] 3 Ch. 209.

2320. —— Authorised when beneficial to charity.] —Under Charities Procedure Act, 1812, the ct. has jurisdiction to authorise a beneficial exchange of the charity property.—MILDMAY *v.* METHUEN (LORD) (1851), 14 Beav. 121, n. ; 51 E. R. 232.

2321. Reference to master to approve of scheme—& to say whether beneficial to obtain Act in respect of matters not within jurisdiction.] — Where the trustees of a charity were possessed of funds, in reference to the application of which there were

o. *Sale of charity estate.*]—CULLEN *v.* O'MEARA (1867), I. R. 1 C. L. 640.—IR.

p. *Establishment of charity cy-près.*] —*Re* BELVEDERE'S (LADY) CHARITY (1840), 2 I. Eq. R. 354.—IR.

q. *Lease of charity estate — If for benefit of charity.*]—*Re* SUIR ISLAND FEMALE CHARITY SCHOOL (1846), 3 Jo. & Lat. 171.—IR.

either no specific directions, or which, for some reason or other it appeared, could not be advantageously applied in the execution of existing trusts:—*Held:* the ct. had jurisdiction to entertain an application under Charities Procedure Act, 1812 (c. 101), for a reference to the master to approve of a scheme, including the question whether it would be beneficial or not to obtain an Act of Parliament in respect of matters with which the ct. had no jurisdiction to interfere.—*Re* SHREWSBURY GRAMMAR SCHOOL (1849), 1 Mac. & G. 324; 1 H. & Tw. 401; 19 L. J. Ch. 287; 14 Jur. 259; 41 E. R. 1290, L. C.

Annotation :—**Refd.** *Re* Hall's Charity (1851), 14 Beav. 115.

Schemes generally, *see* Part IV., Sect. 1, *ante*

2322. Proportions in which objects of charity entitled.]—Under Charities Procedure Act, 1812, the ct. has jurisdiction (1) to declare the proportions in which the charitable objects are entitled, but not (2) to repair a previous misapplication of the funds amongst them.—*Re* HALL'S CHARITY (1851), 14 Beav. 115; 18 L. T. O. S. 59; 15 Jur. 940; 51 E. R. 230.

Annotation :—**Mentd.** *Re* Hall's Charity, Severn Comrs. *v.* Hall's Charity Trustees & Worcestershire County Council (1911), 10 L. G. R. 11.

2323. Whether resolutions by some trustees to change locality of college would be beneficial.]—*Re* MANCHESTER NEW COLLEGE (1853), 16 Beav. 610; 22 L. J. Ch. 571; 21 L. T. O. S. 285; 17 Jur. 540; 1 W. R. 269; 51 E. R. 916.

Annotation :—**Consd.** *Re* Norwich Town Close Estate Charity (1888), 40 Ch. D. 298.

2324. Investment of funds paid into court—Under Lands Clauses Consolidation Act, 1845 (c. 18)—Application not "Application for interim & permanent investment & for payment of dividends"—Within R. S. C. Ord. 55, r. 2 (7).]—*Ex p.* JESUS COLLEGE, CAMBRIDGE (1884), 50 L. T. 583.

Annotations :—**Refd.** *Re* Bethlehem & Bridewell Hospitals (1885), 30 Ch. D. 541; *Ex p.* Castle Bytham, *Ex p.* Midland Ry. Co., [1895] 1 Ch. 348.

2325. —— —— Scheme vesting lands in Official Trustee by whom income & dividends were to be paid to local trustees—Order made for interim investment & payment of dividends.]—*Re* STAFFORD'S CHARITY (1887), 57 L. T. 846.

—— —— ——.]—*See, generally,* Part V., Sect. 3, sub-sect. 7, C., (a), *ante.*

Jurisdiction of Court generally, *see* Part IX., Sect. 3, *ante.*

B. Matters not within Jurisdiction.

See Charities Procedure Act, 1812 (c. 101).

2326. Adverse claim to land—As having formerly belonged to charity.]—*Ex p.* REES (1814), 3 Ves. & B. 10; 35 E. R. 382, L. C.

Annotation :—**Refd.** A.-G. *v.* Stamford (1341), 10 L. J. Ch. 172.

2327. Constructive trusts.] — *Re* NORRIS' CHARITY, *Ex p.* BROWN (1815), Coop. G. 295; 35 E. R. 563, L. C.

2328. Benefits derived from breach of trust by third parties—Information filed & petition presented with same objects—Court will not separate objects & give relief on matters within jurisdiction.]—*Re* LAWFORD CHARITY, *Ex p.* SKINNER (1817), 2 Mer. 453; 35 E. R. 1013, L. C.; *subsequent proceedings* (1818), 1 Wils. Ch. 14, L. C.

Annotation :—**Mentd.** A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437.

2329. Account of assets of deceased trustee—Variation of lease of charity estate.]—*Re* LAWFORD CHARITY, *Ex p.* SKINNER (1818), 1 Wils. Ch. 14; 37 E. R. 7, L. C.

2330. Regulation, alteration or execution of charity.] — *Re* CHERTSEY MARKET, *Ex p.* WALTHEW (1819), 6 Price, 261; Dan. 174; 146 E. R. 803.

2331. Direction of account of assets of person who had received rents of charity estate.]—*Re* ST. WENN'S CHARITY (1824), 2 Sim. & St. 66; 57 E. R. 270.

2332. Approval of scheme for due regulation & management—Inquiry into trusts of charity—Cancellation of lease.]—LUDLOW CORPN. *v.* GREENHOUSE (1827), 1 Bli. N. S. 17; 4 E. R. 780, H. L.; *revsg.* S. C. *sub nom. Ex p.* GREENHOUSE (1815), 1 Madd. 92.

Annotations :—**Refd.** *Re* Upton Warren (1833), 1 My. & K. 410; *Re* Phillipott's Charity (1837), 8 Sim. 381; *Re* West Retford Church Lands (1839), 10 Sim. 101; A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172; *Re* Harden Wesleyan Chapel (1853), 1 W. R. 212. **Mentd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312; *Re* Dean Clarke's Charity (1836), 8 Sim. 34; A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85; A.-G. *v.* Haberdashers' Co. (1852), 15 Beav. 397; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223.

2333. Compensation for damage done to trust property.] — LUDLOW CORPN. *v.* GREENHOUSE, (1827), 1 Bli. N. S. 17; 4 E. R. 780, H. L.; *revsg.* S. C. *sub nom. Ex p.* GREENHOUSE (1815), 1 Madd. 92.

Annotations :—**Refd.** *Re* Upton Warren (1833), 1 My. & K. 410; *Re* Phillipott's Charity (1837), 8 Sim. 381; *Re* West Retford Church Lands (1839), 10 Sim. 101; A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172; *Re* Harden Wesleyan Chapel (1853), 1 W. R. 212. **Mentd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312; *Re* Dean Clarke's Charity (1836), 8 Sim. 34; A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85; A.-G. *v.* Haberdashers' Co. (1852), 15 Beav. 397; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223.

2334. Adverse claims of parties.]—*Re* DEAN CLARKE'S CHARITY (1836), 8 Sim. 34; 59 E. R. 15.

Annotations :—**Refd.** A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172; *Re* Norwich Town Close Estate Charity (1888), 40 Ch. D. 298.

2335. —— Whether legal estate vested in trustees under Municipal Corporations Act, 1835 (c. 76)—Doubtful & difficult questions relating to charity.]—*Re* PHILLIPOTT'S CHARITY (1837), 8 Sim. 381; 59 E. R. 151; *sub nom. Re* NEWARK CHARITIES, Donnelly, 248; 6 L. J. Ch. 215.

Annotation :—**Refd.** A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172.

2336. —— As to who entitled to administer funds.]—*Re* WEST RETFORD CHURCH LANDS (1839), 10 Sim. 101; 8 L. J. Ch. 317; 3 Jur. 501; 59 E. R. 551.

2337. —— As to whether parishes entitled to participate—In funds distributed among certain other parishes for long period.]—*Re* MAGDALEN LAND CHARITY, HASTINGS (1852), 9 Hare, 624; 21 L. J. Ch. 874; 68 E. R. 663.

2338. Transfer of funds of dispensary to hospital—& amalgamation of such institutions.]—*Re* READING DISPENSARY (1839), 10 Sim. 118; 3 Jur. 697; 59 E. R. 558.

2339. Variation of management of endowed school—Principles of administration affected.]—A.-G. *v.* STAMFORD (EARL), *Re* BLUNDELL'S CHARITY (1841), 10 L. J. Ch. 172; 10 Jur. 1070, n., L. C.

2340. Redressing of former misapplication of funds amongst objects of charity.] — *Re* HALL'S CHARITY, No. 2322, *ante.*

2341. Conveyance by trustee not ordered—When trustee disputing title of charity—Transfer of Trust Estates Act, 1830 (c. 60).]—*Re* OLNEY CHARITIES (1847), 11 Jur. 421.

2342. Under Charities Inquiries Act, 1819 (c. 81)—Whether number of trustees fixed by founder should be increased—Application by Attorney-General—No jurisdiction to direct reference to master.]—*Re* STOREY'S ALMSHOUSES, CAMBRIDGE (1839), 9 L. J. Ch. 93; 4 Jur. 620, L. C.

See, further, Part VII., Sect. 2, sub-sect. 5, H., *ante.*

Sect. 2.—*Petitions: Sub-sect.* 1, *B.; sub-sect.* 2, *A., B., C. & D.; sub-sects.* 3, 4 & 5, *A., B. & C.; sub-sects.* 6 & 7.]

2343. As to who proper parties to execute building leases of charity lands—Doubt in whom legal estate vested.]—*Re* EVELYN'S CHARITY (1843), 1 L. T. O. S. 456.

Jurisdiction of court generally, *see* Part IX., Sect. 3, *ante*.

SUB-SECT. 2.—PRESENTATION OF PETITION.

A. By whom Presented.

See Charities Procedure Act, 1812 (c. 101).

2344. Must be presented by two or more persons.]—*Re* DOVENBY HOSPITAL (1836), 1 My. & Cr. 279; 5 L. J. Ch. 212; 40 E. R. 381, L. C.

Annotation :—**Mentd.** *Re* Stevens, West *v.* Smith (1840), 3 Beav. 306.

2345. —— Not sustained if preferred by one person only—Though certified by Attorney-General.]—*Re* GARSTANG CHURCH TOWN SCHOOL, *Ex p.* PEDDER (1829), 7 L. J. O. S. Ch. 169, L. C.

2346. Persons not parties to information—Cannot present petition in cause—After master's report confirmed—Although defendant to information be co-petitioner.]—A.-G. *v.* LECHMERE (1825), Coop. Pr. Cas. 495; 3 L. J. O. S. Ch. 125; 47 E. R. 616.

B. How Petition Entitled.

See Charities Procedure Act, 1812 (c. 101).

2347. What petitions should be entitled under Charities Procedure Act, 1812—Petition for appointment of new trustees.]—*Re* BIERTON CHARITY LAND (1853), 10 Hare, App. II., xxxviii.; 68 E. R. 1136.

2348. —— —— Of Wesleyan chapel.] — *Re* VARTEG IRON WORKS WESLEYAN CHAPEL (1853), 10 Hare, App. II., xxxvii.; 68 E. R. 1136.

2349. —— —— Should also be entitled under Trustee Act, 1850 (c. 60).]—*Re* ROLLE'S CHARITY, *Ex p.* GOLDSMID (1853), 3 De G. M. & G. 153; 22 L. J. Ch. 760; 43 E. R. 61, L. JJ.

2350. —— —— Not when entitled under Charitable Trusts Act, 1853 (c. 137) & Trustee Act, 1850 (c. 60).]—*Re* LINCOLN PRIMITIVE METHODIST CHAPEL, *Re* CHARITABLE TRUSTS ACT, 1853, & TRUSTEE ACT, 1850 (1855), 1 Jur. N. S. 1011; 3 W. R. 608.

2351. —— —— Not when former information stayed for want of funds—Sufficient if entitled in information & Trustee Act, 1850 (c. 60).]—A.-G. *v.* COOPER, *Re* TRUSTEE ACT (1861), 7 L. T. 149; 8 Jur. N. S. 50; 10 W. R. 31.

2352. —— Petition for investment in land of purchase-money under Lands Clauses Consolidation Act, 1845 (c. 18)—Necessary to be so entitled.]—*Re* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1854), 18 Beav. 608; 23 L. T. O. S. 36; 10 W. R. 31, n.; 52 E. R. 239.

Annotations :—**Mentd.** *Re* Bethlem Hospital (1875), L. R. 19 Eq. 457; Rendall *v.* Blair (1890), 45 Ch. D. 139; *Re* Gaselee, [1901] 1 Ch. 923.

2353. —— —— Not necessary to be so entitled—Though no cause or information pending.]—*Re* LONDON & BRIGHTON RY. CO., *Ex p.* HABERDASHERS' CO. (1857), 10 W. R. 31, n.

2354. —— & Church Building Act, 1845 (c. 70)—Petition for apportionment under latter Act.]—*Re* WEST HAM CHARITIES (1848), 2 De G. & Sm. 218; 3 New Mag. Cas. 38; 17 L. J. Ch. 441; 11 L. T. O. S. 512; 12 Jur. 783; 64 E. R. 97.

Annotation :—**Mentd.** *Ex p.* Brompton (1852), 5 De G. & Sm. 626.

2355. Effect of petition erroneously entitled—Petition under two Acts entitled in one only—Must be amended.]—*Re* COVENTRY CHARITIES (1845), 5 L. T. O. S. 33, L. C.

C. Necessity for Signature.

See Charities Procedure Act, 1812 (c. 101).

2356. Signature of two or more persons necessary—In presence of their solicitor.]—*Re* DOVENBY HOSPITAL (1836), 1 My. & Cr. 279; 5 L. J. Ch. 212; 40 E. R. 381, L. C.

Annotation :—**Mentd.** *Re* Stevens, West *v.* Smith (1840), 3 Beav. 306.

2357. —— Must be signature of two individual petitioners—Not of corporation & individual.]—*Re* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1854), 18 Beav. 608; 52 E. R. 239.

Annotations :—**Mentd.** *Re* Bethlem Hospital (1875), L. R. 19 Eq. 457; Rendall *v.* Blair (1890), 45 Ch. D. 139; *Re* Gaselee, [1901] 1 Ch. 923.

D. Certificate of Attorney-General.

See Charities Procedure Act, 1812 (c. 101).

2358. Necessary—Or that of Solicitor-General if office of Attorney-General vacant—Signature to be affixed with same deliberation as in informations regularly filed.]—*Re* LAWFORD CHARITY, *Ex p.* SKINNER (1817), 2 Mer. 453; 35 E. R. 1013, L. C.; *subsequent proceedings* (1818), 1 Wils. Ch. 14, L. C.

Annotation :—**Mentd.** A.-G. *v.* Hungerford (1834), 3 Bli. N. S. 437.

2359. —— ——.]—A.-G. *v.* GREEN (1820), 1 Jac. & W. 303; 37 E. R. 391, L. C.

Annotations :—**Mentd.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85; A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172.

2360. —— ——.]—*Re* DOVENBY HOSPITAL (1836), 1 My. & Cr. 279; 5 L. J. Ch. 212; 40 E. R. 381, L. C.

Annotation :—**Mentd.** *Re* Stevens, West *v.* Smith (1840), 3 Beav. 306.

2361. —— For appointment of new trustees.]—*Re* WARWICK CHARITIES (1845), 1 Ph. 559; 6 L. T. O. S. 41; 41 E. R. 745, L. C.

2362. —— ——.]—*Re* BIERTON CHARITY LAND (1853), 10 Hare, App. II., xxxviii.; 68 E. R. 1136.

2363. —— ——.]—*Re* ROLLE'S CHARITY, *Ex p.* GOLDSMID (1853), 3 De G. M. & G. 153; 22 L. J. Ch. 760; 43 E. R. 61, L. JJ.

2364. —— —— Not where former information stayed for want of funds.]—A.-G. *v.* COOPER, *Re* TRUSTEE ACT (1861), 7 L. T. 149; 8 Jur. N. S. 50; 10 W. R. 31.

2365. —— For investment in land of purchase-money under Lands Clauses Consolidation Act, 1845 (c. 18).]—*Re* LONDON, BRIGHTON & SOUTH COAST RY. CO. (1854), 18 Beav. 608; 52 E. R. 239.

Annotations :—**Refd.** *Re* Bethlem Hospital (1875), L. R. 19 Eq. 457. **Mentd.** Rendall *v.* Blair (1890), 45 Ch. D. 139; *Re* Gaselee, [1901] 1 Ch. 923.

2366. —— —— No cause or information pending.]—*Re* LONDON & BRIGHTON RY. CO., *Ex p.* HABERDASHERS' CO. (1857), 10 W. R. 31, n.

2367. —— Unless petition relates to matters growing out of or having reference to what court has done before on petition properly certified.]—A.-G. *v.* STAMFORD (EARL), *Re* BLUNDELL'S CHARITY (1841), 10 L. J. Ch. 172; 10 Jur. 1070, n., L. C.

2368. —— Special petition after decree made—Praying additional inquiries—Petition dismissed on application of Attorney-General.]—A.-G. *v.* WYGGESTON'S HOSPITAL (1853), 16 Beav. 313; 22 L. J. Ch. 740; 20 L. T. O. S. 230; 1 W. R. 115; 51 E. R. 799, L. C.

SUB-SECT. 3.—PARTIES TO PETITION.

2369. Who are — Respondents.] — *Re* WILLOUGHBY'S CHARITY (1833), 6 Sim. 18; 58 E. R. 502.

2370. Attorney-General not necessary party—His certificate sufficient—Petition by inhabitants on account of misapplication of funds of parish charity.]—*Re* CHERTSEY MARKET, *Ex p.* WALTHEW (1819), 6 Price, 261 ; 146 E. R. 803.

Necessity for certificate of Attorney-General.]—*See* Sub-sect. 2, D., *ante*.

2371. Petition for appointment of new trustees—Of trust to allow such person to preach as Wesleyan Conference should appoint—Persons representing conference entitled to join.]—*Re* HARDEN WESLEYAN CHAPEL (1853), 1 W. R. 212.

SUB-SECT. 4.—SERVICE OF PETITION.

See Charities Procedure Act, 1812 (c. 101).

2372. Upon whom — All parties interested — Inquiry into claims to trusteeship—Order referring to master made ex parte & without service of petition irregular.]—*Re* WALWORTH COMMON ESTATE (1847), 10 L. T. O. S. 341, L. C.

2373. —— All trustees—Petition for removal of trustees—& scheme for regulation of charity.]—*Re* MANIA CHARITY, *Ex p.* SEAGEARS (1813), 1 Ves. & B. 496 ; 35 E. R. 193, L. C.

Annotation :—**Distd.** *Re* Walworth Common Estate (1847), 10 L. T. O. S. 341.

2374. —— Surviving or continuing trustees—Petition for appointment of new trustees.]—*Re* HEREFORD CHARITIES, *Re* GLOUCESTER CHARITIES (1842), 6 Jur. 289, L. C.

Annotation :—**Reid.** *Re* Coventry Charities (1845), 6 L. T. O. S. 42.

2375. —— Attorney-General—Petition to regulate charity—Though not opposed.]—*Re* BAYLIS'S CHARITY (1843), 2 L. T. O. S. 186, L. C.

2376. —— —— Not petition to fill up vacancies amongst trustees.]—*Re* WARWICK CHARITIES (1845), 1 Ph. 559 ; 41 E. R. 745, L. C.

2377. —— —— Special petition presented by relators in Attorney-General's name.]—A.-G. *v.* WYGGESTON'S HOSPITAL (1853), 16 Beav. 313 ; 51 E. R. 799 ; *affd.* on other grounds, 22 L. J. Ch. 740, L. C.

2378. —— —— Not as a matter of course.]—*Re* OXFORD CHARITY (1861), Seton's Judgments & Orders 7th ed. 1263.

2379. —— Freeman of corporation—Petition for application of purchase-money of lands over which freeman had rights—& scheme for benefit of freeman.]—*Re* GREAT NORTHERN RY. CO.'S ACT, *Ex p.* LINCOLN CORPN. (1852), 6 Ry. & Can. Cas. 738 ; 21 L. J. Ch. 621.

2380. —— Official Trustees of Charity Lands & Charitable Funds—Petition for interim investment of purchase-money of land taken under Lands Clauses Consolidation Act, 1845 (c. 18)—Legal estate of lands in Official Trustee of Charity Lands.]—*Re* STAFFORD'S CHARITY (1887), 57 L. T. 846.

SUB-SECT. 5.—THE HEARING.

A. Who may be heard.

2381. Attorney-General—As counsel for respondents—Although petition certified by him.]—LUDLOW CORPN. *v.* GREENHOUSE (1827), 1 Bli. N. S. 17 ; 4 E. R. 780, H. L. ; *revsg.* S. C. *sub nom.* *Ex p.* GREENHOUSE (1815), 1 Madd. 92.

Annotations :—**Consd.** A.-G. *v.* Haberdashers' Co. (1852), 15 Beav. 397 ; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223. **Reid.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85. **Mentd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312 ; *Re* Upton Warren (1833), 1 My. & K. 410 ; *Re* Dean Clarke's Charity (1836), 8 Sim. 34 ; *Re* Phillipott's Charity (1837), 8 Sim. 381 ; *Re* West Retford Church Lands (1839), 10 Sim. 101 ; A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172 ; *Re* Harden Wesleyan Chapel (1853), 1 W. R. 212.

See, also, No. 2271, *ante*.

B. Evidence.

2382. Petition for investment of funds in court—Affidavit of title under Chancery Consolidated Ord. 34, r. 3 (now R. S. C. Ord. 52, r. 18)—Necessary—Though only income of fund proposed to be dealt with.]—*Ex p.* ST. MARY'S COLLEGE, WINCHESTER (WARDEN, SCHOLARS & CLERKS) (1866), 14 L. T. 543 ; 14 W. R. 788.

2383. —— —— —— Petition under Settled Land Act, 1882 (c. 38), s. 32.]—*Re* BYRON'S CHARITY (1883), 48 L. T. 515 ; 31 W. R. 517.

Annotation :—**Mentd.** *Ex p.* Castle Bytham, *Ex p.* Mid. Ry., [1895] 1 Ch. 348.

2384. —— —— Dispensed with—Petition under Lands Clauses Consolidation Act, 1845 (c. 18), s. 70—By large public corporation.] — *Re* MAGDALEN COLLEGE, OXFORD (PRESIDENT, ETC.) (1880), 42 L. T. 822.

2385. —— —— Made by clerk to charity trustees—Sufficient.]—*Re* EDWARD THE SIXTH'S ALMSHOUSES (1868), 19 L. T. 80 ; 16 W. R. 841.

2386. —— & payment of dividends to petitioners—Affidavit in support need not contain statement of exclusive title of petitioners.] — *Re* MERCHANT TAILORS' CHARITY (1870), 23 L. T. 486.

2387. Alteration in title of petition—Affidavits filed in support of original petition—Made evidence on petition under new title by short affidavit referring to them.]—*Re* VARTEG IRON WORKS WESLEYAN CHAPEL (1853), 10 Hare, App. II., xxxvii. ; 68 E. R. 1136.

C. Other Cases.

2388. Where several petitions in same matter—& compromise proposed—Order of hearing.]—*Re* LUDLOW CHARITIES (1844), 4 L. T. O. S. 269, L. C. ; *subsequent proceedings* (1845), 6 L. T. O. S. 65, L. C.

SUB-SECT. 6.—REFERENCES.

2389. To master—Affidavits admissible—Master cannot examine witnesses on interrogatories.]—*Ex p.* GREENHOUSE (1818), 1 Swan. 60 ; 1 Wils. Ch. 18 ; 37 E. R. 9.

2390. —— To appoint person to convey estate to acting trustees—Surviving trustee having died intestate—& on non-appearance of heirs in answer to advertisements.]—*Re* BELKE'S CHARITY (1849), 18 L. J. Ch. 152 ; 13 L. T. O. S. 22 ; 13 Jur. 317.

—— In informations & actions relating to charities.]—*See* Sect. 1, sub-sects. 7, 8, *ante*.

—— To settle scheme.]—*See* Sect. 4, *post*.

SUB-SECT. 7.—REHEARING AND APPEALS.

See Charities Procedure Act, 1812 (c. 101), s. 1 ; Statute Law Revision & Civil Procedure Act, 1881 (c. 59), s. 3, Sched.

2391. Jurisdiction of court—Lord Chancellor could not hear appeal—From order of Master of Rolls—Under Charities Procedure Act, 1812.]—*Re* ROYSTON GRAMMAR SCHOOL (1840), 9 L. J. Ch. 250, L. C.

2392. —— May hear information to alter order made on petition—If authority of court abused—Although order not appealed against.]—A.-G. *v.* STAMFORD (EARL) (1843), as reported in 12 L. J. Ch. 297 ; 7 Jur. 359, L. C.

Annotations :—**Mentd.** A.-G. *v.* Devon (1846), 15 Sim. 193 ; A.-G. *v.* Ludlow Corpn. (1848), 2 Ph. 685 ; A.-G. *v.* Worcester (1851), 9 Hare, 328 ; *Re* Bristol Free Grammar School (1860), 28 Beav. 161 ; A.-G. *v.* Clifton (1863), 32 Beav. 596 ; Manchester School Case (1867), 2 Ch. App. 497.

Sect. 2.—*Petitions: Sub-sects.* 7, 8 & 9. *Sect.* 3: *Sub-sect.* 1, *A., B. & C.; sub-sects.* 2 & 3. *Sect.* 4: *Sub-sects.* 1, 2, 3 & 4, *A. & B.*]

2393. Who may appeal—Only person party or representing party in court below—Although interested.] — LUDLOW CORPN. *v.* GREENHOUSE (1827), 1 Bli. N. S. 17; 4 E. R. 780, H. L.; *revsg.* S.C. *sub nom. Ex p.* GREENHOUSE (1815), 1 Madd. 92.

Annotations:—**Refd.** A.-G. *v.* Haberdashers' Co. (1852), 15 Beav. 397. **Mentd.** A.-G. *v.* Dublin Corpn. (1827), 1 Bli. N. S. 312; *Re* Upton Warren (1833), 1 My. & K. 410; *Re* Dean Clarke's Charity (1836), 8 Sim. 34; A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85; *Re* Newark Charities (1837), Donnelly, 248; *Re* West Retford Church Lands (1839), 10 Sim. 101; A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172; *Re* Harden Wesleyan Chapel (1853), 1 W. R. 212; A.-G. *v.* Magdalen College, Oxford (1854), 18 Beav. 223.

2394. Point not taken in court below—Entertained with reluctance on appeal—No objection taken to jurisdiction under Charities Procedure Act, 1812.]—*Re* UPTON WARREN (PARISH) (1833), 1 My. & K. 410; 39 E. R. 736, L. C.

2395. "Special leave to appeal"—Under City of London Parochial Charities Act, 1883 (c. 36), s. 10—Grounds for granting.]—*Re* ST. STEPHEN, COLEMAN STREET, *Re* ST. MARY THE VIRGIN, ALDERMANBURY, No. 168, *ante*.

SUB-SECT. 8.—EFFECT OF IRREGULARITY OR DEFECT IN PETITION.

See Charities Procedure Act, 1812 (c. 101).

2396. Irregular petition taken off file—On motion—Notwithstanding order made on such petition.]—*Re* DOVENBY HOSPITAL (1836), 1 My. & Cr. 279; 5 L. J. Ch. 212; 40 E. R. 381, L. C.

Annotation:—**Folld.** West *v.* Smith, *Re* Stevens (1840), 3 Beav. 306.

2397. Order made on defective petition null & void.]—A.-G. *v.* GREEN (1820), 1 Jac. & W. 303; 37 E. R. 391, L. C.

Annotations:—**Refd.** A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172. **Mentd.** A.-G. *v.* Fishmongers' Co. (1837), Coop. Pr. Cas. 85.

See, also, No. 2368, *ante*.

2398. Petition based on erroneous facts—Mistaken statement of constitution of charity—Petition for appointment of new trustees & for scheme for future management—Dismissed.]—*Re* PEYTON'S HOSPITAL (1845), 8 Beav. 70; 14 L. J. Ch. 129; 9 Jur. 675; 50 E. R. 28.

SUB-SECT. 9.—FURTHER ORDERS.

See Charities Procedure Act, 1812 (c. 101).

2399. May be obtained on motion—After order on petition.]—*Re* SLEWRINGE'S CHARITY (1814), 3 Mer. 707; 36 E. R. 271.

2400. ——— ———.]—*Re* CHIPPING SODBURY SCHOOL (1832), 5 Sim. 410; 58 E. R. 391.

SECT. 3.—**SUMMONSES.**

SUB-SECT. 1.—WHAT ORDERS MAY BE MADE.

A. Vesting Orders.

See 1853 Act, s. 28.

2401. Vesting charity property — In Official Trustee of Charity Lands.] — *Re* BECKENHAM CHARITY (1854), Seton's Judgments & Orders, 7th ed. 1271.

2402. —— ———.]—*Re* TITCHMARSH (1857), Seton's Judgments & Orders, 6th ed. 1309.

2403. —— ———.]—*Re* WESTFIELD'S CHARITY (1860), Seton's Judgments & Orders, 7th ed. 1271.

2404. —— In new trustees appointed—Surviving trustee having become lunatic.]—*Re* DAVENPORT'S CHARITY (1855), 4 De G. M. & G. 839; 43 E. R. 736; *sub nom. Re* DEVONPORT EDUCATION FUND, 25 L. T. O. S. 90; 3 W. R. 355, L. C.

Annotation:—**Mentd.** *Re* Norwich Town Close Estate Charity (1888), 40 Ch. D. 298.

2405. —— In Attorney-General—Trustee having become lunatic.]—A.-G. *v.* LANGHAM (1887), 82 L. T. Jo. 246.

B. Transfer of Funds and Payment of Dividends.

2406. Order for transfer of funds to Official Trustees—By execution of last surviving trustee.]—*Re* TITCHMARSH (1857), Seton's Judgments & Orders 6th ed. 1309.

2407. —— & payment of income to trustees of charity.] — *Re* WHARTON'S CHARITIES (1859), Seton's Judgments & Orders, 7th ed. 1271.

2408. —— ———.]—*Re* CRANBOURN SCHOOLS (1863), Seton's Judgments & Orders, 7th ed. 1273.

See, further, Part V., Sect. 3, sub-sect. 7, *ante*.

C. Other Orders.

2409. Order for reinvestment in land—Of money paid into court under compulsory sale of charity lands.]—An application as to the reinvestment in land of money which has been paid into court on a sale of some lands belonging to a charity may be made either to the judge in ct. or in chambers.—*Re* CHAMBERLAIN'S CHARITY ESTATES (1852), 1 W. R. 15, 32.

2410. Order approving scheme.] — *Re* TITCHMARSH (1857), Seton's Judgments & Orders, 6th ed. 1309.

2411. Order directing scheme to be settled.]—*Re* SION HOSPITAL (1876), Seton's Judgments & Orders, 7th ed. 1271.

2412. Order appointing new trustees.]—*Re* YARM FREE GRAMMAR SCHOOL (1853), 10 Hare, App. I., v.; 68 E. R. 1115; *sub nom. Re* CONYERS FREE GRAMMAR SCHOOL, 22 L. J. Ch. 707; 17 Jur. 411.

2413. ———.]—*Re* TITCHMARSH (1857), Seton's Judgments & Orders, 6th ed. 1309.

2414. Order deciding whether property held upon charitable trust or not—Summons under 1853 Act, s. 28.] — *Re* NORWICH TOWN CLOSE ESTATE CHARITY (1888), 40 Ch. D. 298; 60 L. T. 202; 37 W. R. 362; 5 T. L. R. 197, C. A.

Annotation:—**Mentd.** *Re* Wills' Trade-Marks, [1892] 3 Ch. 201.

SUB-SECT. 2.—PARTIES TO ORIGINATING SUMMONS.

2415. For permission to retain advowson—Under 1891 Act, s. 8—Official Trustee of Charity Lands necessary party—Charity Commissioners not necessary or proper parties.]—*Re* CHURCH PATRONAGE TRUST, LAURIE *v.* A.-G., No. 158, *ante*.

2416. To determine whether legacy had lapsed—Attorney-General has right to be party.] — *Re* FARAKER, FARAKER *v.* DURELL, No. 921, *ante*.

2417. To determine construction of charitable bequests—Executors after estate distributed & charitable legacies paid.]—*Re* CARDWELL, A.-G. *v.* DAY, No. 2532. *post*.

2418. To determine validity of bequests—Gift over to police superannuation fund—Police authority sufficiently represented by county council.] — *Re* DAVIES, LLOYD *v.* CARDIGAN COUNTY COUNCIL, No. 216, *ante*.

2412 i. *Order appointing new trustees.*]—*Re* COLVAN'S CHARITY (1886), 19 L. R. Ir. 137.—IR.

For recovery of property not exceeding £20 annual value.]—*See* Charitable Trusts (Recovery) Act, 1891, ss. 4, 6; R. S. C. (Charitable Trusts Recovery), 1892, r. 3.

SUB-SECT. 3.—APPEALS.

2419. Appeal from order of vice-chancellor—Under 1853 Act, s. 28—Extends to cases where aggregate income of several charities exceeds £100 though income of each is less.]—*Re* CHARITABLE GIFTS FOR PRISONERS, *Ex p.* CHRIST'S HOSPITAL (GOVERNORS) (1872), 8 Ch. App. 199; 42 L. J. Ch. 391; 28 L. T. 84; 21 W. R. 213, L. C. & L. JJ.

2420. Attorney-General may appeal—Although not made party to proceedings in court below—& although trustees argued in court below.] — *Re* FARAKER, FARAKER *v.* DURELL, No. 921, *ante*.

SECT. 4.—**PROCEDURE IN SETTLING SCHEMES.**

SUB-SECT. 1.—APPLICATION FOR SCHEME.

2421. Application directed to be made to Court of Session for settling scheme—Attorney-General proper person to make application.]—Where the ct. directs an application to be made to the Ct. of Session in Scotland for the purpose of settling a charitable scheme, the A.-G. is the proper person to make the application to the Ct. of Session.—*Re* FRASER, YEATES *v.* FRASER (1883), 22 Ch. D. 827; 52 L. J. Ch. 469; 48 L. T. 187; 31 W. R. 375.

Annotation :—**Mentd.** *Re* Elliott, Raven *v.* Nicholson (1910), 102 L. T. 528.

SUB-SECT. 2.—WHEN REFERENCE TO MASTER DIRECTED.

On informations & actions relating to charities.]—*See* Sect. 1, sub-sects. 7, 8, *ante*.

On petitions relating to charities.]—*See* Sect. 2, sub-sect. 6, *ante*.

2422. Income of charity considerably increased—Reference should be in most general terms—Parties should be permitted to carry in different schemes.]—(1) Where the income of charity property has been very considerably increased, & a new scheme for its administration is sought, the reference to the master for the purpose should be in the most general terms, & parties should be permitted to carry in different schemes upon which the master should decide & report.

(2) The master may decide who are the proper parties so to attend him at the expense of the charity.—A.-G. *v.* PICKERING (1851), 15 J. P. 323.

2423. When dispensed with—Funds of charity too small to bear expense of reference—Scheme directed by court.]—A.-G. *v.* BRANDRETH (1842), 1 Y. & C. Ch. Cas. 200; 6 Jur. 31; 62 E. R. 854.

2424. —— Upon production of certificate of approval of order by trustees—Order increasing scholarships.]—A.-G. *v.* LLANDAFF (BP.) (1841), 10 L. J. Ch. 361.

Annotations :—**Refd.** A.-G. *v.* Ironmongers' Co. (1833), 2 My. & K. 576; A.-G. *v.* Ironmongers' Co. (1841), Cr. & Ph. 208. **Mentd.** Lyons *v.* East India Co. (1836), 1 Moo. P. C. C. 175; Sianett *v.* Herbert (1872), 20 W. R. 270; Lyons *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91.

2425. —— Scheme sanctioned by Attorney-General—Not submitted to master—Carried into effect.]—A.-G. *v.* MANSFIELD (EARL), *Ex p.* HIGHGATE FREE GRAMMAR SCHOOL (WARDENS & GOVERNORS) (1845), 14 Sim. 601; 60 E. R. 491; *sub nom.* A.-G. *v.* HIGHGATE SCHOOL (WARDENS & GOVERNORS), 14 L. J. Ch. 425.

Schemes generally, *see* Part IV., Sect. 1, *ante*.

References for appointment of trustees.] — *See* Part VII., Sect. 2, sub-sect. 5, H., *ante*.

SUB-SECT. 3.—SETTLEMENT OF DRAFT SCHEME.

2426. Draft scheme to be submitted for consideration of Attorney-General.]—*Re* WYERSDALE SCHOOL (1853), 10 Hare, App. II., lxxiv.; 68 E. R. 1159.

SUB-SECT. 4.—ATTENDANCE OF PARTIES.

A. The Attorney-General.

2427. Attends settlement to protect interests of all.]—A.-G. *v.* ST. CROSS HOSPITAL (1854), 18 Beav. 475; 52 E. R. 187.

2428. Attendance necessary — Petition under Charities Procedure Act, 1812 (c. 101)—Inquiries directed to master.]—A.-G. *v.* STAMFORD (EARL) (1843), 1 Ph. 737; 10 L. J. Ch. 58; 4 Jur. 1102; 41 E. R. 812, L. C.

Annotations :—**Mentd.** A.-G. *v.* Devon (1846), 15 Sim. 193; A.-G. *v.* Ludlow Corpn. (1848), 2 Ph. 685; A.-G. *v.* Worcester (1851), 9 Hare, 328; *Re* Bristol Free Grammar School (1860), 28 Beav. 161; A.-G. *v.* Clifton (1863), 32 Beav. 596; Manchester School Case (1867), 2 Ch. App. 497.

2429. —— —— Before judge in chambers.]—*Re* HANSON'S TRUST (1852), 9 Hare, App. I., liv.; 68 E. R. 789.

2430. —— Scheme directed for distribution of uncertain bequest—Irregular for any other charity to appear after Attorney-General served.] — *Re* CLERGY SOCIETY (1856), 2 K. & J. 615; 4 W. R. 664; 69 E. R. 928.

Annotations :—**Mentd.** *Re* Maguire (1870), L. R. 9 Eq. 632; *Re* Kilvert's Trusts (1871), L. R. 12 Eq. 183; *Re* Bradfield, Bradfield *v.* Hancock (1892), 36 Sol. Jo. 646; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876.

2431. Attendance dispensed with—Before master —When fund small.]—A.-G. *v.* HABERDASHERS' CO. (1835), 2 My. & K. 817; 39 E. R. 1156.

2432. —— —— ——.]—A.-G. *v.* LADYMAN (1835), 4 L. J. Ch. 231.

Attendance of Attorney-General generally, *see* Sect. 1, sub-sects. 2, 4, A., *ante*.

B. Parties other than Attorney-General.

2433. Master may decide who are proper parties to attend at expense of charity.]—A.-G. *v.* PICKERING, No. 2422, *ante*.

2434. Persons not parties to suit showing primâ facie claim—Relators incapable of adequately representing property & interests of all objects of charity—Two distinct sets of petitioners allowed to attend—On condition that only one bill of costs allowed against charity.]—A.-G. *v.* SHORE (1836), 1 My. & Cr. 394; 40 E. R. 426, L. C.

2435. Testator's poor kindred—Bequest partly for object which had ceased to exist & partly for poor kindred—Trustees ordered to give notice of order of reference for proposed scheme to such relations as were known to trustees—Proof of notice & of order to have same effect as if liberty expressly given them to appear.]—*Re* SMITH'S CHARITIES (1846), 10 J. P. 404.

2436. Ecclesiastical Commissioners having no special jurisdiction in charity—Allowed to attend at their own costs.]—A.-G. *v.* WIMBORNE SCHOOL (1847), 10 Beav. 209; 16 L. J. Ch. 313; 10 L. T. O. S. 17; 11 Jur. 400; 50 E. R. 562.

2437. Charity unconnected with charity subject of information—Having similar objects—Allowed to attend.]—*Re* RAMSAY'S TRUSTS (1853), 23 L. T. O. S. 57.

Sect. 4.—*Procedure in settling schemes: Sub-sect.* 4, *B. & C.; sub-sect.* 5. *Sects.* 5 & 6: *Sub-sects.* 1, 2 & 3, *A.* (*a*) & (*b*), *B.* (*a*), (*b*) & (*c*).]

2438. Member of corporation consisting of master & thirteen brethren—Not allowed to attend—Even at his own expense—Attorney-General attending.]—A.-G. *v.* ST. CROSS HOSPITAL (1854), 18 Beav. 475; 52 E. R. 187.

2439. Persons having no permanent right as trustees with power to administer fund at discretion—No useful purpose served by attendance—Not allowed to attend.]—Upon the application of the Honourable Society of the Inner Temple to intervene & attend all proceedings connected with the settlement of a scheme relating to the trust fund which had arisen from the sale of Clifford's Inn, on the ground that Clifford's Inn was a dependency of the Inner Temple & had been under the control of that society in all educational matters for several centuries:—*Held:* (1) on the evidence before the ct. the Inner Temple had no paramount right to be regarded as persons in the position of trustees of the fund, with power to administer it as they thought fit; (2) no useful purpose would be served by the ct. exercising its discretion in favour of the Inner Temple & granting the application.—SMITH *v.* KERR (No. 2) (1905), 74 L. J. Ch. 763; *sub nom. Re* NEW INN, A.-G. *v.* COLDNAM, SMITH *v.* KERR, 49 Sol. Jo. 259.

2440. Corporation in whose district property situated—Summons for establishment of scheme to which Attorney-General sole respondent—Application to intervene & attend before order for scheme made—Dismissed as premature.]—A summons was taken out by a rector & churchwardens for the establishment of a scheme for the administration of a charity, to which the A.-G. was the only resp. —*Held:* an application, before any scheme had been proposed, by the W. Corpn., within whose boundary the property was situated, for liberty to intervene in those proceedings for the purpose of contending that the charity was a civil one, was refused as being premature.—*Re* HYDE PARK PLACE CHARITY, [1911] 1 Ch. 678; 80 L. J. Ch. 593; 104 L. T. 701; 75 J. P. 361; 9 L. G. R. 887, C. A.

C. By Counsel.

2441. On scheme settled by Charity Commissioners—Only in cases of exceptional difficulty or importance—As necessary to cut down as far as possible expenses of settling scheme.]—BENTHALL *v.* KILMOREY (1884), cited in Tudor on Charities & Mortmain, 4th ed. 599.

2442. At confirmation of scheme—Trustees ought not to appear by different counsel—Direction to master as to costs where such appearance.]—A.-G. *v.* SHERMAN (1842), 6 J. P. 182.

See, generally, BARRISTERS, Vol. III., pp. 318–320.

SUB-SECT. 5.—CONFIRMATION OF SCHEME.

2443. Who may oppose—Newly appointed trustee not served with proceedings—May present cross petition opposing confirmation of report—On grounds not appearing on report nor brought before master.]—*Re* LOPPINGTON PARISH (1850), 8 Hare, 198; 68 E. R. 330.

2444. Filing of order—Order may refer to copy of scheme approved by judge & filed in court—Instead of scheme being recited in order.]—*Re* YARM FREE GRAMMAR SCHOOL (1853), 10 Hare, App. I., v.; 68 E. R. 1115; *sub nom. Re* CONYERS FREE GRAMMAR SCHOOL, 22 L. J. Ch. 707; 17 Jur. 411.

Appearance of counsel.]—*See* No. 2442, *ante.*

2445. No answer to information by Attorney-General—Complaining of scheme adopted on report obtained in his absence.]—A.-G. *v.* STAMFORD (EARL) (1843), 1 Ph. 737; 10 L. J. Ch. 58; 4 Jur. 1102; 41 E. R. 812, L. C.

Annotations:—**Mentd.** A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172; A.-G. *v.* Devon (1846), 15 Sim. 193; A.-G. *v.* Ludlow Corpn. (1848), 2 Ph. 685; A.-G. *v.* Worcester (1851), 9 Hare, 328; *Re* Bristol Free Grammar School (1860), 28 Beav. 161; A.-G. *v.* Clifton (1863), 32 Beav. 596; Manchester School Case (1867), 2 Ch. App. 497.

SECT. 5.—PROCEDURE OF VISITOR.

2446. Petition to Lord Chancellor as exercising visitatorial power vested in Crown—Cannot be sustained—Where visitatorial power of Crown denied—& facts on which right of Crown as visitor depends controverted.] — *Re* GARSTANG CHURCH TOWN SCHOOL, *Ex p.* PEDDER (1829), 7 L. J. O. S. Ch. 169, L. C.

2447. Visitor need not hear parol evidence on appeal—When compelled by court to exercise power by hearing appeal—Sufficient if he receive grounds of appeal & answer to it in writing.]—R. *v.* ELY (BP.) (1794), 5 Term Rep. 475; 101 E. R. 267.

Annotations:—**Consd.** *Ex p.* Buller (1857), 21 J. P. Jo. 84. **Distd.** R. *v.* Canterbury (1859), 1 E. & E. 545. **Reid.** *Ex p.* Buller (1855), 25 L. T. O. S. 102. **Mentd.** Ferguson *v.* Kinnoull (1842), 9 Cl. & Fin. 251.

Jurisdiction of visitor generally, *see* Part IX., Sect. 2, *ante.*

SECT. 6.—COSTS.

SUB-SECT. 1.—IN PROCEEDINGS BEFORE ATTORNEY-GENERAL.

2448. Court has no jurisdiction to make adverse order—Costs of proceedings before Attorney-General not under sanction or direction of court.]—A.-G. *v.* HARPER, A.-G. *v.* NASH (1838), 8 L. J. Ch. 12.

2449. Proceedings to obtain fiat of Attorney-General—Rendered necessary by unsuccessful opposition of defendants—Costs in cause payable by defendants.]—A.-G. *v.* HALIFAX CORPN. (1871), L. R. 12 Eq. 262; 41 L. J. Ch. 100; 24 L. T. 655.

2450. Proceedings by defendants to obtain withdrawal of fiat of Attorney-General—Pending appeal—Costs in cause payable by defendants.]—A.-G. *v.* HALIFAX CORPN. (1871), L. R. 12 Eq. 262; 41 L. J. Ch. 100; 24 L. T. 655.

Rights & liabilities of Attorney-General as to costs.]—*See* Sub-sect. 3, A., *post.*

SUB-SECT. 2.—IN PROCEEDINGS BEFORE LORD CHANCELLOR AS VISITOR.

2451. Not proceedings in law or equity within Attorneys & Solicitors Act, 1729 (c. 23).]—*Ex p.* DANN (1804), 9 Ves. 547; 32 E. R. 715.

SUB-SECT. 3.—PERSONS ENTITLED TO AND LIABLE FOR COSTS.

A. The Attorney-General.

(a) Right to Costs.

2452. General rule.]—In a suit by the A.-G. the general rule as to costs is, that, as the Crown does not pay costs, the A.-G. does not receive costs where, if a private individual, he could have been called on to pay them. Where, however, if a private individual he could not have been called on to pay costs, the rule does not apply.—A.-G. *v.* LONDON CORPN. (1850), 2 Mac. & G. 247; 2 H. & Tw. 1; 19 L. J. Ch. 314; 14 L. T. O. S. 501;

14 Jur. 205 ; 42 E. R. 95, L. C. ; *affg.* (1849), 12 Beav. 8.

Annotations :—**Consd.** Smith *v.* Stair (1849), 2 H. L. Cas. 807 ; A.-G. *v.* Hanmer (1858), 27 L. J. Ch. 837. **Reld.** Emmerson *v.* Maddison, [1906] A. C. 569. **Mentd.** Flitcroft *v.* Fletcher (1856), 25 L. J. Ex. 94 ; Horton *v.* Bott (1857), 2 H. & N. 249 ; London Gas Light Co. *v.* Chelsea Vestry (1859), 6 C. B. N. S. 411 ; Ingilby *v.* Shafto (1863), 33 Beav. 31 ; Stoate *v.* Rew (1863), 14 C. B. N. S. 209 ; Goodman *v.* Holroyd (1864), 15 C. B. N. S. 839 ; Towne *v.* Cocks (1874), L. R. 9 Exch. 45 ; Saunders *v.* Jones (1877), 7 Ch. D. 435 ; Bewicke *v.* Graham (1880), 50 L. J. Q. B. 396 ; Marriott *v.* Chamberlain (1886), 54 L. T. 714 ; A.-G. *v.* Newcastle-upon-Tyne Corpn., [1897] 2 Q. B. 384 ; A.-G. *v.* Storey (1912), 107 L. T. 430. (*Note.* None of the above annotating cases relates to the point of Agency decided in the head case.)

2453. Not entitled to costs—Where attending separately from relator, by his own solicitor without order of court—Separate costs of Attorney-General not allowed.]—A.-G. *v.* HUNTINGDON CORPN. (1821), Turn. & R. 329, n. ; 37 E. R. 1127.

2454. —— —— ——.]—A.-G. *v.* DOVE (1823), Turn. & R. 328 ; 37 E. R. 1126.

2455. —— **Where appearing in support of bill for legacy—Bill dismissed.**]—GLOUCESTER CORPN. *v.* WOOD (1843), 3 Hare, 131 ; 67 E. R. 326 ; *subsequent proceedings* (1844), 1 Ph. 493, L. C. ; *on appeal, sub nom.* GLOUCESTER CORPN. *v.* OSBORN (1847), 1 H. L. Cas. 272, H. L.

Annotations :—**Mentd.** Briggs *v.* Penny (1849), 3 De G. & Sm. 525 ; A.-G. *v.* Windsor (1858), 24 Beav. 679 ; Lord *v.* Colvin (1861), 1 Drew. & Sm. 475 ; Aston *v.* Wood (1868), L. R. 6 Eq. 419 ; Willoughby *v.* Storer (1870), 22 L. T. 896 ; *Re* Dutton, *Ex p.* Peake (1879), 40 L. T. 430 ; Falle *v.* Godfray (1888), 14 App. Cas. 70.

2456. —— **Where information filed upon address from House of Commons.**]—A.-G. *v.* WINDSOR (DEAN & CANONS) (1860), 8 H. L. Cas. 369 ; 30 L. J. Ch. 529 ; 2 L. T. 578 ; 24 J. P. 467 ; 6 Jur. N. S. 833 ; 8 W. R. 477 ; 11 E. R. 472, H. L.

Annotations :—**Mentd.** A.-G. *v.* Marchant (1866), L. R. 3 Eq. 424 ; A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1 ; *Re* Campden Charities (1881), 18 Ch. D. 310 ; I. R. Comrs. *v.* Walker, [1915] A. C. 509 ; Usher's Wiltshire Brewery *v.* Bruce, [1915] A. C. 433.

2457. Entitled to costs—Information filed without relator—Under Charity Estates, England, Act, 1819 (c. 91)—Defendant liable.]—A.-G. *v.* ASHBURNHAM (EARL) (1823), 1 Sim. & St. 394 ; 57 E. R. 157.

Annotations :—**Consd.** Perkins *v.* Bradley (1842), 1 Hare, 219. **Expld.** A.-G. *v.* Hanmer (1858), 27 L. J. Ch. 837. **Reld.** Kane *v.* Maule, Kane *v.* Reynolds (1854), 2 Sm. & G. 331 ; The Leda (1863), Brown. & Lush. 19.

2458. —— —— **Attorney-General not appearing personally at hearing—Costs of brief to Attorney-General allowed in addition to those of two counsel.**]—A.-G. *v.* DRAPERS' CO. (1841), 4 Beav. 305 ; 49 E. R. 356.

Annotation :—**Consd.** A.-G. *v.* Munro (1849), 1 Mac. & G. 213.

See, also, No. 2532, *post.*

2459. Application for costs, charges & expenses not being costs in cause—Summons must contain statement of matters in respect of which costs desired.]—*Re* DULWICH COLLEGE (1873), L. R. 15 Eq. 294 ; *sub nom. Re* ALLEYN'S COLLEGE OF GOD'S GIFT IN DULWICH, 21 W. R. 519.

Out of what fund costs payable.]—*See* Sub-sect. 4, B., *post.*

Amount of costs.]—*See* Sub-sect. 5, A., *post.*

(b) Liability for Costs.

2460. General rule—Crown does not pay costs.]—A.-G. *v.* LONDON CORPN., No. 2452, *ante.*

See, also, No. 2532, *post.*

B. The Relator.

(a) Security for Costs.

2461. May be required to give security by bond.]—A.-G. *v.* ROCHESTER CORPN. (1680), Shelford's Law of Mortmain, 425.

2462. Failure to give security—Relator also plaintiff in own right—No ground for dismissal of information & bill.]—A.-G. *v.* KNIGHT (1837), 3 My. & Cr. 154 ; 40 E. R. 883, L. C.

(b) Right to Costs.

2463. Relator acting in error—But with bonâ fide intention to benefit charity.]—(1) If in the case of a charity information the relator has acted in error & supposed that he was doing his duty as an individual by coming forward to protect the poor objects of the charity, the ct. will be unwilling to deter others from bringing proper cases before the ct. by subjecting the relator to the costs of the proceedings.

(2) *Secus* where the relator has filed an information for the purpose of gratifying an ill spirit towards those who are made defts. thereto.—A.-G. *v.* BOSANQUET (1841), 11 L. J. Ch. 43, L. C.

2464. Information filed for improper purpose.]—A.-G. *v.* BOSANQUET, No. 2463, *ante.*

See, also, No. 2467, *post.*

2465. Relator proceeding by information instead of petition—Under Charities Procedure Act, 1812 (c. 101)—Not allowed costs.]—A.-G. *v.* BERRY (1847), 8 L. T. O. S. 407 ; 11 Jur. 114.

2466. —— —— **Allowed costs—Because information sanctioned by Attorney-General.**]—A.-G. *v.* BIDDULPH (1853), 22 L. T. O. S. 114.

2467. Information partially successful—No costs given up to hearing of part successful—When information conducted at unnecessary expense—& not filed with view to benefit charity.]—A.-G. *v.* CULLUM (1836), 1 Keen, 104 ; 5 L. J. Ch. 220 ; 48 E. R. 246.

Annotation :—**Folld.** A.-G. *v.* Holland (1837), 2 Y. & C. Ex. 683.

2468. —— —— **Information containing false charges—Of culpable mismanagement & breaches of trust.**]—A.-G. *v.* HOLLAND (1837), 2 Y. & C. Ex. 683 ; 7 L. J. Ex. Eq. 51 ; 160 E. R. 568.

See, also, No. 2536, *post.*

Out of what fund costs payable.]—*See* Sub-sect. 4, C., *post.*

Amount of costs.]—*See* Sub-sect. 5, *post.*

(c) Liability for Costs.

2469. On dismissal of information—Seeking specific performance of pretended agreement—As to power of nomination of executors.]—A.-G. *v.* GLEG (1738), 1 Atk. 356 ; Amb. 584 ; 26 E. R. 227 ; *sub nom.* A.-G. *v.* SPEED, West *temp.* Hard. 491, L. C.

Annotations :—**Mentd.** Moggridge *v.* Thackwell (1803), 7 Ves. 36 ; Lang *v.* Purves (1862), 15 Moo. P. C. C. 389.

2470. —— **Information improper.**] — A.-G. *v.* MIDDLETON (1751), 2 Ves. Sen. 327 ; 28 E. R. 210, L. C.

Annotations :—**Mentd.** A.-G. *v.* Foundling Hospital (1793), 4 Bro. C. C. 165 ; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

2471. —— —— **Filed to gratify ill-will towards defendants.**]—A.-G. *v.* BOSANQUET, No. 2463, *ante.*

2472. —— **Relator acting in error but bonâ fide.**]—A.-G. *v.* BOSANQUET, No. 2463, *ante.*

PART X. SECT. 6, SUB-SECT. 3.—B. (a).

t. *If without visible means.*]—Where an action is brought by a relator, at the suit of A.-G., to have a charitable scheme settled, & it appears that defts. have a defence to the action, or that there is some question to be tried, the ct. will order the relator, if without visible means, to give security for costs.—A.-G. *v.* ALLMAN, [1906] 1 I. R. 473 ; 40 I. L. T. 94.—IR.

PART X. SECT. 6, SUB-SECT. 3.—B. (b).

a. *Information successful—Although interest of relator very small.*]—DUBLIN CORPN. *v.* A.-G. (1834), 3 Cl. & Fin. 306 ; 9 Bli. N. S. 395.—IR.

PART X. SECT. 6, SUB-SECT. 3.—B. (c).

b. *On dismissal of information.—Defendant restrained from proceeding against relators—Upon terms.*]—A.-G. *v.* DUBLIN CORPN. (1824), 2 Mol. 355.—IR.

Sect. 6.—Costs: Sub-sect. 3, B. (c), C. (a), i. & ii. & (b), i. & ii., D. & E.]

2473. —— Costs up to hearing only—Order of court below granting prayer of information & directing inquiries dismissed on appeal—Relator entitled to act on directions as to inquiry.]—SOUTHMOLTON CORPN. *v.* A.-G. (1854), 5 H. L. Cas. 1; 23 L. J. Ch. 567; 23 L. T. O. S. 117; 18 Jur. 435; 10 E. R. 796, H. L.; *revsg.* S. C. *sub nom.* A.-G. *v.* SOUTHMOLTON CORPN. (1851), 14 Beav. 357.

Annotations :—**Mentd.** A.-G. *v.* Trinity College, Cambridge (1856), 24 Beav. 383; Beverley Corpn. *v.* A.-G. (1857), 6 H. L. Cas. 310; A.-G. *v.* Windsor (1860), 8 H. L. Cas. 369; Merchant Taylors' Co. *v.* A.-G. (1871), 6 Ch. App. 512; A.-G. *v.* Wax Chandlers' Co. (1873), L. R. 6 H. L. 1.

2474. On dismissal of part of information—Charging improper alienations of charity estates by trustees.] — A.-G. *v.* CULLUM (1836), 1 Keen, 104; 5 L. J. Ch. 220; 48 E. R. 246.

Annotation :—**Folld.** A.-G. *v.* Holland (1837), 2 Y. & C. Ex. 683.

2475. —— Containing false charges of culpable mismanagement & breaches of trust.]—A.-G. *v.* HOLLAND (1837), 2 Y. & C. Ex. 683; 7 L. J. Ex. Eq. 51; 160 E. R. 568.

2476. —— Against person wrongly made party to suit on ground of alleged interference—Person holding no office in connection with charity.]—A.-G. *v.* BERRY (1847), 8 L. T. O. S. 407; 11 Jur. 114.

2477. Not when information had foundation—Though claim abandoned at hearing.]—A.-G. *v.* BOLTON (1796), 3 Anst. 820; 145 E. R. 1050.

Annotation :—**Mentd.** *Re* Herbage Rents, Greenwich, Charity Comrs. *v.* Green, [1896] 2 Ch. 811.

C. Charity Trustees.

(a) Right to Costs.

i. *In General.*

2478. General rule—Costs do not always follow event—Trustee claiming larger sum than found due —Disallowed costs.]—A.-G. *v.* BREWERS' CO. (1717), 1 P. Wms. 376; 24 E. R. 432, L. C.

2479. Entitled to costs—When great delay in bringing charges against trustees—Petition dismissed as vexatious.]—*Re* CHERTSEY MARKET, *Ex p.* WALTHEW (1819), 6 Price, 261; 146 E. R. 803.

2480. —— When sued as individuals—Suit for administration of charity.]—The trustees of a charity were made, as individuals, defts. to a suit for the administration of the charity; afterwards the information was amended, & they were made defts. in their corporate capacity, but the suit was not dismissed against them as individuals: at the hearing, the record was considered as constituting two different causes, & the cause against the trustees as individuals was dismissed with costs, though, in the cause against them in their corporate capacity, a decree was made, remedying abuses which had grown up in the charity, & regulating its future administration.—A.-G. *v.* MANSFIELD (EARL) (1827), 2 Russ. 501; 38 E. R. 423, L. C.

Annotations :—**Mentd.** Clephane *v.* Edinburgh (1869), L. R. 1 Sc. & Div. 417; *Re* Weir Hospital, [1910] 2 Ch. 124.

2481. —— Petition not alleging improper management of charity—Containing false charges & statements pledged by oath.]—*Re* PORT'S HOSPITAL & FREE SCHOOL (1852), 16 J. P. 196.

2482. —— When proceedings against them unjustified—Action to recover small amount on ground that trust not capable of fulfilment—Failure to substantiate allegation.]—An action was brought by the vicar & churchwardens of a parish to recover from defts., the members of a local committee, a fund of small amount which had been handed over to them for a charitable purpose. Pltfs. alleged that the fund had been handed over subject to a condition which had become incapable of fulfilment. At the trial pltfs. failed to make out their case :—*Held :* (1) the action should be dismissed; (2) the action being unjustifiable, & as the fund ought not to be diminished, pltfs. should pay defts.' costs as between solr. & client.—ANDREWS *v.* BARNES (1888), 39 Ch. D. 133; 57 L. J. Ch. 694; 58 L. T. 748; 53 J. P. 4; 36 W. R. 705; 4 T. L. R. 609, C. A.

Annotations :—*As to* (2) **Refd.** R. *v.* L. C. C. JJ., [1894] 1 Q. B. 453; *Re* Whitwham & Wrexham, Mold & Connah's Quay Ry. (1895), 39 Sol. Jo. 692; Cree *v.* St. Pancras (1899), 68 L. J. Q. B. 389.

2483. —— Trustee separating in defence from co-trustees—& adopting view of successful relator.] —A corpn. being charged in an information by the A.-G. with breaches of trust in reference to charity property, one of the members of the corpn. separated from the others in his defence, & adopted the view taken on the part of the information :—*Held :* he was entitled to recover his costs, as between solr. & client, out of the charity property, the costs to be recovered over against the corpn. as between party & party.—A.-G. *v.* MERCERS' CO., *Re* ST. PAUL'S SCHOOL (1870), as reported in 18 W. R. 448.

2484. Not entitled to costs—New corporation under Municipal Corporations Act, 1835 (c. 76)—Information to rectify breach of trust by old corporation.]—A.-G. *v.* KERR (1840), 2 Beav. 420; 9 L. J. Ch. 190; 4 Jur. 406; 48 E. R. 1244; *subsequent proceedings* (1841), 3 Beav. 425; 4 Beav. 297.

Annotations :—**Mentd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395; A.-G. *v.* Pilgrim (1849), 12 Beav. 57; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54; Capital & Counties Bank *v.* Rhodes, [1903] 1 Ch. 631; *Re* Fletcher, Reading *v.* Fletcher (1916), 86 L. J. Ch. 139.

2485. —— Of appearance on petition—Petition unopposed.]—*Re* HERTFORD CHARITY (1852), 19 Beav. 518, n.; 19 L. T. O. S. 173; 52 E. R. 452, L. C.

Annotation :—**Consd.** Wood *v.* Boucher (1870), 23 L. T. 522.

2486. —— Of inquiry whether expenditure for benefit of charity—Trustees having greatly exceeded estimate authorised by court for erecting school.]—A.-G. *v.* ARMITSTEAD (1854), 19 Beav. 584; 52 E. R. 477.

2487. —— When part of charity property forfeited by breach of condition by trustees—Trustees appealing from decision—Fund out of which costs payable no longer in their possession.]—A.-G. *v.* GRAINGER (1859), 7 W. R. 684.

Out of what funds costs payable.]—*See* Sub-sect. 4, D., *post.*

Amount of costs.]—*See* Sub-sect. 5, *post.*

ii. *For Applications to Parliament.*

2488. When Acts passed—College taking benefit —Costs allowed.]—DOWNING COLLEGE CASE (1769), cited in 2 Russ. 519; 38 E. R. 430.

Annotation :—**Consd.** A.-G. *v.* Mansfield (1827), 2 Russ. 501.

PART X. SECT. 6, SUB-SECT. 3.—C. (a) (i).

c. *Entitled to costs — Where no imputation cast on trustees who were removed—Case not a precedent.*]—A.-G. *v.* DRUMMOND (1842), 3 Dr. & War. 162; 2 Con. & Law. 98.—IR.

d. *Not entitled to costs—Claim by lunatic as heir-at-law of devisor—Costs given out of lunatic's estate.*]—*Re* TURNLEY, *Ex p.* CUMMING (1849), 12 I. Eq. R. 581.—IR.

e. —— *Where point covered by authority.*]—*Re* ROSE (1905), 6 O. W. R. 937.—CAN.

f. —— *On appeal.*] — Trustees having appealed to the H.L. their Lordships when dismissing the appeal refused the trustees their expenses in the appeal out of the trust funds, but of consent did not find expenses due by them.—HOUSTON *v.* LORD ADVOCATE (1917), 55 Sc. L. R. 208.—SCOT.

2489. Application made without sanction of court —Costs allowed.]—A.-G. *v.* VIGOR (1805), cited in 2 Russ. 519 ; 38 E. R. 430.

Annotation :—**Consd.** A.-G. *v.* Mansfield (1827), 2 Russ. 501.

2490. —— Act not obtained owing to accidental circumstances—Costs not allowed—Though trustees' motives fair & proper.]—A.-G. *v.* MANSFIELD (EARL) (1827), 2 Russ. 501 ; 38 E. R. 423, L. C.

Annotations :—**Mentd.** Clephane *v.* Edinburgh (1869), L. R. 1 Sc. & Div. 417 ; *Re* Weir Hospital, [1910] 2 Ch. 124.

2491. Application made with sanction of court—Act not obtained—Costs allowed.]—*Re* BEDFORD CHARITY (1857), 26 L. J. Ch. 613 ; 29 L. T. O. S. 5 ; 21 J. P. 244, L. JJ.

(b) Liability for Costs.

i. *Proceedings occasioned by Misconduct or Breach of Trust.*

2492. Mismanagement of funds — Neglect of objects of charity.]—HABERDASHERS' CO. *v.* A.-G. (1702), 2 Bro. Parl. Cas. 370 ; 2 Eq. Cas. Abr. 237, pl. 2 ; 1 E. R. 1003, H. L.

2493. Suppressing or concealing any evidence relating to charity.]—HERTFORD CORPN. *v.* HERTFORD (POOR) (1713), 2 Bro. Parl. Cas. 377 ; 1 E. R. 1008, H. L.

2494. Extreme negligence—Lease granted at great undervalue—Lessee ordered to surrender lease —Trustees not guilty of corruption.]—EAST *v.* RYAL (1725), 2 P. Wms. 284 ; 2 Eq. Cas. Ab. 199, pl. 6 ; 24 E. R. 732, L. C.

2495. Proceedings contrary to charter—Nomination of schoolmaster by corporation.] — SALOP (TOWN) *v.* A.-G. (1726), 2 Bro. Parl. Cas. 402 ; 1 E. R. 1025, H. L.

Appointment of schoolmaster generally, *see* EDUCATION.

2496. Paying costs of prosecutor before Commission of Charitable Uses—As inducement to compromise—Information made necessary by payment.] —A.-G. *v.* STAFFORD CORPN. (1740), Barn. Ch. 33 ; 27 E. R. 543, L. C.

2497. Refusal by corporation to disclose information—Defeating & obstructing course of justice.]—It is the duty of a corpn., when apprised by the information of the nature & extent of the claims made upon them, to cause a diligent examination to be made, before they put in their answer, of all deeds, papers, & muniments in their possession or power, & to give in their answer all the information derived from such examination, & if they pursue an opposite course, & in their answer allege their ignorance upon the subject, & the information required is afterwards obtained from the documents scheduled to their answer, the ct. will infer a disposition on the part of the corpn. to obstruct & defeat the course of justice, & on that ground alone will charge them with the costs of the suit.— A.-G. *v.* EAST RETFORD CORPN. (1833), 2 My. & K. 35 ; 39 E. R. 857 ; *revsd.* on another point (1838), 3 My. & Cr. 484, L. C.

Annotations :—**Reid.** Solicitor-General *v.* Bath Corpn., A.-G. *v.* Blair (1849), 12 L. J. Ch. 275. **Mentd.** A.-G. *v.* Newark-upon-Trent Corpn. (1842), 1 Hare, 395; Mill *v.* Hawker (1874), L. R. 9 Exch. 309.

2498. Charity allowed to fall into desuetude—Company in which charitable funds vested liable—For costs of information.]—A.-G. *v.* MERCERS' CO. (1833), 2 My. & K. 654 ; 39 E. R. 1094.

Annotation :—**Mentd.** A.-G. *v.* Wax Chandlers' Co. (1870), 19 W. R. 33.

2499. Erroneous administration for long period by trustees & their predecessors—Failure to substantiate rights adversely claimed.] — A.-G. *v.* CHRIST'S HOSPITAL (1841), 4 Beav. 73 ; 49 E. R. 265.

Annotation :—**Mentd.** Merchant Taylors' Co. *v.* A.-G. (1871), 19 W. R. 641.

2500. Breach of trust by old corporation—New corporation & ratepayers liable for costs of obtaining redress.] — A.-G. *v.* LEICESTER CORPN. (1846), 9 Beav. 546 ; 10 J. P. 404 ; 50 E. R. 454.

2501. Trustees refusing to retire on becoming disqualified by change of religious opinions—Liable to pay costs of appointment of new trustees.]— A.-G. *v.* MURDOCH (1856), 2 K. & J. 571 ; 27 L. T. O. S. 118 ; 20 J. P. 643 ; 69 E. R. 910.

See, further, Part III., Sect. 4, sub-sect. 5, & Part VII., Sect. 3, *ante*.

2502. Trustees refusing to pay on ground that school not carried on upon principles indicated by founder—Failure to substantiate allegations—Proceedings characterised by animosity.] — A.-G. *v.* STROUD (1868), 19 L. T. 545.

2503. Trustees refusing to render accounts—Of charity within Charitable Trusts Acts—Liable for costs of motion to commit for contempt.]—*Re* PEEL'S (SIR ROBERT) SCHOOL, TAMWORTH, *Ex p.* CHARITY COMRS. (1868), 3 Ch. App. 543 ; 32 J. P. 707 ; *sub nom. Re* CHARITABLE TRUSTS ACT, 1853, & CHARITABLE TRUSTS AMENDMENT ACT, 1855, *Ex p.* CHARITY COMRS., TAMWORTH SCHOOL CASE, 37 L. J. Ch. 473 ; *sub nom. Re* CHARITY COMRS., *Re* TAMWORTH SCHOOL, 18 L. T. 541 ; *sub nom. Re* TAMWORTH SCHOOL, *Ex p.* CHARITY COMRS., 16 W. R. 773, L. JJ.

Annotations :—**Folld.** *Re* Gilchrist Educational Trust, [1895] 1 Ch. 367. **Mentd.** Jarmain *v.* Chatterton (1882), 20 Ch. D. 493 ; *Re* St. John Street Wesleyan Methodist Chapel, Chester, [1893] 2 Ch. 618.

2504. —— —— ——.]—*Re* ST. BRIDE'S, FLEET STREET, CHURCH OR PARISH ESTATE (1877), 35 Ch. D. 147, n. ; 56 L. J. Ch. 692, n. ; 35 W. R. 689, n. ; *affd.*, [1877] W. N. 149, C. A.

Annotation :—**Mentd.** *Re* St. Botolph Without Bishopsgate Parish Estates (1887), 35 Ch. D. 142.

2505. —— —— ——.]—*Re* GILCHRIST EDUCATIONAL TRUST, No. 1937, *ante*.

2506. Trustees claiming beneficial interest in charity property—Claim unsubstantiated—One trustee separating in defence—& adopting view of Attorney-General as relator.]—A.-G. *v.* MERCERS' CO., *Re* ST. PAUL'S SCHOOL, No. 2483, *ante*.

ii. *Other Cases.*

2507. Petition by trustees under Charities Procedure Act, 1812 (c. 101)—On matters not within jurisdiction on petition.]—*Re* PHILLIPOTT'S CHARITY (1837), 8 Sim. 381 ; 59 E. R. 151 ; *sub nom. Re* NEWARK CHARITIES, Donnelly, 248 ; 6 L. J. Ch. 215.

Annotation :—**Mentd.** A.-G. *v.* Stamford (1841), 10 L. J. Ch. 172.

2508. Not where Charity Commissioners in error —As to construction of public statute—Refusal to sanction renewal of lease.]—MOORE *v.* CLENCH (1875), 1 Ch. D. 447 ; 45 L. J. Ch. 80 ; 34 L. T. 13 ; 24 W. R. 169.

Annotation :—**Mentd.** Salamon *v.* Sopwith (1876), 35 L. T. 463.

2509. Test case by trustees for declaration that property not charity property—Petition presented under London Parochial Charities Act, 1883 (c. 36).] —*Re* ST. STEPHEN, COLEMAN STREET, *Re* ST. MARY THE VIRGIN, ALDERMANBURY, No. 168, *ante*.

D. The Heir-at-law.

Right to costs.]—*See* Nos. 2579, 2580, 2586, *post*.

E. Next of Kin.

Right to costs.]—*See* Nos. 2581, 2582, *post*.

Sect. 6.—Costs: Sub-sect. 3, F. & G.; sub-sect. 4, A., B., C. & D.]

F. Unnecessary Parties.

2510. Not entitled to costs—Made parties in consequence of claim set up by them.]—*Re* SHREWSBURY SCHOOL (1849), 1 Mac. & G. 85; 41 E. R. 1195; *sub nom. Re* SHREWSBURY MUNICIPAL CHARITIES, 13 Jur. 201, L. C.

2511. —— Made parties by executors in administration action—But attending proceedings after having been declared unnecessary parties—Costs payable out of such party's own share.]—GIRDLESTON *v.* CREED (1853), as reported in 1 W. R. 228.

Annotation:—**Mentd.** Sinnett *v.* Herbert (1872), 7 Ch. App. 232.

G. Other Persons.

2512. Purchaser—Of charity lands without notice of annuity issuing therefrom—Not liable to costs.]—WHARTON *v.* CHARLES (1673), Cas. *temp.* Finch, 81; 23 E. R. 43, L. C.

2513. —— Of land ordered to be sold under mistake—Entitled to return of purchase-money without costs—No fund applicable to payment of costs.]—A.-G. *v.* NEWARK CORPN. (1843), 1 L. T. O. S. 227.

2514. Churchwardens—Liable for costs of suit begun by predecessors—With consent & by order of parish.]—RADNOR PARISH IN WALES (1718), 2 Eq. Cas. Abr. 203, pl. 3; 22 E. R. 173.

2515. Former churchwarden—Bill against parish officers for account—Bill not signed by counsel—Taken off file & plaintiff liable for costs.]—FRENCH *v.* DEAR (1800), 5 Ves. 547; 31 E. R. 731, L. C.

Annotation:—**Mentd.** Fell *v.* Official Trustee of Charity Lands, [1898] 2 Ch. 44.

2516. Exceptant to decree of charitable uses—Allowed costs on successful exceptions—Disallowed costs on unsuccessful exceptions.] — BURFORD CORPN. *v.* LENTHALL (1743), 2 Atk. 551; 26 E. R. 731, L. C.

Annotations:—**Consd.** West Ham Union *v.* St. Matthew, Bethnal Green, [1896] A. C. 477. **Refd.** *Re* Woodburn's Trusts (1857), 29 L. T. O. S. 222; Andrews *v.* Barnes (1888), 39 Ch. D 133.

2517. Personal representative of lessee—Husbandry lease set aside without costs—Long possession having been permitted.] — A.-G. *v.* OWEN (1805), 10 Ves. 555; 32 E. R. 960, L. C.

Annotations:—**Consd.** A.-G. *v.* Newbury Corpn. (1838), Coop. Pr. Cas. 72. **Mentd.** A.-G. *v.* Backhouse (1810), 17 Ves. 283; A.-G. *v.* Brooke (1811), 18 Ves. 319; A.-G. *v.* Moses (1816), 2 Madd. 294; A.-G. *v.* Warren (1818), 2 Swan. 291; A.-G. *v.* Hungerford (1834), 8 Bli. N. S. 437; *Re* Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54.

2518. Interested parties—Raising questions in difference by petition—Pending reference of whole subject to master—Order for reference improperly obtained—Costs of petitioners reserved until decision of questions on information.]—A.-G. *v.* STAMFORD (EARL), *Re* BLUNDELL'S CHARITY (1841), 10 L. J. Ch. 172; 10 Jur. 1070, n., L. C.

Annotation:—**Mentd.** A.-G. *v.* Devon, Tiverton School Case (1840), 10 Jur. 1067.

2519. Trustee being mortgagee of charity lands—Information to enforce charitable trust dismissed—Mortgagee given costs—Solicitor who had prepared conveyance not given costs.]—A.-G. *v.* GARDNER (1848), 2 De G. & Sm. 102; 10 L. T. O. S. 459; 12 Jur. 67; 64 E. R. 46.

Annotation:—**Mentd.** Power *v.* Banks (1901), 70 L. J. Ch. 700.

2520. Double set of exceptions filed by Attorney-General & trustees—Defendants entitled to costs so occasioned—Although charged with costs.]—A.-G. *v.* WARD (1848), 11 Beav. 203; 17 L. J. Ch. 485; 12 Jur. 807; 50 E. R. 794.

2521. Information without relator—Defendant liable for costs of co-defendant—Form of order.]—A.-G. *v.* CHESTER CORPN. (1851), 14 Beav. 338; 51 E. R. 316.

Annotations:—**Folld.** A.-G. *v.* Mercers' Co., *Re* St. Paul's School (1870), 18 W. R. 448. **Refd.** Sanderson *v.* Blyth Theatre Co., [1903] 2 K. B. 533.

2522. Appeal by defendants to information—Must have substantial grounds to exempt them from payment of costs.]—There must be a substantial ground for an appeal on the part of defts. to a charity information to exempt them from payment of costs.

Held: the intimation of the opinion of the ct. below upon the substance of the case in pronouncing a decree which contained no declaration, & merely directed a scheme, did not constitute such a ground.—A.-G. *v.* ROCHESTER CORPN. (1854), 5 De G. M. & G. 797; 23 L. T. O. S. 104; 43 E. R. 1079, L. JJ.

Annotations:—**Mentd.** A.-G. *v.* Sidney Sussex College (1869), 4 Ch. App. 722; *Re* Campden Charities (1881), 18 Ch. D 310.

2523. Charity given lands in substitution for lands compulsorily acquired—Entitled to costs of enrolment under Mortmain Acts.]—*Ex p.* CHRIST'S HOSPITAL (GOVERNORS) (1864), 4 New Rep. 14; 10 L. T. 262; 12 W. R. 669.

Charity Commissioners—Proceedings for recovery of property not exceeding £20 annual value.]—*See* Charitable Trusts (Recovery) Act, 1891 (c. 17), s. 3.

SUB-SECT. 4.—FUNDS LIABLE FOR COSTS.

A. In General.

2524. Awarding costs out of charity estate an encouragement to groundless litigation.]—BRUCE *v.* DEER PRESBYTERY (1867), L. R. 1 Sc. & Div. 96, H. L.

2525. When costs allowed out of charity funds—Not when information filed to rectify trifling irregularities—Proceedings unnecessarily expensive.]—A.-G. *v.* DIXON (1843), 7 J. P. 399.

2526. —— Where defendant ordered to pay costs is insolvent.]—A.-G. *v.* LEWIS (1845), 8 Beav. 179; 9 Jur. 220; 50 E. R. 71.

Annotation:—**Mentd.** Elsey *v.* Adams (1863), 32 L. J. Ch. 616.

2527. —— Not when parties appearing to assist Attorney-General in pursuance of public notice—On applications for appointment of new trustees under Municipal Corporations Act, 1835 (c. 76).]—*Re* GLOUCESTER CHARITIES (1853), 10 Hare, App. I., iii.; 68 E. R. 1114.

2528. —— When bonâ fide substantial ground for application.]—*Re* STORIE'S UNIVERSITY GIFT (1860), 2 De G. F. & J. 529; 30 L. J. Ch. 193; 3 L. T. 638; 25 J. P. 243; 7 Jur. N. S. 31; 9 W. R. 323; 45 E. R. 726, L. JJ.

2529. When costs allowed out of fund bequeathed—Litigation caused by grantor himself—Deed void under Mortmain Acts.]—WAY *v.* EAST (1853), 2 Eq. Rep. 275; 23 L. J. Ch. 209; 22 L. T. O. S. 192; 2 W. R. 114.

Annotations:—**Mentd.** Wallgrave *v.* Tebbs (1855), 2 K. & J. 313; Fisher *v.* Brierly (1860), 1 De G. F. & J. 643.

PART X. SECT. 6, SUB-SECT. 3.—F.

g. Not entitled to costs—Party sufficiently represented by another party.]—BURNET'S TRUSTEES *v.* DRUMMOND (1876), 14 S. L. R. 106.—SCOT.

PART X. SECT. 6, SUB-SECT. 3.—G.

h. Party intervening—Order permitting them to intervene not providing for costs—Disallowed costs.]—DILL *v.* BROWN (1852), 3 I. Ch. R. 127; 4 Ir. Jur. 355.—IR.

PART X. SECT. 6, SUB-SECT. 4.—A.

k. When costs allowed out of charity funds—Where validity of settlement challenged—Although unsuccessfully.]—MILLER *v.* ROWAN & MILLER (BLACK'S TRUSTEES) (1837), 2 Sh. & Macl. 866.—SCOT.

l. When costs allowed out of fund bequeathed—Not in payment of expenses of persons opposing trustees' bill for diversion of charity funds—Bill thrown out.] MACKINTOSH *v.* MACLEAN (1852), 14 Dunl. (Ct. of Sess.) 928; 24 Sc. Jur. 577; 1 Stuart, 972.—SCOT.

—— In proceedings to administer & establish charitable gifts by will.]—*See* Sub-sect. 4, E., *post.*

B. Costs of Attorney-General.

2530. Out of charity funds—Where application to Parliament to effect changes in constitution of charity sanctioned by court—Proceedings carried on by Attorney-General on abandonment by trustees—Subsequent abandonment of bill by Attorney-General with sanction of court.]—*Re* BEDFORD CHARITY (1857), 26 L. J. Ch. 613; 29 L. T. O. S. 5; 21 J. P. 244, L. JJ.

2531. —— Where Attorney-General made defendant as guardian of large charitable fund—Appearing in support of judgment of Court of Appeal establishing charity.]—HUNTER *v.* A.-G., No. 687, *ante.*

2532. —— Where Attorney-General takes out originating summons for determination of construction of charitable bequests—Acting under certificate issued under 1853 Act, s. 20.]—(1) The rule that inasmuch as the A.-G. cannot be ordered to pay costs he ought not to receive them does not apply, at all events in a ct. of first instance, to proceedings instituted by the A.-G., pursuant to a certificate of the Charity Comrs. under 1853 Act, s. 20, to determine the construction of charitable gifts in a will. In such a case the A.-G. represents all the objects of the charity, who are pltfs. through him, & he is entitled to be put in the same position as to costs as any other pltf., & (2) is entitled to costs as between solr. & client.

(3) *Semble:* if the exors. have distributed the estate & paid the charitable legacies in question they ought not to be made parties to the proceedings.—*Re* CARDWELL, A.-G. *v.* DAY, [1912] 1 Ch. 779; 81 L. J. Ch. 443; 106 L. T. 753; 28 T. L. R. 307; 56 Sol. Jo. 361.

C. Costs of Relator.

2533. Costs allowed out of charity funds—Relator changed before cause at issue.]—A.-G. *v.* TYLER (1838), Coop. Pr. Cas. 358; 47 E. R. 544.

2534. —— Extra costs—After party & party taxation.]—A.-G. *v.* BERWICK-UPON-TWEED CORPN. (1829), Taml. 239; 48 E. R. 95.

2535. —— —— Difference between solicitor & client costs & amount recovered from defendant—Information in respect of one only of several gifts belonging to charity.]—A.-G. *v.* KERR (1841), 4 Beav. 297; 10 L. J. Ch. 373; 5 Jur. 863; 49 E. R. 353.

2536. —— Information charging corporation with breach of trust—No fraud imputed—Information partially successful.]—SOLICITOR-GENERAL *v.* BATH CORPN., A.-G. *v.* BLAIR (1849), 18 L. J. Ch. 275; 13 L. T. O. S. 64; 13 Jur. 866.

2537. Costs not allowed out of charity funds—Relator appearing to have no title.]—A.-G. *v.* OGLENDER (1790), 1 Ves. 246; 30 E. R. 324, L. C.

2538. —— Extra costs—After party & party taxation—Suit not for benefit of charity.]—A.-G. *v.* FISHMONGERS' CO. (1837), 1 Keen, 492; 48 E. R. 396.

Annotation:—**Consd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

2539. —— Expenses incurred without sanction of master—Relating to advertisements & printed questions published for preparing scheme—But bonâ fide out of pocket expenses allowed.]—A.-G. *v.* IRONMONGERS' CO. (1847), 10 Beav. 194; 2 New Pract. Cas. 152; 8 L. T. O. S. 406; 11 Jur. 234; 50 E. R. 556.

2540. —— Litigation commenced by executive committee failing in its object.]—A.-G. *v.* BRAITHWAITE (1885), 2 T. L. R. 56, C. A.

D. Costs of Charity Trustees.

2541. Costs allowed out of charity funds—Legitimate expenses incurred in performance of duties—Right to reimbursement out of charitable funds — Without any special provision.]—Where persons intrusted with the administration of a fund have incurred legitimate & proper expenses in performing duties thrown upon them by their fiduciary situation, they have a right, both at law & in equity, to reimburse themselves out of the funds in their hands, without any special provision to that effect.—A.-G. *v.* NORWICH CORPN. (1837), 2 My. & Cr. 406; 1 J. P. 164; 40 E. R. 695, L. C.

Annotations:—**Refd.** Fraser *v.* Murdoch (1881), 6 App. Cas. 855. **Mentd.** Foot *v.* Bessant (1838), 3 Y. & C. Ex. 320; Holdsworth *v.* Dartmouth Corpn. (1840), 11 Ad. & El. 490; Bennett *v.* Harrison (1843), 7 Jur. 436; Foss *v.* Harbottle (1843), 2 Hare, 461; R. *v.* Leeds Corpn. (1843), 4 Q. B. 796; A.-G. *v.* Wigan Corpn. (1854), 2 Eq. Rep. 224; Lewis *v.* Rochester Corpn. (1860), 9 C. B. N. S. 401; R. *v.* Sheffield Corpn. (1871), L. R. 6 Q. B. 652; A.-G. *v.* Newcastle-upon-Tyne Corpn. & N. E. Ry. (1889), 23 Q. B. D. 492.

2542. —— On refusal of court to appoint new trustees—When charity funds had accumulated by care & economy of trustees—Notwithstanding long misapplication by trustees & predecessors without fraud.]—A.-G. *v.* CAIUS COLLEGE (1837), 2 Keen, 150; 6 L. J. Ch. 282; 48 E. R. 585.

Annotation:—**Distd.** Solicitor-General *v.* Bath Corpn., A.-G. *v.* Blair (1849), 18 L. J. Ch. 275.

2543. —— On dismissal of petition to set aside appointment by trustees—When trustees exercising discretion honestly—Although no reasons for their action given.]—*Re* BELOVED WILKES'S CHARITY (1851), 3 Mac. & G. 440; 20 L. J. Ch. 588; 17 L. T. O. S. 101; 42 E. R. 330, L. C.

Annotations:—**Mentd.** Hayman *v.* Rugby School (1874), L. R. 18 Eq. 28; Tabor *v.* Brooks (1878), 10 Ch. D. 273; Cassel *v.* Inglis, [1916] 2 Ch. 211; Weinberger *v.* Inglis, [1919] A. C. 606.

2544. —— When minority of trustees insist upon carrying out trust deed literally—Although court holds their views to be erroneous.]—A.-G. *v.* CLAPHAM (1853), 10 Hare, 540; 2 Eq. Rep. 91; 23 L. J. Ch. 70; 68 E. R. 1042; *revsd.* on other grounds (1855), 4 De G. M. & G. 591, L. C.

2545. —— One trustee separating in defence—& adopting view of relator.]—A.-G. *v.* MERCERS' CO., *Re* ST. PAUL'S SCHOOL, No. 2483, *ante.*

2546. Costs not allowed out of charity funds—Information charging corporation with breaches of trust—No fraud imputed—Information partially successful.]—SOLICITOR-GENERAL *v.* BATH CORPN., A.-G. *v.* BLAIR (1849), 18 L. J. Ch. 275; 13 L. T. O. S. 64; 13 Jur. 866.

2547. —— Trustees liable personally—Appointment of new trustees by surviving trustees pendente lite—No clear proof that conduct right & proper.]—A.-G. *v.* CLACK (1839), 1 Beav. 467; 3 Jur. 215; 48 E. R. 1021.

Annotations:—**Refd.** Talbot *v.* Marshfield (1867), L. R. 4 Eq. 661; *Re* Cotter, Jennings *v.* Nye, [1915] 1 Ch. 307. **Mentd.** Cafe *v.* Bent (1843), 3 Hare, 245.

2548. —— —— Suit relating to validity of removal of pastor—Trustees ordered to replace amount taken for costs out of charity estate—With interest at 4 per cent.]—A.-G. *v.* DAUGARS (1864), 33 Beav. 621; 28 J. P. 726; 10 Jur. N. S. 966; 12 W. R. 363; 55 E. R. 509.

2549. —— —— Suit against trustees to compel exchange of lands—Trustees defending as beneficial owners of estate.]—A.-G. *v.* MERCERS' CO. (1870), 22 L. T. 222; 18 W. R. 448.

2550. —— —— —— Costs of trustee separating in defence & adopting view of relator.]—A.-G. *v.* MERCERS' CO., *Re* ST. PAUL'S SCHOOL, No. 2483, *ante.*

2551. —— —— Trustees compelling Attorney-General to file information—Against advice.]—

Sect. 6.—Costs: Sub-sect. 4, D., E. & F. (a), (b), (c) & (d); sub-sect. 5, A. & B.; sub-sects. 6 & 7.]

A.-G. *v.* WEBSTER (1875), L. R. 20 Eq. 483; 44 L. J. Ch. 766.

Annotations:—**Mentd.** *Re* St. Bride's Church, Fleet St. (1877), 35 Ch. D. 147, n.; A.-G. *v.* Dartmouth Corpn. (1883), 48 L. T. 933; *Re* St. Botolph without Bishopsgate Parish Estates (1887), 35 Ch. D. 142; *Re* St. Stephens, Coleman Street, *Re* St. Mary the Virgin, Aldermanbury (1888), 39 Ch. D. 492; Fell *v.* Charity Lands Official Trustee, [1898] 2 Ch. 44; *Re* Church Patronage Trust, Laurie *v.* A.-G., [1904] 2 Ch. 643.

E. Costs of Proceedings to Administer and Establish Charitable Gifts by Will.

See, generally, EXECUTORS & ADMINISTRATORS.

2552. Out of fund bequeathed—All parties entitled to.]—MOGGRIDGE *v.* THACKWELL (1803), 7 Ves. 36; 32 E. R. 15, L. C.; *affd.* (1807), 13 Ves. 416, H. L.; *cffg.* (1792), 1 Ves. 464, L. C.

Annotations: **Mentd.** Cary *v.* Abbot (1802), 7 Ves. 490; Morice *v.* Durham (1804), 9 Ves. 399; Paice *v.* Canterbury (1807), 14 Ves. 364; Mills *v.* Farmer (1815), 1 Mer. 55; Ommanney *v* Butcher (1823), Turn. & R. 260; A.-G. *v.* Ironmongers' Co (1833), 3 L. J. Ch. 11; Ellis *v.* Selby (1836), 5 L. J. Ch. 214; Reeve *v.* A.-G. (1843), 3 Hare, 191; Martin *v.* Margham (1844), 14 Sim. 230; Nightingale *v.* Goulbourn (1848), 2 Ph. 594; Marsh *v.* Means (1857), 30 L. T. O. S. 89 *In the goods of* Tierney (1861), 5 L. T. 247; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91; Pocock *v.* A.-G. (1876), 3 Ch. D. 342; Biscoe *v.* Jackson (1887), 56 L. T. 753; *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876; *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 33; Bourne *v.* Keane, [1919] A. C. 815; *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353; *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44.

2553. —— —— Proceedings for construction of doubtful will.]—*Re* TOWRIE'S CHARITY (1843), 2 L. T. O. S. 93, L. C.

2554. —— —— No question of construction by obscurity of will.]—PHILPOTT *v.* ST. GEORGE'S HOSPITAL (PRESIDENT, ETC.) (1857), 6 H. L. Cas. 338; 27 L. J. Ch. 70; 30 L. T. O. S. 15; 21 J. P. 691; 3 Jur. N. S. 1269; 5 W. R. 845; 10 E. R. 1326, H. L.; *revsg.* (1855), 21 Beav. 134; *subsequent proceedings* (1859), 27 Beav. 107.

Annotations:—**Mentd.** Lechmere *v.* Curtler (1855), 3 Eq. Rep. 938; Hartshorne *v.* Nicholson (1858), 26 Beav. 58; Dent *v.* Allcroft (1861), 30 Beav. 335; Hall *v.* Warren (1861), 9 H. L. Cas. 420; Sewell *v.* Crewe-Read (1866), L. R. 3 Eq. 60; Cresswell *v.* Cresswell (1868), L. R. 6 Eq. 69; *Re* Watmough's Trusts (1869), L. R. 8 Eq. 272; Sinnett *v.* Herbert (1871), L. R. 12 Eq. 201; Chamberlayne *v.* Brockett (1872), 21 W. R. 299; *Re* Cox, Cox *v.* Davie (1877), 7 Ch. D. 204; *Re* Hedgman, Morley & Coxon (1878), 26 W. R. 674; *Re* Christmas, Martin *v.* Lacon (1885), 30 Ch. D. 544; *Re* Holburne, Coates *v.* Mackillop (1885), 53 L. T. 212; Cotton *v.* Imperial & Foreign Agency & Investment Corpn., [1892] 3 Ch. 454.

F. Payment and Apportionment of Costs payable out of Charity Funds.

(a) By Mortgage or Sale.

2555. Mortgage of charity estates—Ordered by court—After providing for salary of schoolmaster.]—A.-G. *v.* ATHERTON (ATHERSTONE) SCHOOL (GOVERNORS) (1833), Shelford's Law of Mortmain, 477.

Annotation:—**Mentd.** A.-G. *v.* Brazen Nose College (1834), 8 Bli. N. S. 377.

2556. —— —— For payment of taxed costs & expenses in suit & in relation to charity—Incurred in previous years.]—A.-G. *v.* ST. DAVID'S (BP.) (1849), Seton's Judgments & Orders, 7th ed. 1269.

2557. —— —— Provision for extinction of mortgage by sinking fund.]—In raising costs out of charity property by a mtge., the ct. is anxious to provide for its extinction by a sinking fund.—A.-G. *v.* YORK (ARCHBP.) (1853), 17 Beav. 495; 2 W. R. 7; 51 E. R. 1126.

2558. Mortgage or sale of charity estates—Reference to master to approve of—No fund applicable for payment of costs.]—A.-G. *v.* NETHERCOTE (1841), 11 Sim. 529; 10 L. J. Ch. 162; 59 E. R. 978.

Annotations:—**Refd.** *Re* Marsden's Estate, Withington *v.* Neumann (1889), 40 Ch. D. 475; Taylor *v.* Roe, [1894] 1 Ch. 413.

(b) Payment out of Income.

2559. Costs of application for payment of income of fund in court—Payable out of income.]—A.-G. *v.* SMYTHIES (1863), 16 Beav. 385; 20 L. T. O. S. 301; 51 E. R. 827.

2560. Costs of settling one scheme for several charities—Ordered to be paid out of annual income of such charities — Or any funds in hand.]—*Re* SAFFRON WALDEN CHARITY (1857), Seton's Judgments & Orders, 7th ed. 1250.

(c) Payment out of Fund subject of Proceedings.

2561. Out of arrears of fund—Where arrears considerable.]—ANON. (1679), Freem. Ch. 40; 22 E. R. 1045; *sub nom.* A.-G. *v.* COMBE, 2 Cas. in Ch. 18, L. C.

Annotations:—**Refd.** A.-G. *v.* Guise (1692), 2 Vern. 266. **Mentd.** De Costa *v.* De Paz (1754), 2 Swan. 487, n.; Moggridge *v.* Thackwell (1803), 7 Ves. 36.

2562. Primarily out of fund or estate recovered by information—Not out of general funds of charity derived from different estates.]—A.-G. *v.* KERR (1841), 4 Beav. 297; 10 L. J. Ch. 373; 5 Jur. 863; 49 E. R. 353.

(d) Apportionment of Costs.

2563. Costs of appointment of trustees of charity consisting of three subjects—Apportioned between such subjects—Application for payment out of funds of one subject refused.]—*Re* HERTFORD CHARITY (1852), 19 Beav. 518, n.; 19 L. T. O. S. 173; 52 E. R. 452, L. C.

Annotation:—**Refd.** Wood *v.* Boucher (1870), 23 L. T. 522.

2564. Costs of settling one scheme for several charities—Apportioned ratably according to annual incomes.]—*Re* SAFFRON WALDEN CHARITY (1857), Seton's Judgments & Orders, 7th ed. 1250.

2565. —— Paid out of existing available fund belonging to three charities—Ultimately borne ratably by all.]—*Re* STAFFORD CHARITIES (1858), 26 Beav. 567; 53 E. R. 1017.

2566. Several charities created by testator vested in same trustees—Costs relating to one only—Not payable out of others.]—A.-G. *v.* GRAINGER (1859), 7 W. R. 684.

SUB-SECT. 5.—SCALE OF COSTS.

See, generally, SOLICITORS.

A. As between Solicitor and Client.

2567. Given to Attorney-General—Where appearing separately from relator.]—A.-G. *v.* WYGGESTON HOSPITAL (1855), Seton's Judgments & Orders, 6th ed. 1290.

See, also, Nos. 2577, 2578, *post.*

2568. Given to relator—Suit to establish several charities—Costs out of testator's estate.]—A.-G. *v.*

PART X. SECT. 6, SUB-SECT. 4.—E.

m. *Out of fund bequeathed—Trustees' costs of settling scheme.]*—DILL *v.* BROWN (1852), 3 I. Ch. R. 127; 4 Ir. Jur. 355.—IR.

2552 i. —— *All parties entitled to—Reference for settlement of scheme.]*—DALY *v.* A.-G. (1860), 11 I. Ch. R. 41.—IR.

2552 ii. —— —— *Suit to administer charity.]*—BAIRD *v.* DUNDEE MAGISTRATES (1863), 1 Macph. (Ct. of Sess.) 6; 35 Sc. Jur. 305.—SCOT.

2552 iii. —— —— *Action by beneficiaries against trustees for due administration of trust.]*—CLEPHANE *v.* EDINBURGH MAGISTRATES (1864), 2 Macph. (Ct. of Sess.) 7; 4 Macq. 603; 36 Sc. Jur. 325.—SCOT.

2552 iv. —— —— *Proceedings against trustees for withholding income.]*—POWER *v.* A.-G. FOR NOVA SCOTIA (1904), 35 S. C. R. 182.—CAN.

CARTE (1746), Dick. 113 ; Beames on Costs, 343 ; 21 E. R. 211.

Annotation :—**Refd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

2569. —— **& costs charges & expenses—Where abuses in charity proved & corrected on information.**]—A.-G. *v.* WINCHESTER CORPN. (1824), Coop. Pr. Cas. 502 ; 3 L. J. O. S. Ch. 64 ; 47 E. R. 621.

Annotation :—**Refd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

2570. —— **Upon obtaining decree — Costs, charges, & expenses allowed—In special cases.**]—A.-G. *v.* KERR (1841), 4 Beav. 297 ; 10 L. J. Ch. 373 ; 5 Jur. 863 ; 49 E. R. 353.

See, also, No. 2575, *post.*

2571. Given to charity trustees—On dismissal of proceedings wholly unjustified.]—ANDREWS *v.* BARNES, No. 2482, *ante.*

See, also, No. 2577, *post.*

2572. Given to trustee separating in defence—& adopting view of relator.]—A.-G. *v.* MERCERS' CO., *Re* ST. PAUL'S SCHOOL, No. 2483, *ante.*

2573. In proceedings to administer & establish charitable gifts by will—No general rule.]—There is no rule that in suits for the administration of property given to charities the costs are to be allowed as between solr. & client.—ARIA *v.* EMANUEL (1861), 9 W. R. 366.

2574. —— **Given to all parties.**]—A.-G. *v.* CARTE (1746), Dick. 113 ; Beames on Costs, 343 ; 21 E. R. 211.

Annotation :—**Refd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

2575. —— ——.]—MOGGRIDGE *v.* THACKWELL (1803), 7 Ves. 36 ; 32 E. R. 15, L. C. ; *affd.* (1807), 13 Ves. 416, H. L.

Annotations :—**Mentd.** Cary *v.* Abbot (1802), 7 Ves. 490 ; Palce *v.* Canterbury (1807), 14 Ves. 364 ; Mills *v.* Farmer (1815), 1 Mer. 55 ; Onmanney *v.* Butcher (1823), Turn. & R. 260 ; A.-G. *v.* Ironmongers' Co. (1833), 3 L. J. Ch. 11 ; Ellis *v.* Selby (1836), 5 L. J. Ch. 214 ; Reeve *v.* A.-G. (1843), 3 Hare, 191 ; Martin *v.* Margham (1844), 14 Sim. 230 ; Nightingale *v.* Goulbourn (1848), 2 Ph. 594 ; Marsh *v.* Means (1857), 30 L. T. O. S. 89 ; *In the goods of* Tierney (1861), 5 L. T. 247 ; Lyons Corpn. *v.* Adv.-Gen. of Bengal (1876), 1 App. Cas. 91 ; Pocock *v.* A.-G. (1876), 3 Ch. D. 342 ; Biscoe *v.* Jackson (1887), 56 L. T. 753 ; *Re* Slevin, Slevin *v.* Hepburn, [1891] 1 Ch. 373 ; *Re* Rymer, Rymer *v.* Stanfield, [1895] 1 Ch. 19 ; *Re* Davis, Hannen *v.* Hillyer, [1902] 1 Ch. 876 ; *Re* Pyne, Lilley *v.* A.-G., [1903] 1 Ch. 83 ; Bourne *v.* Keane, [1919] A. C. 815 ; *Re* Eades, Eades *v.* Eades, [1920] 2 Ch. 353 ; *Re* Willis, Shaw *v.* Willis, [1921] 1 Ch. 44.

2576. —— **Not given—Unless all parties consent.**]—MARTIN *v.* MARGHAM (1844), 14 Sim. 230 ; 13 L. J. Ch. 392 ; 3 L. T. O. S. 433 ; 8 J. P. 532 ; 8 Jur. 609 ; 60 E. R. 346.

Annotations :—**Mentd.** Rochford *v.* Hackman (1852), 9 Hare, 475 ; Adams *v.* Adams, [1892] 1 Ch. 369 ; *Re* Porter, Coulson *v.* Capper, [1892] 3 Ch. 481 ; *Re* Swain, Monckton *v.* Hands, [1905] 1 Ch. 669.

2577. —— **Given to trustees & Attorney-General—No costs to adverse claimants—Disputed legacy.**]—*Re* LYCETT, RILEY *v.* KING'S COLLEGE HOSPITAL (1897), 13 T. L. R. 373.

2578. —— **Given to Attorney-General—Out of charitable legacies—Question of construction.**]—*Re* CARDWELL, A.-G. *v.* DAY, No. 2532, *ante.*

2579. —— **Given to heir-at-law—If making no improper point.**]—CURRIE *v.* PYE (1811), 17 Ves. 462 ; 34 E. R. 179, L. C.

Annotation :—**Refd.** Andrews *v.* Barnes (1888), 39 Ch. D. 133.

2580. —— —— **Only in charity cases—& when heir is trustee.**]—JAMES *v.* JAMES (1849), 11 Beav. 397 ; 50 E. R. 870.

2581. —— **Given to next of kin—When no improper point raised.**]—CARTER *v.* GREEN (1857), 3 K. & J. 591 ; 3 Jur. N. S. 905 ; 69 E. R. 1245.

Annotations :—**N.F.** Wilkinson *v.* Barber (1872), L. R. 14 Eq. 96. **Mentd.** Topham *v.* Portland (1863), 1 De G. J. & Sm. 517 ; *Re* Fleetwood, Sidgreaves *v.* Brewer (1880), 15 Ch. D. 594 ; *Re* Piercy, Whitwham *v.* Piercy, [1898] 1 Ch. 565.

2582. —— —— **Not where appearing unsuccessfully in opposition to charitable bequest.**]—WILKINSON *v.* BARBER (1872), L. R. 14 Eq. 96 ; 41 L. J. Ch. 721 ; 26 L. T. 937.

——.]—*See, generally,* EXECUTORS & ADMINISTRATORS.

B. As between Party and Party.

2583. Given to relator—Information at relation of inhabitants against corporation of town—For establishment of charity, discovery, accounts, etc.—Corporation decreed to account for rents misapplied.]—A.-G. *v.* BERWICK-UPON-TWEED CORPN. (1829), Taml. 239 ; 48 E. R. 95.

2584. —— **Suit not instituted for benefit of charity—Trustees omitting to invest legacy as directed.**]—A.-G. *v.* FISHMONGERS' CO. (1837), 1 Keen, 492 ; 48 E. R. 396.

Annotation :—**Refd.** A.-G. *v.* Kerr (1841), 4 Beav. 297.

2585. Recoverable against trustees—Where given against charity estate as between solicitor & client.]—A.-G. *v.* MERCERS' CO., *Re* ST. PAUL'S SCHOOL, No. 2483, *ante.*

2586. In proceedings to administer & establish charitable gifts by will—Given to heir-at-law—Heir's claim unsuccessful.]—WHICKER *v.* HUME (1851), 14 Beav. 509 ; 51 E. R. 381 ; *affd.* on other grounds (1852), 1 De G. M. & G. 506, L. JJ. ; (1858), 7 H. L. Cas. 124, H. L.

Annotations :—**Refd.** Tardrew *v.* Howell, Parry *v.* Howell (1861), 9 W. R. 296. **Mentd.** Crookenden *v.* Fuller (1859), Sea. & Sm. 3 ; Lord *v.* Colvin (1859), 4 Drew. 366 ; Moorhouse *v.* Lord (1863), 10 H. L. Cas. 273 ; Drevon *v.* Drevon (1864), 34 L. J. Ch. 129 ; Jopp *v.* Wood (1865), 4 De G. J. & Sm. 616 ; Beaumont *v.* Oliveira (1869), 4 Ch. App. 306 ; Thurburn *v.* Steward (1871), L. R. 3 P. C. 478 ; Bradford *v.* Young (1884), 26 Ch. D. 656 ; *Re* Patience, Patience *v.* Main (1885), 29 Ch. D. 976 ; Concha *v.* Concha (1886), 11 App. Cas. 541 ; Jex *v.* McKinney (1889), 14 App. Cas. 77 ; *Re* Berridge, Berridge *v.* Turner (1890), 62 L. T. 365 ; Canterbury Corpn. *v.* Wyburn & Melbourne Hospital, [1895] A. C. 89 ; *Re* Macduff, Macduff *v.* Macduff, [1896] 2 Ch. 451 ; Winans *v.* A.-G., [1904] A. C. 287.

——.]—*See, generally,* EXECUTORS & ADMINISTRATORS.

SUB-SECT. 6.—INTEREST ON COSTS.

2587. Not chargeable where ordered out of estate—& not by party personally—Though recoverable as between party & party—Under Judgments Act, 1838 (c. 110), ss. 17, 18.]—A.-G. *v.* NETHERCOTE (1841), 11 Sim. 529 ; 10 L. J. Ch. 162 ; 59 E. R. 978.

Annotations :—**Refd.** *Re* Marsden's Estate, Withington *v.* Neumann (1889), 40 Ch. D. 475 ; Taylor *v.* Roe, [1894] 1 Ch. 413.

2588. Interest allowed at 4 per cent. on each year's costs—When estates ordered to be mortgaged for payment of costs & expenses in suit & in relation to charity—Incurred in previous years.]—A.-G. *v.* ST. DAVID'S (BP.) (1849), Seton's Judgments & Orders, 7th ed. 1269.

See, also, No. 2548, *ante.*

SUB-SECT. 7.—WHERE CHARITY LAND IS TAKEN COMPULSORILY.

See COMPULSORY PURCHASE OF LAND AND COMPENSATION.

PART X. SECT. 6, SUB-SECT. 5.—A.

2574 i. *In proceedings to administer & establish charitable gifts by will—Given to all parties.*]—Where the question has arisen owing to the terms of a will the costs of all parties were taxed as between solr. & client.—JACKSON *v.* WATKINSON (1915), 34 N. Z. L. R. 243. —**N.Z.**

n. *Unsuccessful suit with bonâ fide desire to protect property—Not given.*]—Where pltf. has commenced litigation with the *bonâ fide* desire to prevent a charitable fund being diverted from the purpose for which it was originally acquired, & had some grounds to justify his action, but was not successful :—*Held :* pltf. not entitled to solicitor & client costs.—JAMISON *v.* CHALMERS CHURCH (No. 2) (1914), 33 N. Z. L. R. 938.—**N.Z.**

CHARTER.

See COMPANIES; CONSTITUTIONAL LAW; CORPORATIONS.

CHARTERPARTY.

See SHIPPING AND NAVIGATION.

CHASE.

See CONSTITUTIONAL LAW.

CHATTELS PERSONAL.

See BILLS OF SALE; PERSONAL PROPERTY; SALE OF GOODS.

CHATTELS REAL.

See REAL PROPERTY AND CHATTELS REAL.

CHEAP TRAINS.

See CARRIERS; RAILWAYS AND CANALS.

CHECKWEIGHER.

See MINES, MINERALS AND QUARRIES.

CHEESE.

See FOOD AND DRUGS.

CHEMICAL MANURES.

See AGRICULTURE.

CHEMICAL WORKS.

See NUISANCE; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

CHEMISTS.

See MEDICINE AND PHARMACY.

CHEQUE.

See BANKERS AND BANKING; BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS; CHOSES IN ACTION.

CHICORY.

See FOOD AND DRUGS.

CHIEF CONSTABLE.

See POLICE.

CHIEF RENT.

See DISTRESS; REAL PROPERTY AND CHATTELS REAL.

CHILDREN.

See BASTARDY; CRIMINAL LAW AND PROCEDURE; HUSBAND AND WIFE; INFANTS AND CHILDREN; MASTER AND SERVANT.

CHILTERN HUNDREDS.

See PARLIAMENT.

CHIMNEYS.

See FACTORIES AND SHOPS; METROPOLIS; NUISANCE; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

CHOSES IN ACTION.

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NOTE.—*In this Title Supreme Court of Judicature Act*, 1873 (*c.* 66) *is referred to as* 1873 *Act.*

Part I.—In General.

SECT. 1.—WHAT IS A CHOSE IN ACTION.

SUB-SECT. 1.—DEFINITIONS.

1. Historical survey.]—COLONIAL BANK *v.* WHINNEY (1886), 11 App. Cas. 426; 56 L. J. Ch. 43; 55 L. T. 362; 34 W. R. 705; 2 T. L. R. 747; 3 Morr. 207, H. L.; *approving dissenting judgment of* FRY, L.J. *in* (1885), 30 Ch. D. 261, C. A.

Annotations:—**Consd.** Dawson *v.* G. N. & City Ry., [1904] 1 K. B. 277. **Refd.** Bradford Banking Co. *v.* Briggs (1886), 12 App. Cas. 29; Sharman *v.* Mason, [1899] 2 Q. B. 679; Torkington *v.* Magee (1902), 71 L. J. K. B. 712. **Mentd.** *Re* Jenkinson, *Ex p.* Nottingham & Nottinghamshire Bank (1885), 15 Q. B. D. 441; Milnes *v.* Huddersfield Corpn. (1886), 11 App. Cas. 511; Nanney *v.* Morgan (1887), 56 L. J. Ch. 805; Tennant *v.* Howatson (1888), 13 App. Cas. 489; *Re* Harrison, *Ex p.* Official Receiver (1892), 67 L. T. 600; *Re* Goetz, Jonas, *Ex p.* Trustee (1898), 78 L. T. 399; Rainford *v.* Keith & Blackman Co., [1905] 1 Ch. 296; Hollinshead *v.* Egan, [1913] A. C. 564.

2. Not mere right of action.]—MAY *v.* LANE, No. 80, *post.*

3. All personal rights of property—Claimed or enforced by action.]—TORKINGTON *v.* MAGEE, No. 81, *post.*

SUB-SECT. 2.—ENUMERATION.

See, also, cases in Part V., Sect. 9, sub-sect. 1, A. (*a*), ii., *post.*

4. Agreement—Unstamped.]—An unstamped agreement, which may be rendered valid by being impressed with a stamp, is a chose in action.—R. *v.* WATTS (1854), Dears. C. C. 326; 23 L. J. M. C. 56; 22 L. T. O. S. 292; 18 J. P. 87; 18 Jur. 192; 2 W. R. 233; 2 C. L. R. 604; 6 Cox, C. C. 304, C. C. R.

Annotations:—**Distd.** R. *v.* Morrison (1859), Bell, C. C. 158. **Refd.** Alcock *v.* Delay (1855), 4 E. & B. 660; R. *v.* Smith (1855), 19 J. P. 774; R. *v.* Lowrie (1867), 36 L. J. M. C. 24.

5. Annuity—Chattel interest in land.]—Testator bequeathed a leasehold estate to trustees upon trust as therein mentioned, & he charged the estate with the payment of an annuity to his daughter, during all his interest in the estate. The daughter afterwards mortgaged her annuity, first to A. & afterwards to B.; B. gave the trustees notice of his mtge. before A. did:—*Held:* (1) the annuity was not a chose in action, but a chattel interest & not subject to the rules affecting choses in action; (2) B. had not gained any priority over A.—WILTSHIRE *v.* RABBITS (1844), 14 Sim. 76; 13 L. J. Ch. 284; 8 Jur. 769; 60 E. R. 285.

Annotations:—*As to* (2) **Consd.** Consolidated Investment & Insce. *v.* Riley (1859), 1 Giff, 371. *Generally* **Refd.** Lee *v.* Howlett (1856), 2 K. & J. 531; Ward *v.* Duncombe, [1893] A. C. 369; Taylor *v.* London & County Banking Co., London & County Banking Co. *v.* Nixon, [1901] 2 Ch. 231.

6. Bank-notes.]—On a motion to set aside an execution on a judgment confessed, for irregularity:—*Held:* bank-notes, etc., cannot be taken in execution; for though they are assignable over, yet they remain, in some measure, choses in action, & the sheriff or his bargainee, cannot bring an action on them without assignment.—FRANCIS *v.* NASH (1734), Cunn. 51; Lee *temp.* Hard. 53; 94 E. R. 1056.

See, generally, BANKERS & BANKING, Vol. III., pp. 196 *et seq.*

7. Barrister's fees—In hands of solicitor.]—Fees received by a solr. for payment to a barrister for professional services are not a debt, & therefore garnishee proceedings cannot be used to attach them in the hands of the solr.

It is clear on the authorities that these fees are not properly to be described as debts at all. I have grave doubts whether they could be made the subject-matter of an equitable assignment, but it is clear from the provisions of 1873 Act that they are not choses in action (EVANS, P.).—WELLS *v.* WELLS, [1914] P. 157; 83 L. J. P. 81; 111 L. T. 399; 30 T. L. R. 545; 58 Sol. Jo. 555, C. A.

See, generally, BARRISTERS, Vol. III., pp. 331 *et seq.*

8. Charterparty.]—MANGLES *v.* DIXON, No. 349, *post.*

See, generally, SHIPPING & NAVIGATION.

9. Lessee's right to be relieved from forfeiture of lease.]—The right of a lessee to be relieved from the forfeiture of a lease is a chose in action which vests in his trustee in bkpcy., & the trustee is entitled to sell such right & to assign it to a purchaser.—HOWARD *v.* FANSHAWE, [1895] 2 Ch. 581; 64 L. J. Ch. 666; 73 L. T. 77; 43 W. R. 645; 39 Sol. Jo. 623; 13 R. 663.

Annotations:—**Mentd.** Humphreys *v.* Morten, [1905] 1 Ch. 739; Durell *v.* Gread (1914), 84 L. J. K. B. 130.

See, generally, LANDLORD & TENANT.

10. Mortgage deed.]—Mtge. deeds which are subsisting securities for money, & therefore choses in action, are not properly described in an indictment as goods & chattels.—R. *v.* POWELL (1852), 2 Den. 403; 21 L. J. M. C. 78; 18 L. T. O. S. 279;

PART I. SECT. 1, SUB-SECT. 1.

a. *Every assignable interest in real & personal property—Debts.*]—The term "chose in action" includes every assignable interest in real or personal property, debts, & the right of action incidental to debts.—KING *v.* JOHNSTON, 3 J. R. N. S. 94.—**N.Z.**

PART I. SECT. 1, SUB-SECT. 2.

5 i. *Annuity.*]—The receiver in an administration suit was ordered to pay out of the rents to H., devisee of the real estates, an annuity of £400:—*Held:* the annuity was not a chose in action.—ROCHARD *v.* FULTON (1844), 1 Jo. & Lat. 413; 7 I. Eq. R. 131.—**IR.**

b. *Chattel bailed.*]—The owner of a corporeal chattel which is in another man's possession, either through bailment or otherwise, has not a mere chose in action. He is said to own the thing itself, as distinguished from having a mere right of action.—*Re* MCLEAN (1904), 23 N. Z. L. R. 504.—**N.Z.**

Sect. 1.—*What is a chose in action: Sub-sect.* 2. *Sect.* 2.]

16 J. P. 104; 16 Jur. 177; 5 Cox, C. C. 396, C. C. R.

11. Mortgage debt.]—TAYLOR *v.* LONDON & COUNTY BANKING CO., LONDON & COUNTY BANKING CO. *v.* NIXON, No. 417, *post.*

See, generally, EQUITY; MORTGAGE.

12. Partnership—Share in.]—B. as trustee & exor. of his father's will, became entitled to one half share in a distillery business lately carried on in partnership between his father & another. In pursuance of a provision in the will, B. continued the partnership business & afterwards purchased the interest of the beneficiaries under the will, & executed mtges. to secure the purchase-money, by one of which, dated Sept. 1872, B. assigned all his beneficial interest under his father's will as a security for payment of the money due, & by the same deed charged all his share & interest in the distillery partnership, & in the goodwill of the business, with the repayment of the money due. New articles of partnership were then entered into between B. & the old partner, in which the former appeared as the owner of one half the business. In June 1877, B. was adjudicated bkpt., & his share in the partnership had since been sold to the other partner:—*Held:* as between B.'s trustee in bkpcy. & the mtgee., the mtge. of B.'s share & interest in the partnership was a charge upon a chose in action, & as such, was not affected by Bkpcy. Act, 1869 (c. 71), s. 15, or by Bills of Sale Act, 1854 (c. 36).—*Re* BAINBRIDGE, *Ex p.* FLETCHER (1878), 8 Ch. D. 218; 47 L. J. Bcy. 70; 38 L. T. 229; 26 W. R. 439.

Annotations:—**Consd.** Colonial Bank *v.* Whinney (1885), 30 Ch. D. 261. **Refd.** *Re* Webber, *Ex p.* Slater (1891), 64 L. T. 426.

See, generally, PARTNERSHIP.

13. Residuary estate—Share in.]—An English testatrix was entitled, under the will of her husband, a domiciled Englishman whose will was proved in England by English exors., to one fourth share of his residuary estate. That estate included, among other property, money invested in mtges. of real estate in New Zealand. At the date of testatrix's death no part of the residuary estate had been distributed, nor had any of the mtges. been converted:—*Held:* testatrix's share in her deceased husband's residuary estate was an English chose in action.—A.-G. *v.* SUDELEY (LORD), [1896] 1 Q. B. 354; 65 L. J. Q. B. 281; 74 L. T. 91; 60 J. P. 260; 44 W. R. 340; 12 T. L. R. 224, C. A.; *affd.* on other grounds *sub nom.* SUDELEY (LORD) *v.* A.-G., [1897] A. C. 11, H. L.

Annotations:—**Aplid.** *Re* Smyth, Leach *v.* Leach, [1898] 1 Ch. 89. **Consd.** Dr. Barnado's Homes *v.* Income Tax Special Purposes Comrs., [1921] 2 A. C. 1. **Refd.** A.-G. *v.* Johnson, [1907] 2 K. B. 885. **Mentd.** Vanneck *v.* Benham, [1917] 1 Ch. 60.

See, generally, ESTATE & OTHER DEATH DUTIES.

14. Stock.]—Stock has no locality, except for purposes of probate & administration. Stock is a chose in action.—R. *v.* CAPPER (1817), 5 Price, 217; 146 E. R. 587.

Annotations:—**Refd.** Colonial Bank *v.* Whinney (1885), 30 Ch. D. 269. **Mentd.** R. *v.* Dover Corpn. (1835), 1 CR. M. & R. 726.

See, generally, COMPANIES; ESTATE & OTHER DEATH DUTIES; EXECUTORS & ADMINISTRATORS.

15. Trust property—Interest in.]—Pltf., in 1833, gave a *post obit* security on his expectancy in a certain fund, payable on the death of his father, to W., in consideration of certain gaming debts. He subsequently won a larger sum of W. by bets on horse-racing, & both parties having submitted to the arbitration of the Jockey Club, in 1837, the steward decided that one debt should be set off against the other, & the security given up. W. refused to give up the security, & in 1842 assigned it for valuable consideration to C., who gave notice to the trustees of the fund. Pltf. having filed his bill to have the security delivered up to be cancelled:—*Held:* although the trust fund was directed to be laid out in land, it must be treated as a mere chose in action, & C. took it subject to all the equities of W.—HAWKER *v.* WOOD (1853), 1 W. R. 316.

16. —— —— Undivided share of real estate—Directed to be sold.]—LEE *v.* HOWLETT, No. 413, *post.*

Conversion generally, *see* EQUITY.

17. —— ——.]—PIGOTT *v.* STEWART, [1875] W. N. 69.

18. —— ——.]—By a marriage settlement £10,000, part of a share of residue to which the wife was entitled under her uncle's will, was settled upon trusts therein declared. The settlement contained a covenant by the husband & wife to settle all property exceeding £300, which the husband & wife, or either of them in her right, should at any time or times subsequent to the solemnisation of the marriage & during the coverture become seised or possessed of or entitled to, either at law or in equity, under any gift, devise or bequest in her favour, or by descent, representation or any other means whatsoever. Previously to the date of the settlement the wife, who was of full age, had executed a general release to the exors. of her uncle's will in respect of all her claims against the estate. It subsequently appeared that the release had been executed under a mistake, common to all the parties to it, as to the amount of the share of residue, & that the wife was in fact entitled to a large additional sum. The release was set aside in proceedings instituted for that purpose:—*Held:* the additional share of

c. *Cheque—Not chose in action.*]—*Re* BERNARD (1911), 18 O. W. R. 525; 2 O. W. N. 716.—**CAN.**

d. *Deposit receipts.*]—Deposit receipts are choses in action.—*Re* CENTRAL BANK, *Ex p.* MORTON (1889), 30 C. L. T. 424.—**CAN.**

e. *Dividends—In insolvent estate.*]—The right to receive dividends in an insolvent estate is not a mere chose in action.—EVANS *v.* STEPHEN (1882), 3 N. S. W. L. R. 154.—**AUS.**

f. —— *Of bank stock.*]—Dividends of bank stock are choses in action.—M'CARTHY *v.* GOOLD (1810), 1 Ball. & B. 387.—**IR.**

g *Dower—Right to.*]—The right to dower is a chose in action until carried into effect by an assignment of the dower.—ZWICKER *v.* ERNST (1897), 29 N. S. R. 258.—**CAN.**

12 i. *Partnership—Share in.*]—The interest of a partner in the partnership assets is a chose in action.—GEFFEN *v.* LAVIN (No. 2) (1920), 1 W. W. R. 666; 51 D. L. R. 203.—**CAN.**

12 ii. —— ——.]—A share in a partnership constitutes an equitable chose in action.—MCGREGOR *v.* NELSON, [1915] 34 N. Z. L. R. 375.—**N.Z.**

h. *Pension.*]—A pension to A. & his assigns, is, when assigned, a grant, & not a chose in action.—M'CARTHY *v.* GOOLD (1810), 1 Ball & B. 387.—**IR.**

k. *Personal wrong—Convict's right to sue for—Convicts' Forfeitures Act,* 1871, *s.* 10.]—A right of action for a personal wrong committed against a convict whilst subject to above Act is not a chose in action within the above sect.—BROWN *v.* TEARE (1902), 22 N. Z. L. R. 155.—**N.Z.**

l. *Return of taxes—Right to.*]—Resp. was holder of grazing properties on which he had paid taxes & received certificates therefor. By mtge. he assigned his rights in these properties to appts., & also all his chattels & effects on the stations. Resp. subsequently conveyed his equity of redemption therein to appts.: *Held:* the right of resp. under the certificates to a return of the taxes paid by him was a personal right in the nature of a chose in action.—GOLDSBROUGH MORT & CO., LTD. *v.* TOLSON (1909), 10 C. L. R. 470.—**AUS.**

14 i. *Stock—Public funds.*]—Stock or public funds are choses in action.—BANK OF IRELAND *v.* EVANS' CHARITIES, TRUSTEES (1852), 3 I. C. L. R. 380, 300.—**IR.**

residue was an equitable chose in action, which until the release was set aside, could not have been recovered against the exors.—*Re* GARNETT, ROBINSON *v.* GANDY (1885), 31 Ch. D. 648; 55 L. J. Ch. 773; 53 L. T. 756; 34 W. R. 434; *revsd.* on other grounds (1886), 33 Ch. D. 300, C. A.

19. —— Right to sue for.]—The administratrix of a sole trustee who died insolvent appointed new trustees of the trust estate without however vesting the trust property in them:—*Held:* the right to sue for the trust property was a chose in action retained by her.—*Re* BENETT, WARD *v.* BENETT (1895), 92 L. T. 593; 49 Sol. Jo. 403; *revsd.* on other grounds, [1906] 1 Ch. 216, C. A.

Annotation:—**Mentd.** *Re* Harris, Davis *v.* Harris, [1914] 2 Ch. 395.

See, generally, EXECUTORS & ADMINISTRATORS; TRUSTS & TRUSTEES.

Advowson.]—*See* ECCLESIASTICAL LAW.

Bond.]—*See* BONDS, Vol. VII., p. 224, No. 665; *see, also,* No. 180, *post.*

Debenture.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 749, No. 6465.

Debts.]—*See* Part III., Sect. 2, *post.*

Insurance policy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 749, No. 6467; & *see, further,* INSURANCE.

Interest in settlement of real estate.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 750, No. 6469.

Proceeds of sale of real estate.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 749, No. 6468.

Shares.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 749, Nos. 6463–6466.

Within Bills of Sale Acts.]—*See* BILLS OF SALE, Vol. VII., pp. 32, 33.

Within Companies Acts.]—*See* COMPANIES.

SECT. 2.—LOCALITY.

20. General rule.] — The subject matter of the assignment is a chose in action which has no locality (DAY, J.).—LEE *v.* ABDY (1886), 17 Q. B. D. 309; 55 L. T. 297; 34 W. R. 653, D. C.

Annotations:—**Consd.** *Re* Maudslay & Field, Maudslay *v.* Maudslay & Field, [1900] 1 Ch. 602; Kelly *v.* Selwyn, [1905] 2 Ch. 117. **Mentd.** Alcock *v.* Smith, [1892] 1 Ch. 238.

21. —— Chose situate in country where enforceable.]—A chose in action must be regarded as situate in the country where the chose in action is enforceable (RUSSELL, J.).—*Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF (1921), 153 L. T. Jo. 47.

22. Stock.]—R. *v.* CAPPER, No. 14, *ante.*

23. Simple contract debt — Within area of local jurisdiction within which debtor resides.]—Though a debt has no absolute local existence, yet it is a well-settled rule that it possesses an attribute of locality. A simple contract debt is within the area of the local jurisdiction within which the debtor for the time being resides. The locality of a specialty debt is where the specialty is found at the time of the creditor's death.—STAMPS COMR. *v.* HOPE, [1891] A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268; *sub nom.* NEW SOUTH WALES STAMPS COMR. *v.* HOPE, 7 T. L. R. 710, P. C.

Annotations:—**Consd.** Velazquez *v.* I. R. Comrs., [1914] 3 K. B. 458. **Distd.** Toronto General Trusts Corpn. *v.* R., [1919] A. C. 679. **Refd.** Smelting Co. of Australia *v.* I. R. Comrs. (1896), 66 L. J. Q. B. 137; *Re* Maudslay & Field, Maudslay *v.* Maudslay & Field, [1900] 1 Ch. 602; I. R. Comrs. *v.* Muller Margarine, [1901] A. C. 217; Stamp Duties Comrs. *v.* Salting, [1907] A. C. 449; Winans *v.* R., [1908] 1 K. B. 1022; R. *v.* Lovitt, [1912] A. C. 212.

24. —— ——.] — In Oct. 1899, receivers were appointed in debenture holders' actions of the undertaking & of the property whatsoever & wheresoever both present & future of an English co., the order following the wording of the debentures. Among the assets of the co. was a debt due to them by a French firm. In Nov. 1899, P. & Co., English creditors of the co., took proceedings in France for the purpose of attaching the debt due to the co. from the French firm. Pltfs. in the debenture holders' actions moved to restrain P. & Co. from intercepting, attaching, or taking in execution, or attempting to obtain payment of money due to the co. from the French firm, or from otherwise interfering with the receivers:—*Held:* the debt due from the French firm must be treated as being situate in France, & subject to French law.—*Re* MAUDSLAY, SONS & FIELD, MAUDSLAY *v.* MAUDSLAY, SONS & FIELD, [1900] 1 Ch. 602; 69 L. J. Ch. 347; 82 L. T. 378; 48 W. R. 568; 16 T. L. R. 228; 8 Mans. 38.

Annotations:—**Consd.** *Re* Derwent Rolling Mills Co., York City & County Banking Co. *v.* Derwent Rolling Mills Co. (1904), 21 T. L. R. 81. **Refd.** Bank of Africa *v.* Cohen, [1909] 2 Ch. 129. **Mentd.** The Kronprinz Olav, [1921] P. 52.

25. —— ——.] — By New Brunswick Succession Duty Act, 1896, s. 1 (5), all property situate within the province is liable to succession duty whether the deceased was domiciled there or not; such duty being assimilated by other provisions of the same Act to a probate duty payable for local administration. Testator, resident & domiciled in the Province of Nova Scotia, at the date of his death was possessed of $90,351 deposited in the New Brunswick branch of a bank, the head office of which was in London; & the amount was paid to his exors. after they had obtained ancillary probate in New Brunswick. The property consisted of simple contract debts, the obligation to pay being primarily confined to the New Brunswick branch of the bank, & these debts for the purpose of legal representation, of collection, & of administration, as distinguished from distribution, were governed by the law of New Brunswick, where they were locally situated:—*Held:* the exors. were liable to pay succession duty.—R. *v.* LOVITT, [1912] A. C. 212; 81 L. J. P. C. 140; 105 L. T. 650; 28 T. L. R. 41, P. C.

Annotations:—**Distd.** Cotton *v.* R., [1914] A. C. 176. **Refd.** Velazquez *v.* I. R. Comrs., [1914] 2 K. B. 404. **Mentd.** Royal Bank of Canada *v.* R., [1913] A. C. 283.

See, generally, CONFLICT OF LAWS.

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m. *Wife's legitim.*]—Legitim going to the wife of a domiciled Englishman, the fund being *in medio*, is not a chose in action.—LASHLEY *v.* MORELAND (1809), 15 Fac. Coll. 465, H. L.—SCOT.

PART I. SECT. 2.

20 i. *General rule.*]—A debt has no *situs*.—HUDSON BAY CO. *v.* BATTLEFORD SCHOOL DISTRICT, MACDONALD *v.* SAME, CLINKSKILL *v.* SAME (1899), 4 Terr. L. R. 285.—**CAN.**

23 i. *Simple contract debt—Within area of district of debtor's residence.*]—Appts. were assessed to taxation on "personal property" in respect of debts due to them & contracted in a school district, within which appts. carried on their businesses. One appt. was a non-resident, but operated through a resident agent; another was a foreign corpn., carrying on business through an agent residing & operating their establishment within the district, & the third was a merchant residing & carrying on business within the district:—*Held:* choses in action had a *situs* for certain purposes & that the debts were "personal property situated within the limits of the school district" & assessable accordingly.—HUDSON BAY CO. *v.* BATTLEFORD SCHOOL DISTRICT, MACDONALD *v.* SAME, CLINKSKILL *v.* SAME (1899), 4 Terr. L. R. 285.—**CAN.**

n —— *Whether included in devise of testator's property in specified place.*]—A devise of all "my real estate & property whatsoever & of what nature & kind soever" at a place named does not include a debt due by the devisee, who resided & carried on business at such place, to testator.—THORNE *v.* THORNE (1903), 33 S. C. R. 309.—**CAN.**

Sect. 2.—*Locality. Part II. Sects.* 1 & 2.]

26. Debt not attached to land.]—A personal right to a debt which is not attached to land has no local situation.—VELAZQUEZ, LTD. *v.* INLAND REVENUE COMRS., [1914] 3 K. B. 458; 83 L. J. K. B. 1108; 111 L. T. 417; 30 T. L. R. 539; 58 Sol. Jo. 554, C. A.

27. Residence of debtor — Bond.] — Testator bequeathed the residue of his personal estate & effects within the United Kingdom to one set of trustees, & his personal property, estates & effects in South Africa to another set of trustees:—*Held:* (1) bonds of the Port Elizabeth Waterworks Co., payable to bearer, fell under the rule that debts are to be considered as locally situate where the debtor lives; (2) shares in cos. which are registered in South Africa, but which shares can be transferred in England, & of which the certificates are in England at testator's death, must be regarded as locally situate in England.—*Re* CLARK, MCKECHNIE *v.* CLARK, [1904] 1 Ch. 294; 73 L. J. Ch. 188; 89 L. T. 736; 52 W. R. 212; 20 T. L. R. 101; 48 Sol. Jo. 130.

Annotation:—Generally, **Consd.** *Re* Lazarus, Lazarus *v.* Lazarus (1919), 121 L. T. 491.

Assignments executed abroad.]—*See* Nos. 459–462, 504, 505, *post.*

Part II.—Assignment in General.

SECT. 1.—APPLICATION AND EFFECT OF JUDICATURE ACTS.

28. 1873 Act, s. 25 (6) — Retrospective.] — The above sub-sect. is retrospective.—DIBB *v.* WALKER, [1893] 2 Ch. 429; 68 L. T. 610; 41 W. R. 427; 37 Sol. Jo. 355; 3 R. 474.

Annotations:—**Mentd.** *Re* England, Steward *v.* England, [1895] 2 Ch. 100; *Re* Chant, Bird *v.* Godfrey, [1905] 2 Ch. 225; *Re* Lacey, Howard *v.* Lightfoot, [1907] 1 Ch. 330.

29. —— Relates to procedure only.] — The above sub-sect. relates to procedure only. It does not enlarge the class of choses in action the assignability of which was previously recognised either at law or in equity. It is designed to avoid the necessity of going first to a Ct. of Equity & then to a Ct. of Law. Some limit must be put upon the words used. It is plain that there are many contracts of such a personal nature that they do not admit of being assigned, *e.g.* a contract to paint a picture. Even where the personal element did not come in, the old Ct. of Ch. did not, any more than the Cts. of Common Law, regard the burthen of a contract as assignable. There was an exception in the case of contracts of which specific performance could be granted. (COZENS-HARDY, L.J.).—TOLHURST *v.* ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900) *v.* TOLHURST, [1902] 2 K. B. 660; 71 L. J. K. B. 949; 87 L. T. 465; 51 W. R. 81, C. A.; *affd.* on other grounds, [1903] A. C. 414; H. L.

Annotations:—**Consd.** Fitzroy *v.* Cave (1905), 93 L. T. 499; Bennett *v.* White, [1910] 2 K. B. 643. **Refd.** Dawson *v.* G. N. & City Ry., [1905] 1 K. B. 260; Kemp *v.* Baerselman, [1906] 2 K. B. 604; Hubbard *v.* Weldon (1909), 25 T. L. R. 356; Cooper *v.* Micklefield Coal & Lime Co. (1912), 107 L. T. 457; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1913] 2 K. B. 251; Whiteley *v.* Hilt, [1918] 2 K. B. 808; Ellis *v.* Torrington, [1920] 1 K. B. 399. **Mentd.** Fratelli Sorrentino *v.* Buerger, [1915] 1 K. B. 307.

30. —— Applies to legal & equitable choses.] — TORKINGTON *v.* MAGEE, No. 81, *post.*

31. —— ——.] — (1) Where a beneficiary charges his share under a will & notice of the charge is duly given to the trustees, such charge has priority to any liability of the share to the estate subsequently incurred by the beneficiary, although where a trustee-beneficiary charges his share the share is liable for any subsequent default of the trustee. (2) The above sub-sect. applies to equitable as well as legal choses in action. (3) The tenant for life of a moiety of the residuary estate under a will assigned his interest by way of mtge. & the assignees gave notice of the assignment to the trustees. Subsequently the tenant for life brought an action against the trustees for account. The assignees were added as defts. to the action & did not oppose the taking of the account. In the result nothing was found due & the tenant for life became liable to pay the costs:—*Held:* while in an ordinary case the charge in favour of the assignees would have had priority, as against the tenant for life's interest, over these costs, yet as the assignees had stood by & had neither opposed the taking of the account nor required to be joined as co-pltfs. the costs took priority over their mtge.—*Re* PAIN, GUSTAVSON *v.* HAVILAND, [1919] 1 Ch. 38; 87 L. J. Ch. 550; 119 L. T. 647; 63 Sol. Jo. 178.

Annotation:—Generally, **Mentd.** *Re* Jewell's Settlmt., Watts *v.* Public Trustee, [1919] 2 Ch. 161.

32. —— Effect on equitable assignments.] — BRANDT'S (WILLIAM) SONS & CO. *v.* DUNLOP RUBBER CO., No. 205, *post.*

33. —— Effect on assignee's position.] — The words of 1873 Act, s. 25 (6), mean what they say: they transfer the legal right to the debt as well as the legal remedies for its recovery. The debt is transferred to the assignee & becomes as though it had been his from the beginning; it is no longer to be the debt of the assignor at all, who cannot sue for it, the right to sue being taken from him; the assignee becomes the assignee of a legal debt & is not merely an assignee in equity, & the debt being his, he can sue for it & sue in his own name (LORD ESHER, M. R.).—READ *v.* BROWN, No. 485, *post.*

34. —— —— Effect of consideration.] — *Re* WESTERTON, PUBLIC TRUSTEE *v.* GRAY, No. 193, *post.*

SECT. 2.—MODE OF ASSIGNMENT.

NOTE.—*In considering the following cases regard must be had to the effect of* 1873 *Act*, s. 25 (6).

35. Whether writing necessary.] — A. borrowed £100 of F. & at the day brought it in a bag

o. —— ——.]—A bequest of choses in action described as situated in a particular locality is limited to cases where at the time of testator's death debtors reside in that locality.—YOUNG *v.* BAIN, *Re* YOUNG (Deceased) (1902), 21 N. Z. L. R. 503.—**N.Z.**

PART II. SECT. 1.

p. *Judicature Act (Ireland),* 1877, *s.* 28—*Right of equitable assignee not affected.*]—The above sect. does not affect the right of an equitable assignee of a chose in action, but merely affects the procedure enabling an assignee to sue in his own name at law.—GRUNDY *v.* BROADBENT, [1918] 1 I. R. 433.—**IR.**

q. *Property Law Act,* 1905, *s.* 46 (1) —*Applies to legal & equitable choses.*]—NEW ZEALAND LOAN & MERCANTILE AGENCY CO. *v.* MITCHELL (1906), 26 N. Z. L. R. 433.—**N.Z.**

PART II. SECT. 2.

35 i. *Whether writing necessary.*]—A parol assignment of a chose in action is valid.—ONTARIO TRUSTS CORPN. *v.* RIDER (1896), 24 A. R. 157.—**CAN.**

& cast it upon the table before F., & F. said to A., being his nephew, " I will not have it, take it you, & carry it home again with you " :—*Held :* a good gift by parol, for being cast upon the table it was then in the possession of F. & A. might wage his law : otherwise if A. only offered it to F. for then it was chose in action only, & could not be given without a writing.—FLOWERS CASE (1597), Noy, 67 ; 74 E. R. 1035.

Annotations :—**Refd.** Douglas *v.* Douglas (1859), 22 L. T. 127 ; Cochrane *v.* Moore (1890), 25 Q. B. D. 57 ; *Re* Stoneham, Stoneham *v.* Stoneham, [1919] 1 Ch. 149.

36. —— **Equitable assignment.**] — Debts are assignable in equity by parol.

P., agent & factor for A., sold, in A.'s name, some of A.'s goods sent him for the purpose, the price being payable at a future date. P. doubting he had not goods in his hands to make good what he had undertaken by accepting A.'s bills, informed A. who agreed that P. should secure himself out of what effects, etc. he had. At this time A. was indebted to E. & others by bond ; P. being indebted on his own account, assigned by parol to his creditors the debts due to A. P. & A. both dying, P.'s administrator & the assignees of the debts due to A. sued A.'s extrix. to have the benefit of the debts due to A. for his goods sold by P., but assigned by P. to his own creditors :—*Held :* by the agreement P. had a good title in equity to the debts, which in equity had become his, and were no longer A.'s, & P.'s creditors were entitled.—FASHION *v.* ATWOOD (1680), 2 Cas. in Ch. 36 ; 22 E. R. 835, L. C.

37. —— —— **By parol or deed.**] — An equitable assignment of a debt may be by parol as well as by deed.—HEATH *v.* HALL (1812), 4 Taunt. 326 ; 128 E. R. 355.

Annotation :—**Mentd.** *Re* Mackenzie, *Ex p.* Bolton (1816), Buck, 7.

38. —— ——.] — TIBBITS *v.* GEORGE, No. 284, *post.*

39. —— ——.] — Parol authority by a debtor to a creditor to go & take certain goods & sell them, & pay himself a particular debt out of the proceeds :—*Held :* to amount to the creation of an equitable lien upon such goods, & as such to be valid as against a claim by the personal representative of the debtor after his death.—GURNELL *v.* GARDNER (1863), 4 Giff. 626 ; 3 New Rep. 59 ; 9 L. T. 367 ; 9 Jur. N. S. 1220 ; 12 W. R. 67 ; 66 E. R. 857.

Annotation :—**Refd.** Parish *v.* Poole (1884), 53 L. T. 35.

40. —— ——.] — Verbal agreement to assign, as security, the assignor's interest in certain goods sent to G. for sale :—*Held :* effective as an equitable assignment.—LONDON & YORKSHIRE BANK, LTD. *v.* WHITE (1895), 11 T. L. R. 570 ; 39 Sol. Jo. 708, D. C.

41. —— —— **Statute of Frauds—Assignment of debts.**] — A. being insolvent, a verbal agreement was entered into between several of his creditors & B. whereby B. agreed to pay the creditors 10*s.* in the pound in satisfaction of their debts, which they agreed to accept, & to assign their debts to B. :—*Held :* this agreement was not within Stat. Frauds, not being a collateral promise to pay the debt of another, but an original contract to purchase the debts.—ANSTEY *v.* MARDEN (1804), 1 Bos. & P. N. R. 124 ; 2 Smith, K. B. 426 ; 127 E. R. 406.

Annotations :—**Refd.** Fitzgerald *v.* Dressler (1859), 7 C. B. N. S. 374 ; Harburg India Rubber Comb Co. *v.* Martin, [1902] 1 K. B. 778.

42. —— —— —— **Future rents amounting to interest in land.**]—A customer, in July, borrowed £200 from his bankers upon the terms of a verbal agreement that the loan should be repaid out of the rent of a farm which would become due to him at Michaelmas. The money was advanced by the bankers, & the customer then gave them a letter addressed by him to the tenant of the farm, by which he authorised & requested the tenant, when his Michaelmas rent became due, to pay £200 to the bankers. The letter contained no reference to the loan, & did not show that any consideration had been given for the authority. The bankers sent the letter to the tenant. The customer was adjudicated a bkpt. upon an act of bkpcy. committed in Aug. :—*Held :* as the rent was an interest in land, the agreement was one which, by Stat. Frauds, s. 4, could not be proved by parol evidence, & the letter could alone be looked at.—*Re* WHITTING, *Ex p.* HALL (1879), 10 Ch. D. 615 ; 48 L. J. Bcy. 79 ; 40 L. T. 179 ; 27 W. R. 385, C. A. ; *affg.* S. C. *sub nom. Re* WHITTING, *Ex p.* ROWELL (1878), 48 L. J. Bcy. 46.

Annotations :—**Distd.** Greenway *v.* Atkinson (1881), 29 W. R. 560 ; Percival *v.* Dunn (1885), 29 Ch. D. 128. **Consd.** Brandts *v.* Dunlop Rubber Co., [1904] 1 K. B. 387. **Refd.** Mounsey *v.* Rankin (1885), Cab. & El. 496 ; McManus *v.* Cooke (1887), 35 Ch. D. 681.

43. —— **To pass interest of equitable mortgagee.**]—An equitable mtgee. by deposit of a deed cannot pass his interest in the mortgaged property by a parol voluntary gift accompanied by delivery of the deed.—*Re* RICHARDSON, SHILLITO *v.* HOBSON (1885), 30 Ch. D. 396 ; 55 L. J. Ch. 741 ; 53 L. T. 746 ; 34 W. R. 286, C. A.

Annotations :—**Consd.** *Re* Hancock, Hancock *v.* Berrey (1888), 57 L. J. Ch. 793. **Refd.** Deverges *v.* Sandeman, Clark, [1902] 1 Ch. 79 ; London County & Westminster Bank *v.* Tompkins, [1918] 1 K. B. 515.

See, generally, MORTGAGE.

44. Whether deed necessary.] — An assignment of a chose in action need not be by deed.—HOWELL *v.* MACIVERS (1792), 4 Term Rep. 690 ; 100 E. R. 1247.

45. —— **Equitable assignment.**]—A *cestui que trust* by letter directed an exor. to pay the share to which " I am entitled," or " due to me," to three persons equally, & such letter was adopted & acted on by all parties. The writer having died :—*Held :* it was not necessary that an assignment to be valid in equity should be by deed ; such letter operated as an assignment of the whole share of the *cestui que trust* in testator's estate, whether immediately payable or in reversion.—LAMBE *v.* ORTON (1860), 1 Drew. & Sm. 125 ; 29 L. J. Ch. 319 ; 1 L. T. 394 ; 8 W. R. 202 ; 62 E. R. 325.

Annotation :—**Distd.** *Re* Russell, Russell *v.* Oakes (1893), 37 Sol. Jo. 212.

46. —— **Under 1873 Act—Execution by one partner sufficient.**] — (1) A document purporting to be a deed of assignment of a debt, falling due

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37 i. —— *Equitable assignment—By parol.*]—Assignments of choses in action may in equity be by parol.—WEST *v.* LYNCH (1888), 5 Man. L. R. 167.—**CAN.**

37 ii. —— —— ——.]—TODD & SON *v.* PHŒNIX, UNITED FIRE INSURANCE CO *v.* LOWENBERG, HARRIS & CO. (1894), 3 B. C. R. 302.—**CAN.**

37 iii. —— —— ——.]—A valid equitable assignment may be made by parol, and may be enforced notwithstanding Judicature Act, 1873, s. 25.—DETRO *v.* HAGGARD, *Re* PEPLER (1903), 8 W. L. R. 156 ; 1 Alta. L. R. 221.—**CAN.**

44 i. *Whether deed necessary.*] — An assignment of a debt may be by parol as well as by deed.—O'CONNOR *v.* WEEKS (1872), 9 N. S. R. 71.—**CAN.**

r. *Whether witness necessary — Assignment of judgment.*]—S. obtained a judgment the amount whereof was paid into ct. He assigned it in writing but the document was not witnessed as required by rules of ct :—*Held :* the assignment was not valid.—ELLIS & MANTON *v.* SCANTON & CASEY & HAYES (1914), 33 N. Z. L. R. 820.—**N.Z.**

Sect. 2.—Mode of assignment. Part III. Sects. 1 & 2: Sub-sect. 1.]

to a trading firm consisting of two partners, by the firm to one of their creditors was executed by one partner only:—*Held:* although it could not be treated as the deed of the partner who did not execute it, it was a good assignment; the ineffectual effort to make it a deed by putting a seal to it, & getting one partner to deliver it as a deed of the firm, did not prevent it operating as an equitable assignment, since 1873 Act, s. 25 (6) rendered a deed unnecessary. (2) A debt due to a firm was assigned by one partner to defts. by writing, & was subsequently assigned by the other partner to pltf. by deed. Pltf. gave notice to debtor before defts. did so:—*Held:* having first given notice to debtor, pltf. was entitled to the debt in priority to defts.—MARCHANT *v.* MORTON, DOWN & Co., [1901] 2 K. B. 829; 70 L. J. K. B. 820; 85 L. T. 169; 17 T. L. R. 640.

Annotation:—As to (1) **Refd.** Torkington *v.* Magee, [1902] 2 K. B. 427.

Whether particular words necessary to constitute an assignment.]—*See* Part IV., Sect. 2, sub-sect. 1, *post; see, also,* Nos. 244, 246 *post.*

Assignment of insurance policies.]—*See* INSURANCE.

Part III.—What may be Assigned.

SECT. 1.—IN GENERAL.

NOTE.—*In considering the following cases regard must be had to the effect of* 1873 *Act, s.* 25 (6).

47. Chose in contract—Assignable in satisfaction.]—H. was indebted to F. in the sum of £100 under a bond. F. being indebted to S. in the same sum, assigned to S. his suit against H. in full satisfaction of his indebtedness, & also delivered the bond to S. & empowered him to sue in F.'s name. F. died intestate & S. sued H. in the name of F.'s administrators. H. subsequently brought an action against S. for maintenance:—*Held:* liability under a chose in contract might be assigned in satisfaction & maintenance of the action was justified.—HORN *v.* FOSTER (1455), Y. B. 34 Hen. 6, fo. 30, pl. 15.

Annotation:—**Refd.** Harvey *v.* Bateman (1595), Noy, 52.

48. At common law—Chose in action not formerly assignable.]—First was observed the great wisdom & policy of the sages & founders of our law, who have provided, that no possibility, right, title, nor thing in action, shall be granted or assigned to strangers, for that would be the occasion of multiplying of contentions & suits, of great oppression of the people, & chiefly of terre tenants, & the subversion of the due & equal execution of justice. As they cannot be granted by the act of the party; so a right in action shall not be transferred by act in law (*per* CUR.).—LAMPET'S CASE (1612), 10 Co. Rep. 46 b; 77 E. R. 994.

Annotations:—**Consd.** Sheriff *v.* Wrotham (1618), Cro. Jac. 509; Blunket *v.* Holmes (1661), 1 Keb. 119; Poole *v.* Haskey (1663), O. Bridg. 364; Gower *v.* Grosvenor (1740), Barn. Ch. 54; *Re* Bellamy, Elder *v.* Pearson (1883), 25 Ch. D. 620. **Refd.** Kent *v.* Steward & Scott (1634), Cro. Car. 358; Baker *v* Willis (1637), Cro. Car. 476; Goring *v.* Bickerstaffe (1663), Freem. Ch. 163; Kimpland *v.* Courtney (1701), Freem. Ch. 250; Doe d. Shaw *v.* Steward (1834), 1 Ad. & El. 300; *Re* Ashforth, Sibley *v.* Ashforth, [1905] 1 Ch. 535. **Mentd.** Bartholomew *v.* Belfield (1613), Cro. Jac. 333; Sheffeild *v.* Ratcliffe (1615), Hob. 334; Child *v.* Baylie (1618), Cro. Jac. 459; Pells *v.* Brown (1620), Cro. Jac. 590; Marsh *v.* Newman (1624), Poph. 163; Cookes *v* Bellamy (1664), 1 Sid. 187; Seaman *v.* Warman (1675), Freem. K. B. 306; Warman *v.* Seaman (1675), Freem. Ch. 306; Hornbee, Petitioner (1691), Freem. K. B. 331; Cage *v.* Acton (1700), 1 Ld. Raym. 515; Marks *v.* Marks (1718), 10 Mod. Rep. 419; Beauclerk *v.* Dormer (1742), 2 Atk. 308; Doe d. Hayes *v.* Sturges (1816), 2 Marsh. 505; Wilson *v.* Hirst (1833), 4 B. & Ad. 760; Wood *v.* Lambirth (1841), 1 Ph. 8; Fitzgerald *v.* Fitzgerald (1868), 37 L. J. P. C. 44; Johns *v.* Pink, [1900] 1 Ch. 296; *Re* Francis, Francis *v.* Francis, [1905] 2 Ch. 295; *Re* Nash, Cook *v.* Frederick, [1910] 1 Ch. 1.

49. —— ——.]—A right is not assignable, & if the conusee of a statute sue an extent, & a *liberate* is returned, yet if he suffer the conusor to keep possession, he cannot assign the lands, for his possession under the *liberate* is, by his non-entry, turned to a right.—HANNAM *v.* WOODFORD (1691), 4 Mod. Rep. 48; Skin. 300; 87 E. R. 255; *sub nom.* HANNAM *v.* STEPHENS, 1 Show. 290; *sub nom.* HAMMOND *v.* WOOD, 2 Salk. 563; Holt, K. B. 611; *sub nom.* STEPHENS *v.* HANHAM, 3 Lev. 312.

50. —— ——.]—Payment to the assignee of a judgment debt after the death of the judgment creditor is no answer to an action upon the judgment by the exors. of the judgment creditor.

As far as the assignment operates as a power of attorney, it is revoked by the death of the principal. As an assignment it is nothing in law, for it is of a chose in action (PATTESON, J.).—BURLEY *v.* DOBSON (1850), 15 L. T. O. S. 135.

51. In equity—Chose in action assignable for valuable consideration.]—A sum of money was under a settlement of lands to be raised for daughters' portions; one of the daughters married & died before her portion was paid; her husband took administration to her, & assigned all his interest in the portion to his son by a former wife. The son, the father being dead, sued in equity for this money:—*Held:* there was a considerable difference between the assignment of the party & of the administrator, where the administrator was a stranger, or had not right before, & no colour of right but merely by the administration. In this case the administration was *pro formâ* only, for here he had a right to the money, as a portion or provision for his wife, & every man hath not ready money to give daughters, but their portions are to be provided for by this means, & it is reasonable to advance or promote the establishing of them, so that they might be disposable by the husband as money itself may be.—HURST *v.* GODDARD (1670), 1 Cas. in Ch. 169; 22 E. R. 746.

52. —— ——.]—CROUCH *v.* MARTIN & HARRIS, No. 134, *post.*

53. —— ——.]—A *feme covert*, possessed of choses in action, died & her husband administered & made a voluntary assignment:—*Held:* this was an alteration of the property.

It seems reasonable the assignment should be taken to alter the property; besides, that is the very ground of the difference, that choses in action are assignable in equity, though not at law (LORD COWPER, C.).—SQUIB *v.* WYN (1717), 1 P. Wms. 378; 24 E. R. 432, L. C.

Annotations:—**Expld.** Betts *v.* Kimpton (1831), 2 B. & Ad. 273. **Consd.** Smart *v.* Tranter (1890), 43 Ch. D. 587. **Refd.** Forbes *v.* Phipps (1760), 1 Eden. 502; *Re* Lambert's Estate, Stanton *v* Lambert (1883), 39 Ch. D. 626; Elliot *v.* North, [1901] 1 Ch. 424. **Mentd.** Blennerhasset *v.* Mousell (1852), 19 L. T. O. S. 36.

54. —— ——.]—Tenant for life assigned rents & dividends for twenty-one years, in trust to pay a debt by instalments, the remainder to be paid to himself; but if he died before payment of all due, then such rents, etc. as were due at that time or should be due at his death, should be applied in satisfaction of the residue:—*Held:* a specific lien on all the arrears for that debt, & they were not assets until full satisfaction of it.

In equity a chose in action may be assigned for valuable consideration, & that covenant being for valuable consideration, this ct. will consider, as if it had been done, & as an assignment of the thing itself (LORD HARDWICKE, C.).—TOWNSHEND (LORD) *v.* WINDHAM (1750), 2 Ves. Sen. 1; 28 E. R. 1, L. C.

Annotations:—**Mentd.** Ward *v.* Shallet (1750), 2 Ves. Sen. 16; Hurst *v.* Winchelsea (1759), 2 Keny. 444; Holmes *v.* Coghill (1806), 12 Ves. 206; Doe d. Otley *v.* Manning (1807), 9 East, 59; Thorpe *v.* Goodall (1811), 17 Ves. 460; Holloway *v.* Millard (1816), 1 Madd. 414; Platt *v.* Routh (1840), 6 M. & W. 756; Skarf *v.* Soulby (1849), 1 Mac. & G. 364; Ewart *v.* Ewart (1853), 1 Eq. Rep. 536; Patch *v.* Shore (1862), 2 Drew. & Sm. 589; *Re* Roper, Roper *v.* Doncaster (1888), 39 Ch. D 482; *Re* Power, *Re* Stone, Acworth *v.* Stone, [1901] 2 Ch. 659; *Re* Dixon, Penfold *v.* Dixon, [1902] 1 Ch. 248; *Re* Guedalla, Lee *v.* Guedalla's Trustee, [1905] 2 Ch. 331; *Re* Hadley, Johnson *v.* Hadley (1908), 77 L. J. Ch. 669; *Re* Hadley, Johnson *v.* Hadley, [1909] 1 Ch. 20; O'Grady *v.* Wilmot, [1916] 2 A. C. 231.

55. —— ——.]—Chose in action or possibility assignable in equity, & no particular form is requisite.—WHITFIELD *v.* FAUSSET (1750), 1 Ves. Sen. 387; 27 E. R. 1097, L. C.

Annotations:—**Consd.** Doe d. Brune *v.* Martyn (1828), 8 B. & C. 497. **Refd.** Chesterfield *v.* Janssen (1751), 2 Ves. Sen. 125. **Mentd.** Read *v.* Brookman (1789), 3 Term Rep. 151; Crosse *v.* Bedingfield (1841), 5 Jur. 836.

See Part IV., Sect. 6, *post.*

—— **Voluntary assignments.**]—*See* Part VIII., *post.*

56. —— **Chose in action not coupled with any partial interest in possession—Which cannot be reduced into possession without suit—Not assignable.**]—An assignment of a bare right to file a bill in equity for a fraud committed on the assignor, is contrary to sound policy, & void; therefore, where A., who was entitled to certain property under his father's will, for a valuable consideration, assigned the whole of that property, except a reversionary interest in the funds, to B., his father's exor., & afterwards assigned the whole of his interest under his father's will, including the reversionary interest, to C.:—*Held:* (1) C. could not maintain a bill to set aside the first assignment, on the ground of fraud committed by B. against A., the latter refusing to join as pltf. in the suit; (2) a chose in action, not coupled with any partial interest in possession, & which cannot be reduced into possession without a suit, is not assignable in equity.—PROSSER *v.* EDMONDS (1835), 1 Y. & C. Ex. 481; 160 E. R. 196.

Annotations:—*As to* (1) **Consd.** Wilson *v.* Short (1848), 6 Hare, 366; Bruty *v.* Edmundson (1915), 113 L. T. 1197. **Refd.** Cockell *v.* Taylor (1852), 15 Beav. 103. *As to* (2) **Distd.** Dickinson *v.* Burrell, Stourton *v.* Burrell (1866), L. R. 1 Eq. 337. **Consd.** Fitzroy *v.* Cave, [1905] 2 K. B. 364. **Refd.** Cook *v.* Field (1850), 15 Q. B. 460; Radcliffe *v.* Anderson (1860), E. B. & E. 819; Dawson *v.* G. N. & City Ry., [1905] 1 K. B 260; Defries *v.* Milne, [1913] 1 Ch. 98; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ellis *v.* Torrington, [1920] 1 K. B. 399. *Generally*, **Mentd.** Bradlaugh *v.* Newdegate (1883), 11 Q. B. D. 1; Alabaster *v.* Harness, [1895] 1 Q. B. 339; British Cash & Parcel Conveyors *v.* Lamson Store Service Co., [1908] 1 K. B. 1006; Oram *v.* Hutt, [1913] 1 Ch. 259; Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

Right of assignee to sue in name of assignor.]—*See* Part VI., Sect. 3, sub-sect. 1, *post.*

Assignment of interest in litigation.]—*See* Sects. 4, 5, *post.*

SECT. 2.—DEBTS.

SUB-SECT. 1.—IN GENERAL.

57. At common law—Formerly not assignable—No consideration for bond.]—J. R. *v.* M. P. (1459), Y. B. 37 Hen. 6, fo. 13, pl. 3.

Annotations:—**Mentd.** Higgens's Case (1605), 6 Co. Rep. 44 b.; Oxford's Case (1615), 1 Rep. Ch. 1; Manby *v.* Scot (1663), 1 Keb. 80.

58. —— ——.]—B. being in difficulties, assigned all his book debts, estate & effects to trustees for the benefit of creditors. He was employed by the trustees at a salary, to manage the business & collect the debts for them. He received the amount of two of the debts, & did not account for it:—*Held:* inasmuch as the debts, being choses in action, could not be legally assigned, he had received only money which was in law, though not in equity, his own, & he could not be guilty of embezzling it.—R. *v.* BARNES (1858), 8 Cox. C. C. 129.

59. —— —— **Exception—New agreement of all parties.**]—The general rule of law is, that a debt cannot be assigned. The exception to that rule is, that where there is a defined & ascertained debt due from A. to B., & a debt to the same or a larger amount due from C. to A., & the three agree that C. shall be B.'s debtor instead of A., & C. promises to pay B., the latter may maintain an action against C. But in such action, it is incumbent on pltf. to show, that at the time when C. promised to pay B. there was an ascertained debt due from A. to B.—FAIRLIE *v.* DENTON (1828), 8 B. & C. 395; 2 Man. & Ry. K. B. 353; 6 L. J. O. S. K. B. 351; 108 E. R. 1089.

Annotations:—**Refd.** Bird *v.* Gammon (1837), 3 Bing. N. C. 883; Hutchinson *v.* Heywortth (1838), 9 Ad. & El. 375; Barretts, Hoares *v.* South London Tram. Co. (1886), 2 T. L. R. 848. **Mentd.** Gaskill *v.* Skene (1850), 14 Q. B. 664.

Novation generally, *see* CONTRACT.

60. In equity — Assignable — Contract with debtor not essential.]—A trader having given to a creditor an order on the exor. of her debtor to pay the debt to the creditor, & the exor. having received the order, & retained it until the assets of testator should enable him to pay simple contract debts, & the trader having become bkpt. before payment, the creditor was declared entitled to receive the amount of the order from the exor., notwithstanding a subsequent arrest of the trader.

An assignment of a debt requires not, for its validity in equity, a contract with the debtor.—*Re* ROW, *Ex p.* SOUTH (1818), 3 Swan. 392; 36 E. R. 907, L. C.

Annotations:—**Expld.** Best *v.* Argles (1834), 2 Cr. & M. 394; Boll *v.* L. & N. W. Ry. (1852), 15 Beav. 548. **Consd.** Rodick *v.* Gandell (1852), 1 De G. M. & G. 763. **Foll.** *Re* Barker & Barker, *Ex p.* Assignees (1859), 33 L. T. O. S. 140. **Consd.** Addison *v.* Cox (1872), 8 Ch. App. 76. **Refd.** Tibbits *v.* George (1836), 5 Ad. & El. 107; Burn *v.* Carvalho (1839), 4 My. & Cr. 690; Morrell *v.* Wootten (1852), 16 Beav. 197; Diplock *v.* Hammond (1854), 2 Eq. Rep. 738; Brandts *v.* Dunlop Rubber Co., [1905] A. C. 454.

61. —— —— **Order to debtor to pay third party.**]—RODICK *v.* GANDELL, No. 211, *post.*

62. —— —— **Without debtor's concurrence.**]—(1) A debt or other chose in action may be assigned in equity without any concurrence on the part of the debtor.

(2) A railway contractor gave his bankers a

a. *Judgments—Foreign.*]—A foreign judgment is *primâ facie* a debt, & conclusive on its merits, & as such is assignable. —FOWLER *v.* VAIL (1877), 27 C. P. 417. —CAN.

Sect. 2.—Debts: Sub-sects. 1, 2 & 3.]

letter directing the railway co. to pass the cheques which might become due to him "to his account with the bank":—*Held:* this was not an equitable assignment, but it would have been if it had directed the cheques to be passed to the bank.—BELL *v.* LONDON & NORTH WESTERN RY. Co. (1852), 15 Beav. 548; 19 L. T. O. S. 292; 51 E. R. 651.

Annotation:—As to (1) **Distd.** Saunderson *v.* Perrin (1870), 22 L. T. 419.

Assignment of moneys due or to become due.]—*See* Sub-sect. 3, *post.*

Assignment amounting to maintenance or champerty.]—*See* ACTION, Vol. I., p. 76, No. 617, p. 78, Nos. 627–633.

Annuity.]—*See* Sect. 6, *post.*

SUB-SECT. 2.—PART OF DEBT.

63. Whether assignable—Part of moneys due or to become due.]—(1) G. agreed to build a vessel for deft., the price of which was to be paid by instalments. Before the vessel was finished, G., being in debt to pltf., by an instrument in writing directed deft. to pay to pltf. £100 out of moneys due or to become due from deft. to G. At the time of giving this direction all the instalments which were due had been paid by deft. to G. Notice in writing of the above-mentioned instrument was given to deft., but he refused to be bound by it, & afterwards paid to G. the balance of the price of the vessel, amounting to more than £100:—*Held:* the instrument in writing constituted a valid assignment of £100, part of the moneys due or to become due from deft. to G., & pltf. was entitled to recover that amount from deft., notwithstanding the subsequent payment by him to G.

(2) If a debt is a chose in action & if there is an assignment of it, 1873 Act, s. 25 (6) is directly in point & there need be no acceptance & no agreement on the part of debtor, express notice having been given (LORD COLERIDGE, C.J.).—BRICE *v.* BANNISTER (1878), 3 Q. B. D. 569; 47 L. J. Q. B. 722; 38 L. T. 739; 26 W. R. 670, C. A.

Annotations:—As to (1) **Consd.** Buck *v.* Robson (1878), 3 Q. B. D. 686; *Re* Whitting, *Ex p.* Hall (1879), 10 Ch. D. 615. **Expld.** *Re* Jones, *Ex p.* Nichols (1883), 22 Ch. D. 782. **Consd.** Walker *v.* Bradford Old Bank (1884), 12 Q. B. D. 511. **Distd.** Western Wagon & Property Co. *v.* West, [1892] 1 Ch. 271. **Folld.** May *v.* Lane (1894), 43 W. R. 58. **Consd.** Durham *v.* Robertson, [1898] 1 Q. B. 765. **Distd.** Brandts *v.* Dunlop Rubber Co., [1904] 1 K. B. 337. **Consd.** Skipper & Tucker *v.* Holloway & Howard, [1910] 2 K. B. 630. **Refd.** Fisher *v.* Calvert (1879), 27 W. R. 301; *Re* Toward, *Ex p.* Trustee (1884), 54 L. J. Q. B. 126; Percival *v.* Dunn (1885), 29 Ch. D. 128; Barnetts, Hoares *v.* South London Tram. Co. (1886), 2 T. L. R. 848; Drew *v.* Josolyne (1887), 18 Q. B. D. 590; Mercantile Bank of London *v.* Evans (1898), 79 L. T. 496; Torkington *v.* Magee, [1902] 2 K. B. 427; Clegg *v.* Bromley (1912), 81 L. J. K. B. 1081; *Re* Gunsbourg, *Ex p.* Trustee (1919), 88 L. J. K. B. 479; *Re* Westerton, Public Trustee *v.* Gray, [1919] 2 Ch. 104. *As to* (2) **Refd.** British Waggon Co. *v.* Lea (1880), 5 Q. B. D. 149.

64. —— Part of entire debt.]—DURHAM BROTHERS *v.* ROBERTSON, No. 196, *post.*

65. —— Ascertained part of existing debt.]—JONES *v.* HUMPHREYS, No. 74, *post.*

66. —— ——.]—Under 1873 Act, s. 25 (6), an ascertained part of a debt can be assigned, & the assignee can sue in his own name to recover from debtor the part of the debt assigned.

By a deed of assignment so much of a debt of £125 due to the assignor not exceeding £30, as should cover the costs due from the assignor to pltfs., was assigned to pltfs.:—*Held:* (1) the assignment was valid under the above sub-sect. & (2) pltfs. could sue debtor in their own name to recover from him the portion of the debt assigned to them.—SKIPPER & TUCKER *v.* HOLLOWAY & HOWARD, [1910] 2 K. B. 630; 79 L. J. K. B. 91; 26 T. L. R. 82; *revsd.* on other grounds, 79 L. J. K. B. 496, C. A.

Annotations:—As to (1) **Consd.** Forster *v.* Baker, [1910] 2 K. B. 636. **Refd.** *Re* Steel Wing Co., [1921] 1 Ch. 349.

67. —— —— Not operative to pass legal right to part assigned.]—The assignment of part of a debt does not operate to pass the legal right to that portion of the debt, as it is not an assignment within 1873 Act, s. 25 (6). But such an assignment does operate in equity to transfer the part assigned, & it constitutes the assignee a creditor in equity of original debtor.—*Re* STEEL WING CO., LTD., [1921] 1 Ch. 349; 90 L. J. Ch. 116; 124 L. T. 664; 65 Sol. Jo. 240; [1920] B. & C. R. 160.

68. —— Part of judgment debt.]—A judgment creditor having assigned part of the judgment debt for valuable consideration, the assignee applied under R. S. C., Ord. 42, r. 23, for leave to issue execution:—*Held:* the assignee was not entitled to such leave, on the ground (1) (BRAY, J.) that there cannot be an absolute assignment within 1873 Act, s. 25 (6) of a definite part of an existing debt or other legal chose in action; (2) (CT. OF APPEAL) that, as the original judgment creditor could only issue a single execution upon his judgment, & could not split up the judgment debt & issue separate executions upon the different parts, he could not give to an assignee of a part of the judgment debt a right which he did not himself possess.—FORSTER *v.* BAKER, [1910] 2 K. B. 636; 79 L. J. K. B. 664; 102 L. T. 522; 26 T. L. R. 421, C. A.; *affg.* S.C. *sub nom.* BOWLES *v.* BAKER, 26 T. L. R. 243.

Annotations:—As to (2) **Apld.** Rothschild *v.* Fisher, [1920] 2 K. B. 243. *Generally,* **Mentd.** *Re* Freshwater, Yarmouth & Newport Ry. (1913), 29 T. L. R. 568.

—— To crown.]—*See* No. 647. *post.*

SUB-SECT. 3.—FUTURE DEBTS.

69. General rule.] — RODICK *v.* GANDELL, No. 211, *post.*

70. ——.]—The assignment for a valuable consideration of a future or contingent debt is effectual to pass the property therein; & when the debt comes into existence, it is payable to the assignee of the original creditor.

L. requested pltf. to supply him with wine, which he intended to sell to M., & it was agreed between L., M. & pltf., for a valuable consideration given by pltf. to L., that if M. accepted the wine, the price of it should be paid to pltf. instead of L. The agreement was made in Dec. 1873, & pltf. accordingly supplied the wine, which was delivered to M., & accepted by him in Jan. 1874:—*Held:* although the debt did not exist at the time when the agreement was made, the property in the debt vested in pltf., & upon the acceptance of the wine by M. the price thereof became payable to pltf. instead of to L.—PERCY *v.* CLEMENTS (1874), 43 L. J. C. P. 155; 30 L. T. 264; 22 W. R. 803.

71. What is a future debt—Not judgment for costs—Costs duly taxed—Amount not entered upon record.]—A judgment for possession of land

PART III. SECT. 2, SUB-SECT. 2.

64 i. *Whether assignable—Part of entire debt.*]—SEAMAN *v.* CANADIAN STEWART CO. (1911), 18 O. W. R. 56; 2 O. W. N. 576.—CAN.

64 ii. —— ——.]—An assignment of part of a debt is not within Judicature Act (Ireland), 1877, s. 28, (6).—CONLAN *v.* CARLOW COUNTY COUNCIL, [1912] 2 I. R. 535.—IR.

PART III. SECT. 2, SUB-SECT. 3.

69 i. *General rule.*]—Prospective debts may be assigned.—KEITH *v.* BUTLER & FOSTER (1866), 1 Q. S. C. R. 141.—AUS.

& costs had been recovered against deft. The costs had been duly taxed, but the amount thereof was not entered upon the record. While the record was in this form the judgment was assigned to pltf. by deed without consideration, & notice in writing of the assignment was duly given to deft. In an action by pltf. as assignee to recover the amount of the costs:—*Held:* there was a valid chose in action in existence capable of legal assignment from the date of the judgment, or of the taxing master's certificate, and the assignment was not an equitable assignment of a future debt, for which consideration would be necessary.—HAMBLETON *v.* BROWN, [1917] 2 K. B. 93; 86 L. J. K. B. 1223; 117 L. T. 146.

72. Unascertained amount — Architect's commission—"As then was or should become due."]—Deft., being indebted to pltf. in £150, & being employed by T. to perform works for which he was receiving a percentage, wrote an order to T. to pay pltf. £150 out of the first moneys due to deft. Afterwards, being indebted to B. in £997, he executed a deed reciting the above facts, assigning & transferring to B. such sums as then were or should become due to him, deft., from T., in trust, first to pay pltf. the £150, &, secondly, to retain the residue towards payment of the £997; with covenants that he would not receive the money, nor revoke, etc., that he had right to assign, had not incumbered, & for further assurance. Deft. afterwards received £150 from T.; & pltf. sued him for money had & received, & on an account stated:—*Held:* (1) the action lay for the £150, though no proof was given of T.'s assent to the order, & though, at the time of making the order, nothing was due from T., & though, at the time of making the deed, there was not £150 due from T., & it was, at such times, uncertain to what extent deft. would be employed by T., & though pltf. was not a party to the deed; (2) the deed was not a mtge. but an absolute assignment of the deft.'s earnings.—POOLEY *v.* GOODWIN (1835), 4 Ad. & El. 94; 1 Har. & W. 567; 5 Nev. & M. K. B. 466; 111 E. R. 722.

Annotations:—Generally, **Mentd.** Hart *v.* Hart (1841), 1 Hare, 1; Crowther *v.* Solomons (1848), 6 C. B. 758; Closmadeuc *v.* Carrel (1856), 18 C. B. 36; Marine Investment Co. *v.* Haviside (1872), L. R. 5 H. L. 624.

73. —— Balance at bank—"Then or thereafter to be standing to credit of assignor."]—By a deed of assignment all moneys then or thereafter to be standing to the credit of the assignor at a bank were assigned to a trustee, on trust for the assignor for his life, & after his death on other trusts. At the date of the assignment the assignor's balance at the bank was £48, at his death it was £217. Notice of the assignment was not given to the bank until after the assignor's death. In an action by the trustee against the bank to recover the balance of £217:—*Held:* (1) the bank, being a stranger to the assignment, could not set up the defence that it was voluntary & invalid in equity: (2) the balance at the time of the assignor's death was a debt or legal chose in action within 1873 Act, s. 25 (6); (3) notice after the death of the assignor was sufficient, & pltf. was entitled to recover.—WALKER *v.* BRADFORD OLD BANK (1884), 12 Q. B. D. 511; 53 L. J. Q. B. 280; 32 W. R. 644, D. C.

Annotations:—As to (2) **Follid.** Mercantile Bank of London *v.* Evans (1893), 79 L. T. 496. **Refd.** Skipper & Tucker *v.* Holloway & Howard, [1910] 2 K. B. 630; Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

74. —— Present & future income—For payment of sum certain—& in discharge of future indebtedness.]—By an assignment in writing K., in consideration of an advance, assigned to pltf. "so much & such part of my income, salary & other emoluments from H." (deft., in whose employment he then was) "as shall be necessary & requisite for payment to you of the sum of £22 10s., or of any further or other sums in which I may hereafter become indebted to you." In an action by pltf. as assignee to recover two months' salary due from deft. to the assignor, who in turn was alleged to be then indebted to the pltf. in a larger amount:—*Held:* the assignment, not being of a definite & ascertained amount, was not such an assignment as was contemplated by 1873 Act, s. 25 (6), & pltf. could not maintain the action in his own name.

Qu.: whether an assignment of an ascertained part of a debt is within the sub-sect.—JONES *v.* HUMPHREYS, [1902] 1 K. B. 10; 71 L. J. K. B. 23; 85 L. T. 488; 50 W. R. 191; 18 T. L. R. 54; 46 Sol. Jo. 70, D. C.

*Annotations:—***Distd.** Hughes *v.* Pump House Hotel Co., [1902] 2 K. B. 190. **Refd.** Torkington *v.* Magee, [1902] 2 K. B. 427; Skipper & Tucker *v.* Holloway & Howard, [1910] 2 K. B. 630.

75. Future rents—Arrears due at death — No specific lien created.]—A. being bound to pay S. a sum of money within a year after his death, gave a note by way of collateral security, that the money should be paid out of such arrears of rent as should be due at his death; the benefit whereof pltf. now prayed by the bill:—*Held:* this assignment or agreement was utterly void, for it could not create any specific lien, because the thing itself, namely, the arrears, was not then in being, nor was it to take effect till A.'s death, & then it was too late, for the arrears then became part of his assets liable to his debts generally; & this differed from the case of off-reckoning or of pay, due or to become due, etc., because in those cases the thing assigned was certain, & the assignee had a certain interest, but notwithstanding the assignment or agreement, A. had it still in his power to receive all the arrears, & so to defeat his own assignment.—GRAY (LADY) *v.* HAMILTON (DUCHESS) (1730), 2 Eq. Cas. Abr. 88; 22 E. R. 76.

76. —— Surrender of lease — No rents accruing due.]—Pltfs. sublet a portion of premises, of which they had a lease, to deft. They afterwards assigned their interest in the premises to B., & agreed, in writing with B., that notwithstanding this assignment they should receive the rent due from deft. for the remainder of her lease, & notice of this agreement was given to deft. Deft. afterwards surrendered her lease to B. In an action for rent claimed as accruing after the surrender:—*Held:* even if there was a valid assignment of a chose in action, still pltfs. could not recover, for the assignment was of rent to become due, whereas no rent had accrued due after the surrender, & deft. could not be prevented by the agreement between pltfs. & B. from surrendering her lease to B.—SOUTHWELL *v.* SCOTTER (1880), 49 L. J. Q. B. 356; 44 J. P. 376, C A.

77. Moneys due or to become due — On contract.]—BRICE *v.* BANNISTER, No. 63, *ante.*

78. Money accruing to assignor by will.]—A mtgor. by deed assigned to the mtgee. all the household goods & live & dead farming stock, tenant's rights & interests of the mtgor. of, in or upon any farm then held, or which during the security might be held, by him; also all real & personal estate to which he should become entitled under the will of his father; also all moneys of

77 i. *Moneys due or to become due—On contract.*]—Moneys arising out of future contracts can be assigned — MOLSONS BANK *v.* CARSCADEN (1892), 8 Man. L. R. 451.—CAN.

Sect. 2.—Debts: Sub-sect. 3. Sects. 3 & 4.]

or to which he then was, or might during the security become, entitled under any settlement. will or other document, either in his own right, or as the devisee, legatee or next of kin of his father, or any other person or persons; also a policy of assurance; also all other the freehold hereditaments, goods, chattels, effects, debts, securities, documents, vouchers, books of account, fixtures & personal property of, in or to which he was, or during the security should become, beneficially seised, possessed, entitled or interested, for any vested, contingent or possible estate or interest; with full right & title to enter & possess. The mtgor. afterwards became entitled under a will to a share of the personal estate of a testator:—*Held:* the assignment was a divisible one, & the portion of it which related to property derived under any will was not too vague to be enforced, & the property coming to the mtgor. under the will in question passed under the assignment.—*Re* CLARKE, COOMBE *v.* CARTER (1887), 36 Ch. D. 348; 56 L. J. Ch. 981; 57 L. T. 823; 36 W. R. 293; 3 T. L. R. 818, C. A.

Annotations:—**Apprvd.** Tailby *v.* Official Receiver (1888), 13 App. Cas. 523. **Consd.** *Re* Kelcey, Tyson *v* Kelcey, [1899] 2 Ch. 530. **Refd.** *Re* Turcan (1888), 40 Ch. D. 5; Churston *v.* Buller (1897), 77 L. T. 45; *Re* Dallas, [1904] 2 Ch. 385; *Re* Reis, *Ex p* Clough, [1904] 2 K. B. 769; Clegg *v.* Bromley (1911), 81 L. J. K. B. 334; *Re* Allix, *Ex p.* Official Receiver (1914), 58 Sol. Jo. 250; *Re* Lind, Industrials Finance Syndicate *v.* Lind, [1915] 2 Ch. 345; Harwood *v.* Millar's Timber & Trading Co., [1916] 2 K. B. 44.

Part of moneys due or to become due.]—*See* Sub-sect. 2, B., *ante.*

Payable out of particular fund.]—*See* Part IV., Sect. 2, sub-sect. 2, *post.*

Future book debts—Assignment by bill of sale.]—*See* BILLS OF SALE, Vol. VII., pp. 124, 125, Nos. 705, 706.

After-acquired property—Assignment by bill of sale.]—*See* BILLS OF SALE, Vol. VII., pp. 118–125, Nos. 686–706.

Future receipts of business—Assigned by trader for value—Inoperative against trustee in bankruptcy.] — *See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 697, No. 6129.

Future payments—Assigned by bankrupt.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 695–697, Nos. 6122–6129.

Expectancies.]—*See* Sect. 7, *post.*

Salaries, pensions, allowances, etc.]—*See* Sect. 13, *post.*

Prize money.]—*See* Sub-sect. 11, *post.*

SECT. 3.—BENEFIT OF CONTRACT OR COVENANT.

79. To lend money—No debt created.]—P. mortgaged freehold property to defts., to secure £7,500 & further advances up to £10,000, which defts. contracted to make. P. made a second mtge. of the same property to pltfs., to secure £1,000 & further advances up to £2,500, & assigned to them his right, under the contract in the first mtge., to call for & require payment from defts. of the further advances therein mentioned, & the full benefit of the contract. Pltfs. gave notice of this assignment to defts., but notwithstanding the notice defts. subsequently made a further advance of £500 to P. Pltfs. brought an action to recover from defts. personally the sum of £500 so paid by them to P., or damages for breach of contract:—*Held:* (1) no money or fund was bound by the contract to make further advances, which created no debt; (2) whether the assignment did or did not fall within 1873 Act, s. 25 (6), pltfs. could not sue for damages in their own right, but only in the right of their assignor P., who, on the facts, had sustained no damage.—WESTERN WAGON & PROPERTY CO. *v.* WEST, [1892] 1 Ch. 271; 61 L. J. Ch. 244; 66 L. T. 402; 40 W. R. 182; 8 T. L. R. 112; 36 Sol. Jo. 91.

Annotations:—*As to* (1) **Distd.** May *v.* Lane (1894), 43 W. R. 58. **Mentd.** Erie County Natural Gas & Fuel Co. *v.* Carroll, [1911] A. C. 105. *As to* (2) **Refd.** Blake *v.* Halse (1892), 36 Sol. Jo. 733; Torkington *v.* Magee, [1902] 2 K. B. 427. *Generally*, **Refd.** South African Territories *v.* Wallington, [1897] 1 Q. B. 692.

80. —— ——.]—(1) Deft. entered into an agreement with a builder under which certain houses were to be erected by the builder at his own expense, & upon completion of which deft. was to grant leases of same to the builder. After the building operations were commenced deft. entered into a verbal agreement with the builder to make advances to him up to £250 to enable the builder to complete the buildings. By a letter addressed to deft. & given to pltfs., the builder authorised & requested deft. to pay to pltfs. £50 "out of the moneys due or to become due," to the builder. Notice in writing of this assignment of £50 was given to deft. by pltfs.:—*Held:* the agreement by deft. to advance money to the builder did not create any debt or other legal chose in action which could be assigned within 1873 Act, s. 25 (6).

(2) A legal chose in action is something which is not in possession, but which must be sued for in order to recover possession of it. It does not include a right of action, such as, for instance, a right to recover damages for breach of a contract or a legal right to recover damages arising out of an assault (RIGBY, L.J.).—MAY *v.* LANE (1894), 64 L. J. Q. B. 236; 71 L. T. 869; 43 W. R. 193; 39 Sol. Jo. 132; 14 R. 149, C. A.

Annotations:—*As to* (1) **Refd.** Swan & Cleland's Graving Dock & Slipway Co. *v.* Maritime Insce. & Croshaw, [1907] 1 K. B. 116. *As to* (2) **Dbtd.** Earle's Shipbuilding & Engineering Co. *v.* Atlantic Transport Co. (1899), 43 Sol. Jo. 691. **Consd.** Torkington *v.* Magee, [1902] 2 K. B. 427; Dawson *v.* G. N. & City Ry., [1905] 1 K. B. 260; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. I very respectfully think that the above dictum goes too far & suggests too broad a proposition (MCCARDIE, J.); Ellis *v.* Torrington, [1920] 1 K. B. 399. It is not of much use to cite *May* v. *Lane* at the present day without citing the cases in which it has been explained. The judgment of RIGBY, L.J., is generally cited without reference to the facts. It ought to be taken with the qualification placed upon it in *Torkington* v. *Magee*, No. 81, *post* (SCRUTTON, L.J.).

81. To purchase reversionary interest in property.]—Deft. contracted to sell his reversionary interest in property to R. who by deed assigned his interest under the contract to pltf. & notice in writing of the assignment was duly given to deft. Deft. after the assignment to pltf. refused to perform his contract:—*Held:* the assignment, was an assignment of a legal chose in action within 1873 Act, s. 25 (6) & pltf. was entitled to sue deft. for damages for the breach of contract.

"Chose in action" is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action

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PART III. SECT. 3.

t. *Part of.*]—There is no reason why an assignment of part only of assignor's rights under a contract should not be upheld.—CANADIAN MOLINE PLOW CO. *v.* TRCA, [1918] 1 W. W. R. 845; 13 Alta. L. R. 354; 39 D. L. R. 581.—CAN.

u. *Right under guarantee — For payment of rent.*]—R. leased premises to C., & received from D. a guarantee, expressed to be made with R. & his "assigns," for the rent. R. formed a co. & conveyed to it the premises, but did not assign the guarantee. C. continued in occupation as tenant to the co., & rent accrued due which remained unpaid. Subsequently R. assigned the guarantee to the co., & served notice of the assignment upon D. In an action against D. on the guarantee, in which both R. & the co. were joined as pltfs.:—*Held:* the guarantee was assignable as an ordinary chose in

& not by taking physical possession. I think the words " debt or other legal chose in action " mean " debt or right which the common law looks on as not assignable by reason of its being a chose in action but which a ct. of equity deals with as being assignable." (CHANNELL, J.).—TORKINGTON *v.* MAGEE, [1902] 2 K. B. 427; 71 L. J. K. B. 712; 87 L. T. 304; 18 T. L. R. 703, D. C.; *revsd.* on other grounds, [1903] 1 K. B. 644, C. A.

Annotations :—**Refd.** Tolhurst *v.* Associated Portland Cement Manufacturers (1900), Associated Portland Cement Manufacturers (1900) *v.* Tolhurst, [1902] 2 K. B. 660; Glegg *v.* Bromley, [1912] 3 K. B. 474; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38; Ellis *v.* Torrington, [1920] 1 K. B. 399.

82. To buy beer from particular brewery—Brewer's lease.]—In 1892, A. executed under seal an agreement to take an hotel as yearly tenant to B. & Co.. & thereby covenanted to purchase all his beer of B. & Co. " & their successors in business." The covenant did not mention " assigns." B. & Co. did not execute the agreement, & there was nothing on the face of it to show that they were brewers. They were, in fact, brewers, & A. occupied the hotel under the agreement as their tenant & purchased beer of them. In 1899, B. & Co. sold & conveyed their brewery, tied houses, including the hotel, & business to C. & Co., who were brewers, & who incorporated B. & Co.'s business with their own. After the sale B. & Co. ceased to carry on business. Notice of the change of ownership was given by C. & Co. to A., & for a time he purchased beer of them. C. & Co. brought an action to restrain A. from committing a breach of the covenant :—*Semble* : the benefit of the covenant was a chose in action, assignable in equity before 1873 Act, & by s. 25 (6) of that Act, the covenant could, after an absolute assignment thereof in writing & due notice given, be sued upon by the assignee.—MANCHESTER BREWERY Co. *v.* COOMBS, [1901] 2 Ch. 608; 70 L. J. Ch. 814; 82 L. T. 347; 16 T. L. R. 299.

Annotations :—**Refd.** Torkington *v.* Magee, [1902] 2 K. B. 427; Blane *v.* Francis, [1917] 1 K. B. 252; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Cole *v.* Kelly, [1920] 2 K. B. 106. **Mentd.** Rickett *v.* Green (1909), 79 L. J. K. B. 193; Gilbey *v.* Cossey (1912), 106 L. T. 607; Wedd *v.* Porter, [1916] 2 K. B. 91.

83. Right to indemnity—Whether assignable by executors of mortgagor.]—The exors. of a mtgor. who had died insolvent had assured the mortgaged property to a transferee, who covenanted to pay to the mtgees. the principal moneys secured to them, & to indemnify the exors. & the estate & effects of the deceased mtgor. against all proceedings in respect of the non-payment of the mtge. debts :—*Held* : a deed by which the exors. purported without consideration to assign the benefit of the covenant of indemnity to an assignee was inoperative, & the covenant was not capable of assignment.—RENDALL *v.* MORPHEW (1914), 84 L. J. Ch. 517; 112 L. T. 285.

Annotation :—**Consd.** British Union & National Insce. *v.* Rawson, [1916] 2 Ch. 476.

84. —— Against unpaid calls on shares—Whether assignable by married woman.]—Pltf. co. recovered judgment against a married woman in respect of unpaid calls on shares against which deft. had indemnified her. Not having any separate property, she assigned the benefit of her right of indemnity to pltf. co., who, after written notice of the assignment, sued deft. for the full amount of their judgment :—*Held* : although the married woman had paid nothing, nevertheless she was entitled to have the amount of the calls paid by deft. either to pltfs. or to herself, & this right was capable of assignment, & pltfs. as assignees were entitled to have it enforced by order directing payment to themselves.—BRITISH UNION & NATIONAL INSURANCE Co. *v.* RAWSON, [1916] 2 Ch. 476; 85 L. J. Ch. 769; 115 L. T. 331; 32 T. L. R. 665; 60 Sol. Jo. 679, C. A.

Annotation :—**Refd.** Ellis *v.* Torrington (1919), 89 L. J. K. B. 369.

See, further, GUARANTEE.

Claims for damages—Arising on breach of contract or in tort.]—*See* Sect. 4, *post*.

Personal & other contracts.]—*See, generally*, CONTRACT.

Novation.]—*See* CONTRACT.

Contracts in restraint of trade.]—*See* TRADE & TRADE UNIONS.

Hire-purchase agreement—Assignment by hirer.]—*See* BAILMENT, Vol. III., p. 97, No. 262.

SECT. 4.—CLAIM TO DAMAGES, COMPENSATION, OR RESCISSION.

85. Claim to damages—Breach of contract—Before assignment—Contract to lend money—Not assignable.]—MAY *v.* LANE, No. 80, *ante*.

86. —— —— —— Assignable—Right of action connected with enjoyment of property.]—A freehold messuage & tenement were the subject of the following leases : (*a*) a head lease which expired on Dec. 25, 1917; (*b*) an underlease which expired on Dec. 18, 1917; (*c*) a sub-underlease which expired on Dec. 15, 1917. All three leases contained onerous covenants to repair the premises & to keep them & yield them up in good repair. The sub-underlease became vested by assignment in deft. On Dec. 18, 1917, pltf., who had been a tenant to deft. of same premises, & was liable to him under a covenant to repair less onerous than those in the three leases above mentioned, agreed to purchase, & on May 1, 1918, took a conveyance of the fee simple of the premises together with the benefit of the covenants in the head lease. At the expiration of all the leases the premises were out of repair & deft. was threatening pltf. with an action on his covenant. Thereupon pltf. obtained an assignment of the full benefit of the lessee's covenants to repair contained in the sub-underlease, & commenced an action against deft. as assignee of the sub-underlease for breaches of the lessee's covenants therein :—*Held* : the assignment was free from objection on the ground of maintenance or champerty, the right of action on the covenants being so connected with the enjoyment of property as to be more than a bare right to litigate.—ELLIS *v.* TORRINGTON, [1920] 1 K. B. 399; 89 L. J. K. B. 369; 122 L. T. 361; 36 T. L. R. 82, C. A.

Annotation :—**Mentd.** Cole *v.* Kelly, [1920] 2 K. B. 106.

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action.—ROBB'S TRUSTEES & BELFAST ESTATE CO., LTD. *v.* M'HENRY (1899), 33 I. L. T. Jo. 517.—**IR.**

PART III. SECT. 4.

a. *Claim to damages—General rule.*] —The principle limiting the lawful assignment of choses in action is founded upon grounds of public policy, & where the assignment is not of anything in the nature of property, but of a bare right to bring a hostile party into a ct. to recover damages, it is a rule of law that that assignment does not give the assignee a right to legal remedies.—NEW ZEALAND LOAN & MERCANTILE AGENCY CO. *v.* MITCHELL (1906), 26 N. Z. L. R. 433.—**N.Z.**

85 i. —— *Breach of contract—Before assignment—Not assignable.*]—ABU MAHOMED *v.* CHUNDER (1909), I. L. R. 36 Calc. 345.—**IND.**

85 ii. —— —— —— ——.]—VARAHASWAMI *v.* RAMACHANDRA RAJU (1913), I. L. R. 38 Mad. 138.—**IND.**

86 i. —— —— ——*Assignable.*]—A contract is assignable after breach if the assignor's only remedy is an action for damages for the breach.—BAIRD & BOTTERELL *v.* TAYLOR, [1917] 1 W. W. R. 1172; 33 D. L. R. 99.—**CAN.**

Sect. 4.—Claim to damages, compensation, or rescission. Sects. 5 & 6.]

87. —— —— After assignment — Assignable.] —An agreement made between A. & D., not under seal, stipulated that until the lease of certain premises thereby agreed to be granted should be executed, D. his heirs, exors., administrators & assigns should be bound by all the covenants set forth in the agreement, amongst which was a covenant that D. his heirs, exors., administrators & assigns should leave the whole of the premises & fixtures then in & intended to be fixed in or about the messuage & premises in a perfect & tenantable state of repair at the expiration of the term therein mentioned or sooner determination thereof. No lease by deed was ever granted in accordance with the agreement, but D. & his representatives entered into possession under the agreement, & continued therein until the expiration of the term for which it was intended the lease should be granted. During the currency of the term mentioned in the agreement A. was adjudicated a bkpt., & his trustee, acting in accordance with the provisions of Bkpcy. Act, 1869 (c. 71), sold & assigned to pltf. all the property of the bkpt. In an action for breach of the contract to repair :— *Held :* (1) the contract in the agreement was binding upon deft., the personal representative of D., & the right of action in respect of the breach of the contract was a chose in action of bkpt., which passed under the assignment to pltf. ; (2) pltf. was not bound to have given notice of the assignment under 1873 Act, s. 25 (6).—GIBBON *v.* DUDGEON (1881), 45 J. P. 748.

88. —— —— —— ——.] — EARLE'S SHIPBUILDING & ENGINEERING CO. *v.* ATLANTIC TRANSPORT CO. (1899), 43 Sol. Jo. 691.

Annotation :—**Mentd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

89. —— —— —— ——.] — TORKINGTON *v.* MAGEE, No. 81, *ante*.

See, further, CONTRACT.

90. —— In respect of tort — Assault — Not assignable.]—MAY *v.* LANE, No. 80, *ante*.

91. —— —— Damage to insured cargo — Assignable.] —A claim for unliquidated damages arising out of a tort is a legal chose in action which can be assigned by virtue of Queensland Jud. Act (40 Vict. c. 86), s. 5 (6), which is in the same words as 1873 Act, s. 25.—KING *v.* VICTORIA INSURANCE CO., LTD., [1896] A. C. 250 ; 65 L. J. P. C. 38 ; 74 L. T. 206 ; 44 W. R. 592 ; 12 T. L. R. 285, P. C.

Annotations :—**Folld.** Manchester Brewery Co. *v.* Coombs, [1901] 2 Ch. 608. **Consd.** Torkington *v.* Magee, [1902] 2 K. B. 427 ; *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38. **Refd.** Chelsham & Woldingham Assocn. *v.* Hayward (1911), 76 J. P. 52

92. —— —— Not assignable.] —A right to sue for damages in tort is not a legal chose in action within 1873 Act, s. 25, & consequently an assignee is not entitled to sue.—DAWSON *v.* GREAT NORTHERN & CITY RY. CO., [1904] 1 K. B. 277 ; 73 L. J. K. B. 174 ; 90 L. T. 20 ; 68 J. P. 214 ; 20 T. L. R. 87 ; *revsd.* on other grounds, [1905] 1 K. B. 260, C.A.

Annotations :—**Consd.** Defries *v.* Milne, [1913] 1 Ch. 98. **Refd.** Turner *v.* Mid. Ry. (1911), 104 L. T. 347 ; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251 ; Ellis *v.* Torrington, [1920] 1 K. B. 399. **Mentd.** Zick *v.* London United Tramways, [1908] 1 K. B. 611.

93. —— —— Waste — Not assignable.] — A right of action for damages in the nature of waste being in respect of a tort is, on grounds of public policy, not capable of assignment.—DEFRIES *v.* MILNE, [1913] 1 Ch. 98 ; 82 L. J. Ch. 1 ; 107 L. T. 593 ; 57 Sol. Jo. 27, C. A.

Annotation :—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

94. Damages for tort—If & when recovered by assignor — Assignable.]—Damages, if & when recovered in an action of tort, are capable of assignment.—GLEGG *v.* BROMLEY, [1912] 3 K. B. 474 ; 81 L. J. K. B. 1081 ; 106 L. T. 825, C. A.

Annotations :—**Refd.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Mentd.** *Re* Cozens, Green *v.* Brisley, [1913] 2 Ch. 478 ; Wells *v.* Wells (1914), 30 T. L. R. 437 ; German *v.* Yates (1915), 32 T. L. R. 52 ; Hambleton *v.* Brown, [1917] 2 K. B. 93 ; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251 ; Hosack *v.* Robins (1918), 62 Sol. Jo. 520 ; Denny *v.* Denny & Warr, [1919] 1 K. B. 583.

95. Claim to compensation — Damage to lands —Not incident to reversion.]—F. & G., the owners of the fee, granted to W. & his assigns liberty to dig china clay, & to make adits & erect sheds, engine-house & buildings, for the working of the clay for the term of 21 years, determinable by W. by twelve months notice to quit. W. covenanted to make compensation to F. & G. their heirs & assigns, for injury to inclosed lands, in digging for clay, to be ascertained by arbn., F. & G. subsequently, while the term or interest was in existence, assigned the fee to M. At the time of the assignment W. had done injury to the inclosed land for which no compensation had been made. After the assignment the term or interest of W. was determined by notice :—*Held :* the liability of W. to make compensation for the lands injured was a mere chose in action, & was incapable of being assigned, & did not pass as incident to the reversion.—MARTYN *v.* WILLIAMS (1857), 1 H. & N. 817 ; 26 L. J. Ex. 117 ; 28 L. T. O. S. 321 ; 5 W. R. 351 ; 156 E. R. 1430.

Annotations :—**Refd.** Hooper *v.* Clark (1867), L. R. 2 Q. B. 200. **Mentd.** Norval *v.* Pascoe (1864), 4 New Rep. 390 ; Indermaur *v.* Dames (1867), 36 L. J. C. P. 181 ; Hastings *v.* N. E. Ry., [1898] 2 Ch. 674.

96. —— —— Under Lands Clauses Consolidation Act, 1845 (c. 18)—Assignable.]—A claim, under Lands Clauses Consolidation Act, 1845, s. 68, to compensation in respect of an interest in lands injuriously affected within that sect. is not a claim to damages for a wrongful act, but a claim of a right to compensation for damage which might be done in the lawful exercise of statutory powers, & such a claim is capable of assignment.—DAWSON *v.* GREAT NORTHERN & CITY RY. Co., [1905] 1 K. B. 260 ; 74 L. J. K. B. 190 ; 92 L. T. 137 ; 69 J. P. 29 ; 21 T. L. R. 114, C. A.

Annotations :—**Consd.** Turner *v.* Mid. Ry. (1911), 104 L. T. 347. **Refd.** Defries *v.* Milne, [1913] 1 Ch. 98 ; County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251 ; Ellis *v.* Torrington, [1920] 1 K. B. 399. **Mentd.** Zick *v.* London United Tramways, [1908] 1 K. B. 611.

97. Claim to set aside conveyance — "Unduly obtained."]—One being in an undue manner drawn in to execute a conveyance of his estate, after makes his will, & thereby devises all

b. —— —— *In respect of tort—Conversion.*]—A right to recover damages for wrongful conversion is not assignable at law.—LANCASTER *v.* VANCOUVER LOG CO., LTD. (1919), 27 B. C. R. 3.—**CAN.**

c. —— —— ——.] — A right to recover damages for conversion of goods belonging to a bkpt.'s estate is assignable by the trustee in bkpcy.—TAYLOR *v.* KNAPMAN (1884), 2 N. Z. L. R. 265. **N.Z.**

d. —— —— *Deceit.*]—A right of action for damages for deceit is not assignable under King's Bench Act, s. 39 (*e*).—MCGREGOR *v.* CAMPBELL (1909), 19 Man. L. R. 38.—**CAN.**

e. —— —— ——.]—A claim for damages for deceit is not assignable.—MCDONALD *v.* PEUCHEN (1918), 42 O. L. R. 18 ; 13 O. W. N. 380 ; 41 D. L. R. 619.—**CAN.**

f. —— —— *Killing horse.*]—Pltf. brought action for damages for the killing of his master's horse under an assignment from the master :— *Held :* the claim was not an assignable chose in action.—MCCORMACK *v.* TORONTO RY. CO. (1907), 9 O. W. R. 300 ; 13 O. L. R. 656.—**CAN.**

g. —— —— *Malicious prosecution.*] —An action for malicious prosecution is not capable of being assigned. —BLAIR *v.* ASSELSTINE (1893), 15 P. R. 211.—**CAN.**

his lands to be sold for payment of his debts; his creditors may set aside the conveyance, having a right in nature of an equity of redemption, as testator himself had, though urged, that it was but in nature of a chose in action, & not assignable.—BLAKE *v.* JOHNSON (1700), Prec. Ch. 142; 24 E. R. 69.

Annotation:—**Refd.** Hawes *v.* Wyatt (1790), 2 Cox, Eq. Cas. 263

98. Claim to set aside settlement—For fraud—Not assignable.]—PROSSER *v.* EDMONDS, No. 56, *ante*.

99. —— —— ——.]—Under his father's will, G. was tenant for life of certain property, & his son, E., was first tenant in tail. G. had incurred debts at his father's request which he had expected to discharge out of his father's estate, which was, however, all settled. Before E. attained twenty-one years he had agreed that these debts should be provided for on a resettlement of the property. E. was independently advised not to provide for the debts. By a resettlement made in 1902, shortly after E. had attained twenty-one years, the property was settled upon trust to raise £7,000 for G.'s benefit, & then, subject to two annuities of £500 & £200 already charged on the property, was settled upon trust for G. for life, & then as to one third for E. absolutely, & as to the other two thirds for E. for life, with remainder to his children, & in default of children for his sister & her children, with power for E. upon marriage to revoke the trusts as to the two thirds. G. covenanted to pay to E. an annuity of £100 for five years, & afterwards an annuity of £150. The £7,000 was applied in the payment of G.'s debts. In 1906 E. was in financial difficulties, & a receiving order was made against him, & the meeting of creditors was adjourned for fourteen days with a peremptory notice that if money was not then forthcoming to pay the debts in full bkpcy. would ensue. E. had no assets except his interests under the resettlement, which were valued by an actuary at £2,600 if sold to a member of the family, but as of very doubtful value to an outsider. The debts & costs amounted to £1,200. G. was unable to provide the money, but a friend of the family offered to advance sufficient to pay the debts & costs if G. purchased the interest outright. E. was independently advised that he ought not to accept less than £2,000, but agreed to accept G.'s offer to purchase for £1,200. An agreement for purchase by G. at that price was entered into, & the debts & costs were paid. E. went abroad, giving a power of attorney limited to a year. The assignment of the interests was not executed by the attorney until the year had expired. In 1913, E. borrowed £1,000 from B. on the security of his interests under the resettlement without disclosing any of the transactions in 1906. B. did not give notice to the trustees for six months, & was then informed of the purchase. E. never repudiated the purchase, but B. alone brought an action to set aside the resettlement so far as related to the payment of £7,000, on the ground of undue influence: & to set aside the purchase by G. so as to stand only as security for the money paid, on the grounds of inadequate price, that the interests were reversionary, that the agreement to purchase was only executory, & that G. was a trustee purchasing & was dealing with his son. Three actuaries gave evidence that the value of the interests in 1906 did not exceed £1,200:—*Held:* (1) B. could not sue without joining E. as a co-pltf.; (2) what was assigned by E. was a bare, naked right to possess himself of property by an action in a ct. of equity seeking to set aside the assignment to G., &, in these circumstances, no right of action passed to pltf. by the mtge. under which he claimed.—BRUTY *v.* EDMUNDSON (1915), 85 L. J. Ch. 568; 113 L. T. 1197.

Assignments savouring of champerty or maintenance.]—*See* ACTION, Vol. I., pp. 70–79, 85, Nos. 584–587, 589–593, 600–637, 696.

SECT. 5.—INTEREST IN LITIGATION.

100. Promise to pay over proceeds of litigation.]—Although a chose in action cannot be assigned still a promise to pay what one recovers in an action to another after recovery is good.—MORRIS *v.* BADGER (1621), Palm. 189; 81 E. R. 1036.

Claim to damages.]—*See* Sect. 4, *ante*.

101. Right to sue — Devisable interest.] — A right to sue is a devisable interest.—GRESLEY *v.* MOUSLEY (1859), 4 De G. & J. 78; 28 L. J. Ch. 620; 33 L. T. O. S. 154; 5 Jur. N. S. 583; 7 W. R. 427; 45 E. R. 31, L. JJ.

Annotations:—**Refd.** Turner *v.* Turner, Hall *v.* Turner (1880), 28 W. R. 859. **Mentd.** Lyddon *v.* Moss (1859), 4 De G. & J. 104; Clanricarde *v.* Henning (1861), 30 Beav. 175.

102. Assignment of judgment debt to solicitor—Agreement arrived at before judgment—Void—Though bonâ fide.]—PITTMAN *v.* PRUDENTIAL DEPOSIT BANK, LTD. (1896), 13 T. L. R. 110; 41 Sol. Jo. 129, C. A.

Position of barristers & solicitors—As to transfer of subject matter of action.]—*See* ACTION, Vol. I., p. 87, Nos. 709–715.

Assignments savouring of champerty or maintenance.]—*See* ACTION, Vol. I., pp 70–79, 85, Nos. 584–587, 589–593, 600–637, 696.

SECT. 6.—ANNUITIES AND RENTCHARGES.

103. Annuity — For term of life — Issuing out of land.]—An annuity granted *pro consilio impenso* may be assigned.—BAKER *v.* BROOK (1549), 1 Dyer, 65 a.; 73 E. R. 137.

Annotation:—**Folld.** Anon. (1550), Ben. & D. 5, pl. 10.

104. —— —— ——.]—Pltf. alleged that deft. granted an annuity of £40 for good consideration to J. for the term of his life, who granted the annuity over to pltf. who became seised thereof as of his frank tenement, & brought his action for £30 arrears:—*Held:* the annuity was capable of being granted over.—ANON. (1550), Ben. & D. 5, pl. 10; 123 E. R. 228.

h. —— —— *Negligence of agent.*]—A mere right to recover damages for negligence of an agent in failing to collect rents if founded on tort, is not assignable.—VARAHASWAMI *v.* RAMACHANDRA RAJU (1913), 1. L. R. 38 Mad. 138.—**IND.**

k. —— —— *Personal injuries.*]—Pltf. was driving with a companion along a street when deft.'s horse & buggy ran into the horse & buggy driven by pltf. Pltf.'s companion was injured & assigned her claim therefor to pltf.:—*Held:* such claim was not assignable.—COMPTON *v.* ALLWARD (1912), 19 W. L. R. 783; 1 D. L. R. 107; 1 W. W. R. 452.—**CAN.**

l. —— —— *Trespass to land—Assignable.*]—HILDITCH *v.* YOTT (1908), 9 W. L. R. 53.—**CAN.**

PART III. SECT. 5.

m. *Assignment of interest under decree.*]—One of several decree-holders may assign his interest under the decree.—MUTHUNARAYANA REDDI *v.* BALAKRISHNA REDDI (1896), I. L. R. 19 Mad. 306.—**IND.**

n. *Benefit of arbitration — Assignable.*]—A party to a submission may, pending the arbitration, assign his claim, with power to the assignee to obtain decree in his own name; & on the assignation being intimated to the opponent, & produced, for the arbiters to issue decree in the assignee's name.—HENRY *v.* HEPBURN (1835), 13 Sh. (Ct. of Sess.) 361; 30 Fac. Coll. 201.—**SCOT.**

Sect. 6.—Annuities and rentcharges. Sects. 7, 8, 9, 10 & 11.]

105. —— —— ——.]—A rentcharge granted to one & his assigns *pro consilio impendendo* may be assigned over.—MAUND'S CASE (1601), 7 Co. Rep. 28 b; 77 E. R. 454.

Annotations:—**Mentd.** Cranley *v.* Kingswell (1617), Hob. 207; Sands *v.* Lea (1622), Palm. 320; Polson *v.* Warren (1628), Palm. 490; Smith *v.* Smith (1638), Cro. Car. 507; Crouche *v.* Fastolfe (1680), T. Raym. 418.

106. —— ——.]—G. sued on an annuity against the parson of D. & pltf. pleaded that the said parson granted an annuity for term of his life:—*Held:* the annuity might be granted over though no more than a chose in action.—GERRARD *v.* BODEN (1627), Het. 80; 124 E. R. 358.

107. —— **For term of years—Charged on leaseholds.**]—WILTSHIRE *v.* RABBITS, No. 5, *ante*.

108. —— **By bankrupt in possession.**]—A., being a bkpt. continues in possession of his estate, & grants an annuity out of certain premises to B. The tenant in possession pays the rent to B., in order to prevent a distress. The assignees cannot maintain an action for money had & received against B.

If the tenant paid this money to a person who had no title to receive it, that payment would not be available against the assignees. The tenant still remains liable to them, & if he was imposed on, may recover it back from deft., but he cannot transfer this chose in action to the assignees (LORD KENYON, C.J.).—DARNTON *v.* PIGMAN (1796), Peake, Add. Cas. 111, N. P.

See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., Part XX., Sect. 7, sub-sect. 1, B., p. 729.

109. —— **To retiring incumbent—Under Union of Benefices Act, 1860.**]—In pursuance of an Order in Council under Union of Benefices Act, 1860 (c. 142), uniting two City benefices, certain annuities were granted to the retiring incumbent & his assigns out of the annual income of the united benefice, & made a first charge thereon during the joint lives of himself & the incumbent of the united benefice, so long as he should perform in person, or by substitute to be approved of by the bishop, the duties of curate of the united benefice under the style of vicar in charge, with a provision for the retiring incumbent after the death of the incumbent of the united benefice:—*Held:* such annuities were not a benefice with cure within 13 Eliz. c. 20, & could be validly mortgaged by the retired incumbent.—MCBEAN *v.* DEANE (1885), 30 Ch. D. 520; 55 L. J. Ch. 19; 53 L. T. 701; 33 W. R. 924; 1 T. L. R. 624.

See, generally, RENTCHARGES & ANNUITIES.

SECT. 7.—EXPECTANCIES.

110. At law—Not assignable.]—Although a grant of a future possibility is not good in law, yet a possibility under a trust may be assigned in equity.

An assignment made by a beneficiary entitled under a testamentary appointment in remainder after the death of a tenant for life:—*Held:* valid as against a subsequent lessee from the beneficiary.—WARMSTREY *v.* TANFIELD (1628), 1 Rep. Ch. 29; 1 Eq. Cas. Abr. 46; 21 E. R. 498.

111. In equity—Whether assignable—Possibility under trust.]—WARMSTREY *v.* TANFIELD, No. 110, *ante*.

112. —— ——.]—At law a possibility could not be assigned, though it might be released, & since equity follows the law:—*Held:* the same rule applied in equity.—THOMAS *v.* FREEMAN (1706), 2 Vern. 563; 23 E. R. 967.

Annotations:—**Refd.** Wright *v.* Wright (1750), 1 Ves. Sen. 409; Voyle *v.* Hughes (1854), 2 Eq. Rep. 42. **Mentd.** Doe d. Brune *v.* Martyn (1828), 8 B. & C. 497.

113. —— ——.]—WHITFIELD *v.* FAUSSET, No. 55, *ante*.

114. —— —— **For valuable consideration.**]—Possibility assignable in equity for valuable consideration.—WRIGHT *v.* WRIGHT (1750), 1 Ves. Sen. 409; 27 E. R. 1111, L. C.

Annotations:—**Refd.** Stone *v.* Lidderdale (1795), 2 Anst. 533; Doe d. Brune *v.* Martyn (1828), 8 B. & C. 497. **Mentd.** Lyde *v.* Mynn (1833), 1 My. & K. 683; Parker *v.* Downing (1833), Coop. *temp.* Brough. 148; Harris *v.* Davis (1844), 1 Coll. 416; Hawker *v.* Hallewell (1854), 2 Sm. & G. 498; Crofts *v.* Middleton (1856), 8 De G. M. & G. 192.

115. —— —— **Mere spes successionis—Not enforceable against assignor without consideration.**]—MEEK *v.* KETTLEWELL, No. 617, *post*.

116. —— —— —— **Operates by way of covenant.**]—*Re* ELLENBOROUGH, TOWRY LAW *v.* BURNE, No. 619, *post*.

Voluntary assignments, *see* Part VIII., *post*.

117. —— —— **By married woman.**]—A married woman can give a valid charge on her expectancy under the will or as one of the next of kin of a living person, & such a charge will be enforced after that person's death against separate estate bequeathed by his will to the married woman.—FLOWER *v.* BULLER (1880), 15 Ch. D. 665; 49 L. J. Ch. 784; 43 L. T. 311; 28 W. R. 948.

Annotation:—**Mentd.** Pike *v.* Fitzgibbon, Martin *v.* Fitzgibbon (1881), 17 Ch. D. 454.

See, further, HUSBAND & WIFE.

118. —— —— **Assignment by way of mortgage to secure debt—Actual interest created in assignee.**]—An assignment of a mere expectancy upon the death of a living person where the subject-matter of the assignment is definite, notwithstanding that the assignment is by way of mtge. to secure a debt, creates, not merely a personal liability on the mtgor. to transfer the property when the time comes, but an actual interest in the mtgee. as if he had been possessed of the property at the date of the assignment, & this interest is not affected by the subsequent bkpcy. & discharge of the mtgor.; & the mtgee. takes the property assigned, upon its becoming realised, in priority to a purchaser & assignee of the expectancy from the mtgor. under an assignment made before its realisation, but after the bkpcy. & discharge of the mtgor.—*Re* LIND, INDUSTRIALS FINANCE SYNDICATE, LTD. *v.* LIND, [1915] 2 Ch. 345; 84 L. J. Ch. 884; 113 L. T. 956; 59 Sol. Jo. 651; [1915] H. B. R. 204, C. A.

Future debts.]—*See* Sect. 2, sub-sect 3, *ante*.

SECT. 8.—REVERSIONARY INTERESTS.

119. In proceeds of sale of land—Before sale of land—By married woman.]—The interest of a married woman in the proceeds of real estate,

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PART III. SECT. 7.

114 i. *In equity—Whether assignable—For valuable consideration.*]—An equitable assignment for value may be made of a mere possibility or mere expectancy of future property.—LYNBERG *v.* TARBOX (1908), 9 W. L. R. 347; 1 Sask. L. R. 492—**CAN.**

115 i. —— —— *Mere spes successionis.*]—A., with consent of her husband undertook that any debt due by her husband to her father at the latter's death should "form a debt due" by her & "a deduction from" her share of her father's estate.

In an action for legitim brought by A. against her father's trustees after his death, when her husband's indebtedness to her father admittedly exceeded her share of legitim:—*Held:* the agreement was effectual even though the subject dealt with was a *spes successionis*.—COATS *v.* BANNOCHIE'S TRUSTEES, [1912] S. C. 329.—**SCOT.**

devised by the will under which she took such interest, upon trust for sale, held to pass by her deed, executed & acknowledged according to Fines & Recoveries Act, 1833 (c. 74).—BRIGGS *v.* CHAMBERLAIN (1853), 11 Hare, 69; 1 Eq. Rep. 404; 23 L. J. Ch. 635; 21 L. T. O. S. 218; 18 Jur. 56; 1 W. R. 346; 68 E. R. 1191.

Annotations :—**Folld.** Tuer *v.* Turner (1855), 20 Beav. 560. **Consd.** Miller *v.* Collins, [1896] 1 Ch. 573. **Refd.** Franks *v.* Bollans (1867), 37 L. J. Ch. 148; *Re* Jakeman's Trusts (1883), 23 Ch. D. 344; *Re* Lyne's Settlmt. Trusts, *Re* Gibbs, Lyne *v.* Gibbs, [1919] 1 Ch. 80. **Mentd.** Gresham Life Assce. Soc. *v.* Crowther, [1914] 2 Ch. 219.

120. —— —— ——.]—An assignment of the reversionary interest of a married woman in the proceeds of land directed to be sold, by a deed acknowledged before the period of sale had arrived: —*Held*: good.—TUER *v.* TURNER (1855), 20 Beav. 560; 3 Eq. Rep. 983; 24 L. J. Ch. 663; 25 L. T. O. S. 252; 3 W. R. 583; 52 E. R. 720.

Annotations :—**Refd.** Marsh *v.* A.-G. (1860), 30 L. J. Ch. 233; Miller *v.* Collins, [1896] 1 Ch. 573; *Re* Lyne's Settlmt. Trusts, *Re* Gibbs, Lyne *v.* Gibbs, [1919] 1 Ch. 80.

121. —— ——.]—LEE *v.* HOWLETT, No. 413, *post*.

122. —— ——.]—(1) The knowledge of one of several trustees, who is also a beneficiary, of a mtge., created by himself, of his own share in the proceeds of land held in trust for sale is not, by itself, notice to the trustees. Such a mtge. will be postponed to a subsequent mtge. of which due notice has been given to the trustees.

(2) A reversionary interest in the proceeds of land held in trust for sale, but not yet sold, is a chose in action & (3) within the principle laid down by *Dearle* v. *Hall*, No. 393, *post*, as to gaining priority by notice to trustees.—LLOYD'S BANK *v.* PEARSON, [1901] 1 Ch. 865; 70 L. J. Ch. 422; 84 L. T. 314; 45 Sol. Jo. 378.

Annotations :—*As to* (1) **Consd.** *Re* Dallas, [1904] 2 Ch. 385. *As to* (1) & (3) **Consd.** Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257.

123. Interest as joint tenant — Severance of joint tenancy.]—If A. executes an equitable assignment of his reversionary interest under the will of B., & such reversionary interest is an interest as joint tenant with others expectant on the death of the then tenant for life, such assignment will operate by implication to create a severance of the joint tenancy, for it could not have been the intention of the parties thereto that the security should be void if A. should predecease any of the other joint tenants in reversion.—*Re* SHARER, ABBOTT *v.* SHARER (1912), 57 Sol. Jo. 60.

SECT. 9.—POLICIES OF INSURANCE.

See INSURANCE.

SECT. 10.—ALIMONY AND MAINTENANCE.

124. Permanent alimony — Allowance to wife out of lunatic husband's estate.]—On a decree for a judicial separation an order was made for payment of £60 a year to the wife as permanent alimony. The husband was afterwards found lunatic by inquisition, & by an order in Lunacy & Ch. the dividends of a sum of stock to which he was entitled in a Ch. suit were ordered to be carried to his account in the Lunacy & £60 a year to be paid out of them to his wife in respect of her alimony till further order. The wife assigned the annuity to a purchaser, who presented a petition in Lunacy & in the suit to have the annuity paid to him :—*Held*: the petition must be refused, on the ground that whether the annuity was considered as alimony, or as an allowance made to the wife by the ct. in Lunacy, it was not assignable.—*Re* ROBINSON (1884), 27 Ch. D. 160; 53 L. J. Ch. 986; 51 L. T. 737; 33 W. R. 17, C. A.

Annotations :—**Refd.** Anderson *v.* Hay (1890), 7 T. L. R. 113; Watkins *v.* Watkins, [1896] P. 222. **Mentd.** Linton *v.* Linton (1885), 15 Q. B. D. 239; Kerr *v.* Kerr (1897), 77 L. T. 29; Maclurcan *v.* Maclurcan (1897), 77 L. T. 474.

125. Maintenance for divorced wife — Ordered under Matrimonial Causes Act, 1866 (c. 32)—Allowance purely personal.]—Sums of money ordered under the above Act, s. 1, to be paid by a husband for the maintenance of his divorced wife, are a purely personal allowance, & so long as the order subsists can neither be alienated nor released.—WATKINS *v.* WATKINS, [1896] P. 222; 65 L. J. P. 75; 74 L. T. 636; 44 W. R. 677; 12 T. L. R. 456, C. A.

Annotations :—**Consd.** Maclurcan *v.* Maclurcan (1897), 77 L. T. 474. **Apld.** Paquine *v.* Snary, [1909] 1 K. B. 688. **Refd.** Bishop *v.* Bishop, Judkins *v.* Judkins (1897), 76 L. T. 409; Victor *v.* Victor, [1912] 1 K. B. 247. **Mentd.** Kerr *v.* Kerr, [1897] 2 Q. B. 439.

126. Weekly sum payable under separation order—Under Summary Jurisdiction (Married Women) Act, 1895 (c. 39).]—A weekly sum payable under a separation order made under the above Act, is inalienable, & a receiver cannot be appointed by way of equitable execution in respect of such sum.—PAQUINE *v.* SNARY, [1909] 1 K. B. 688; 78 L. J. K. B. 361; 100 L. T. 220; 25 T. L. R. 212, C. A.

See, generally, HUSBAND AND WIFE.

SECT. 11.—PRIZE MONEY.

127. Before grant made — Nature of prize money.]—A party has a right to assign his interest in booty or prize money, though, at the time of such assignment, no grant of it had been made, & the assignment will be supported in a ct. of equity.—ALEXANDER *v.* WELLINGTON (DUKE) (1831), 2 Russ. & M. 35; 2 State Tr. N. S. 763; 39 E. R. 308, L. C.; *affg.* (1830), 9 L. J. O. S. Ch. 36.

Annotations :—**Consd.** Kinloch *v.* Secretary of State for India (1882), 7 App. Cas. 619. **Refd.** The Parlement Belge (1879), 4 P. D. 129; Andersen *v.* Marten, [1907] 2 K. B. 248. **Mentd.** Metcalfe *v.* York (1836), 1 My. & Cr. 547; Banda & Kirwee Booty (1866), L. R. 1 A. & E. 109.

128. By captor — Before condemnation.]—A captor of a prize assigned his share therein before condemnation :—*Held*: he could legally do it.—MORROUGH *v.* COMYNS (1748), 1 Wils. 211; 95 E. R. 579.

Annotations :—**Refd.** Camplin *v.* Bullman (1761), Park. 198; Andersen *v.* Marten, [1907] 2 K. B. 248.

129. By sailors or ordinary seamen.]—Contract with two sailors for the sale of their prize money set aside on the foot of imposition & public inconvenience.—BALDWIN *v.* ROCHFORD (1748), 1 Wils. 229; 95 E. R. 589, L. C.

130. ——.]—Sale of a seaman's prize money, & subsequent agreement in confirmation, set aside.—TAYLOUR *v.* ROCHFORT (1751), 2 Ves. Sen. 281; 28 E. R. 182.

131. —— Sale at undervalue—Fraud.]—Assignment of sailor's share of prize money at great undervalue, set aside for fraud, but still to stand as security for what really advanced. The same equity as to an under-assignment.—HOW *v.* WELDON (1754), 2 Ves. Sen. 516; 28 E. R. 330.

Annotation :—**Mentd.** Falcke *v.* Gray (1859), 29 L J Ch. 28.

PART III. SECT. 10.

c. *Alimony for separated wife.*]—A bond to secure payment of alimony to a separated wife is not assignable, such assignment tending to lessen the inducement to reconciliation.—REIFFENSTEIN *v.* HOOPER (1875), 36 U. C. R. 295.—CAN.

Sect. 11.—*Prize money.* *Sects.* 12 & 13: *Sub-sects.* 1, 2, 3 & 4.]

132. By boatswain — Previous to confirmation of appointment by Admiralty.]—The commander-in-chief on a foreign station, in the case of a fleet, or the captain, in the case of a single ship at sea, *quasi* commander-in-chief, may appoint a successor to a boatswain, & such successor will be thereby raised above the rank of petty officer or seaman, & may, previous to the confirmation of such appointment by warrant from the Admiralty, assign prize money without being subject to the restriction of 45 Geo. 3, c. 72, imposed by the legislature for the protection of petty officers & seamen.—WELLARD *v.* Moss (1823), 1 Bing. 134; 7 Moore, C. P. 503; 1 L. J. O. S. C. P. 18; 130 E. R. 55.

SECT. 12.—WAGES.

133. General rule — Moneys due under contract of personal service.]—Moneys due under a contract of personal service can be assigned notwithstanding that a contract for personal service is not assignable. The fact that a contract is assigned as a security does not necessarily prevent the assignment from being an absolute assignment.—RUSSELL & Co., LTD. *v.* AUSTIN FRYERS (1909), 25 T. L. R. 414, D. C.

134. Seaman's wages.] — A seaman assigned his wages, as a security for money, & died indebted to other persons:—*Held:* the assignment specifically bound the wages, & the money secured thereby should be paid preferable to all other debts.

It is a chose in action, being due by contract, although the service not then done, & a chose in action is assignable in equity upon a consideration paid (*per* CUR.).—CROUCH *v.* MARTIN & HARRIS (1707), 2 Vern. 595; 1 Eq. Cas. Abr. 45, pl. 7; 23 E. R. 987.

Annotations:—**Consd.** Stone *v.* Lidderdale (1795), 2 Anst. 533. **Refd.** Voyle *v.* Hughes (1854), 2 Sm. & G. 18; Russell *v.* Fryers (1909), 25 T. L. R. 414.

Under Wages Attachment Abolition Act, 1870 (c. 30).]—*See* EXECUTION.

Under Police Act, 1890 (c. 45).]—*See* EXECUTION.

SECT. 13.—SALARIES, PENSIONS, ALLOWANCES, ETC.

SUB-SECT. 1.—IN GENERAL.

135. Grounds of non-assignability.] — A canon of W. granted the canonry & the profits, etc., to pltf. to secure a sum of money. So far as it appeared on an interlocutory application, the estates were vested in the corpn., & the canon was entitled to an *aliquot* share of the profits. There was no cure of souls, & the only duties were residence within the castle, & attendance in the chapel twenty-one days a year:—*Held:* the security was valid, & a receiver of the profits was appointed.

There are various cases in which public duties are concerned in which it may be against public policy that the income arising for the performance of those duties should be assigned & for this simple reason, because the public is interested, not only in the performance, from time to time, of the duties, but also in a fit state of preparation of the party having to perform them. Such is the reason in the cases of half-pay where there is a sort of retainer, & where the payments which are made to officers, from time to time, are the means by which they, being liable to be called into public service, are enabled to keep themselves in a state of preparation for performing their duties. So also, where a pension or remuneration is given for a purpose which tends less directly to the public benefit (LORD LANGDALE, M.R.).—GRENFELL *v.* WINDSOR (DEAN & CANONS) (1840), 2 Beav. 544; 48 E. R. 1292.

Annotations:—**Consd.** *Re* Mirams, [1891] 1 Q. B. 594. **Refd.** M'Bean *v.* Deane (1885), 1 T. L. R. 624.

SUB-SECT. 2.—SALARIES AND FULL PAY.

136. Full pay — Of military officer — Assignment with power to redeem.]—A., major of a fort, borrowed £225 of B. &, for securing to B. an annuity of £30 during A.'s life, assigned over his pay of 8*s.* a day, with a power to redeem. B. showed this assignment to C., the pay-agent, who refused to take notice thereof. Wherefore B. brought his bill against A. & C.:—*Held:* the pay should be secured to B. but C., as agent, was not bound to take notice but from the time of the filing the bill, because of the inconveniency.—GOMEZ *v.* GRAHAM (1742), 9 Mod. Rep. 287; 88 E. R. 457, L. C.

Annotations:—**Refd.** Stuart *v.* Tucker (1777), 2 Wm. Bl. 1137; Stone *v.* Lidderdale (1795), 2 Anst. 533.

137. —— ——.]—Pltf. had bought an annuity from an officer on full pay, secured by bond & judgment, & by an assignment of his pay, with notice to defts., the agents of the regiment, to pay it over to pltf. accordingly. The assignor being abroad on service, pltf. demanded payment of the arrears from defts. They objected till they should hear from the regiment that he had not taken up his pay abroad. Pltf. filed this bill. Defts. proved that by the rules of the army the officers are at liberty to take up their pay from the regimental paymaster abroad, & that the agent is answerable over to him:—*Held:* the annuity should be discharged by defts. only out of what should remain in their hands after the demands of the paymaster.—SPENCER *v.* COX & DRUMMOND (1773), 2 Anst. 535, n.; 145 E. R. 959, n.

Annotations:—**Consd.** Stone *v.* Lidderdale (1795), 2 Anst. 533; Tunstall *v.* Boothby (1840), 10 Sim. 542.

PART III. SECT. 12.

p. *Future wages.*]—A debtor may validly cede the whole amount of his salary to become due from his employer up to the amount of the debt.—CONSOLIDATED FINANCE CO., LTD. *v.* REUVID (1912), T. P. D. 1019.—**S. AF.**

q. *Under Assignment of Wages Act, R. S. M. c. 13.*]—A. purchased land from his employer & agreed to pay therefor "out of his wages to be earned by him in the employ of the vendor," who was authorised to deduct the purchase money from the wages:—*Held:* (1) the assignment was valid as to wages previously earned; (2) it was invalid as to future wages if A. were married & living with his wife if made without her consent under sect. 3 of above Act.—TKACZUK *v.* STEWART, [1920] 2 W. W. R. 205; 51 D. L. R. 441; 30 Man. L. R. 362.—**CAN.**

PART III. SECT. 13, SUB-SECT. 1.

135 i. *Grounds of non-assignability.*]—The salary of a govt. officer, paid for the performance of a public duty, is, on the grounds of public policy, not assignable.—CANE *v.* MACDONALD (1903), 10 B. C. R. 444.—**CAN.**

135 ii. ——.]—On grounds of public policy the salary of a public officer is not assignable by him.—FOWELL *v.* R. (1905), 25 C. L. T. 140; 9 Exch. C. R. 364.—**CAN.**

135 iii. ——.]—HOBBS *v.* HOWELL (1914), 29 W. L. R. 650; 7 W. W. R. 250.—**CAN.**

PART III. SECT. 13, SUB-SECT. 2.

136 i. *Full pay—Of Royal North-West Mounted Police.*]—A sergeant in R. N. W. M. P. is a public officer & his remuneration is not assignable.—HOBBS *v.* HOWELL (1914), 29 W. L. R. 650; 7 W. W. R. 256.—**CAN.**

s. *Salary of junior clerk in civil service.*]—The rule of law that the salaries of public officers cannot be assigned as being contrary to public policy does not extend to the case of a junior clerk in the civil service.—TRADERS BANK *v.* MCKAY (1909), 2 Alta. L. R. 31.—**CAN.**

138. —— ——.]—The full pay of a military officer cannot be assigned.—BARWICK *v.* READE (1791), 1 Hy. Bl. 627; 126 E. R. 357.

Annotations :—**Consd.** Stone *v.* Lidderdale (1795), 2 Anst. 533. **Refd.** Palmer *v.* Bate (1821), 2 Brod. & Bing. 673. **Mentd.** Apthorpe *v.* Apthorpe (1887), 12 P. D. 192.

139. —— Of naval officer.]—The pay of a surgeon in the navy who is on active service cannot be assigned, & therefore cannot be attached for costs.—APTHORPE *v.* APTHORPE (1887), 12 P. D. 192; 57 L. T. 518; 35 W. R. 728; 3 T. L. R. 619, C. A.

140. Salary of judge — To be paid to his legal personal representatives—Not payable during lifetime of judge.]—An assignment, by a puisne judge of the Supreme Ct. at Madras, of the sum "equal to the amount of six months' salary," directed by Indian Salaries & Pensions Act, 1825 (c. 85), to be paid to the "legal personal representatives" of such judge, in case he should die, in & after six months' possession of office, is a valid assignment, being a vested contingent interest in such judge, & not being payable during the lifetime of the judge, is not an assignment of salary, within Sale of Offices Acts, 1551 (c. 16) & 1809 (c. 126), contrary to public policy.—ARBUTHNOT *v.* NORTON (1846), 5 Moo. P. C. C. 219; 3 Moo. Ind. App. 435; 10 Jur. 145; 13 E. R. 474, P. C.

141. Salary of workhouse chaplain — Paid out of local funds—Not "public officer."]—A chaplain of a workhouse & workhouse infirmary assigned his stipend or salary to a creditor. The appointment to the chaplaincy was solely in the hands of the guardians, & the stipend was paid out of the rates. The chaplain was adjudicated bkpt. Upon a motion by the trustee in bkpcy, for a declaration that the stipend vested in him, & to restrain the assignee from receiving the portion he claimed :—*Held :* the charge was not invalid on the ground of public policy, & to make the office or chaplaincy a public office the pay must come out of national & not out of local funds.—*Re* MIRAMS, [1891] 1 Q. B. 594; 60 L. J. Q. B. 397; 64 L. T. 117; 39 W. R. 464; 7 T. L. R. 309; 8 Morr. 59.

Annotations :—**Mentd.** Mogul S.S. Co. *v.* McGregor Gow, [1892] A. C. 25; Hyams *v.* Stuart King (1908), 77 L. J. K. B. 794; Horwood *v.* Millar's Timber & Trading Co., [1916] 2 K. B. 44.

Salary of member of Parliament—Appropriation of, in bankruptcy for benefit of creditors.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 928, No. 7599.

Charge on benefices by rector or vicar.]—*See* ECCLESIASTICAL LAW.

Parish clerk—Assignment of office.]—*See* ECCLESIASTICAL LAW.

SUB-SECT. 3.—HALF-PAY.

142. Not assignable at law—Use of it assignable in equity.]—Though an officer's half-pay is not assignable at law, yet the use of it may be assigned in equity, &, when so assigned, the assignor cannot maintain an *assumpsit* for it, as money had & received to his use.—STUART *v.* TUCKER (1777), 2 Wm. Bl. 1137; 96 E. R. 671.

Annotations :—**Consd.** Stone *v.* Lidderdale (1795), 2 Anst. 533; Palmer *v.* Bate (1821), 2 Brod. & Bing. 673. The case of *Stuart* v. *Tucker* was much shaken by subsequent decisions (PARK, J.). **Refd.** Arbuckle *v.* Cowtan (1803), 3 Bos. & P. 321.

143. ——.]—The creditors under 32 Geo. 3, c. 23, may compel the debtor to include in his schedule everything that he can sell for his own benefit. But the half-pay of an officer is not the subject of sale; & therefore the creditors cannot compel him to include it in his schedule.—FLARTY *v.* ODLUM (1790), 3 Term Rep. 681; 100 E. R. 801.

Annotations :—**Consd.** Lidderdale *v.* Montrose (1791), 4 Term Rep. 248. **Apld.** Stone *v.* Lidderdale (1795), 2 Anst. 533. **Consd.** Arbuckle *v.* Cowtan (1803), 3 Bos. & P. 321. **Apld.** Wells *v.* Foster (1841), 8 M. & W. 149. **Consd.** Carew *v.* Cooper (1863), 4 Giff. 619. **Expld.** Gathercole *v.* Smith (1881), 44 L. T. 439. **Consd.** Apthorpe *v.* Apthorpe (1887), 12 P. D. 192; Hollinshead *v.* Hazleton, [1916] 1 A. C. 428. **Refd.** Palmer *v.* Bate (1821), 2 Brod. & Bing. 673; *Re* Battine (1833), 1 Nev. & M. K. B. 579; Lucas *v.* Harris (1886), 18 Q. B. D. 127; *Re* Fitzgerald, Surman *v.* Fitzgerald, [1904] 1 Ch. 573. **Mentd.** *Ex p.* Ricketts (1836), 4 Ad. & El. 999.

144. —— Or in equity.]—An assignment of the half-pay of an officer in the army is bad in equity as well as at law.—STONE *v.* LIDDERDALE (1795), 2 Anst. 533; 145 E. R. 958.

Annotations :—**Consd.** Willcock *v.* Terrell (1878), 3 Ex. D. 323; *Re* Fitzgerald, Surman *v.* Fitzgerald, [1904] 1 Ch. 573.

145 —— Future half-pay.]—The future half-pay of an officer is not assignable.—LIDDERDALE *v.* MONTROSE (DUKE) (1791), 4 Term Rep. 248; 100 E. R. 1000.

Annotations :—**Apld.** Stone *v.* Lidderdale (1795), 2 Anst. 533. **Expld.** Carew *v.* Cooper (1863), 4 Giff. 619. **Consd.** *Re* Fitzgerald, Surman *v.* Fitzgerald, [1904] 1 Ch. 573. **Refd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127; Hollinshead *v.* Hazleton, [1916] 1 A. C. 428.

146. Difference received upon retiring on half-pay — Assignable.] — The difference received by an officer upon retiring on half-pay is assignable.—PRICE *v.* LOVETT (1851), 20 L. J. Ch. 270; 15 Jur. 786.

SUB-SECT. 4.—PENSIONS.

147. General rule.] — Where a pension is paid to a man solely as compensation for past services, such pension is assignable, & therefore may be sequestered; but where the payment is a condition for some continuing duty or service :—*Semble :* it cannot be assigned or sequestered.—DENT *v.* DENT (1867), L. R. 1 P. & D. 366; 36 L. J. P. & M. 61; 15 L. T. 635; 15 W. R. 591.

Annotations :—**Distd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127. **Refd.** Willcock *v.* Terrell (1878), 3 Ex. D. 323.

148. What is pension — Not money paid to retired military officer for commutation of pension.] —(1) The money paid to a retired officer of Her Majesty's forces for the commutation of his pension does not retain its character as pension so far as to prevent it from being taken in execution.

(2) An officer in the army who had retired on a pension having become bkpt., an order was made, under Bkpcy. Act, 1883 (c. 52), s. 53, directing the payment of a portion of his pension to the trustee in bkpcy. The bkpcy. having afterwards been annulled, a surplus was left in the hands of the trustee, part of which consisted of money paid under this order :—*Held :* the money was still pension, & equitable execution of it would not be granted, since, by Army Act, 1881 (c. 58), s. 141, it was not assignable.—CROWE *v.* PRICE (1889), 22 Q. B. D. 429; 58 L. J. Q. B. 215; 60 L. T. 915; 53 J. P. 389; 37 W. R. 424; 5 T. L. R. 280, C. A.

Annotation :—*As to* (2) **Consd.** Jones *v.* Coventry, [1909] 2 K. B. 1029.

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t. *Salary of city solicitor—Paid out of corporation funds, not "public officer."*]—GRAHAM *v.* MCVEITY (1905), 5 O. W. R. 395, 521.—**CAN.**

u. *Salary of clerk of petty sessions.*]—A petty sessions clerk covenanted to assign his official salary to pltf. to secure an annuity. In an action for the appointment of a receiver by way of equitable execution over the future salary of the clerk :—*Held :* the assignment of the salary was unenforceable.—M'CREERY *v.* BENNETT, [1904] 2 I. R. 69.—**IR.**

PART III. SECT. 13, SUB-SECT. 3.

144 i. *Not assignable at law—Or in equity.*]—Half-pay of an officer is not assignable on principles of public policy.—M'CARTHY *v.* GOOLD (1810), 1 Ball & B. 387.—**IR.**

Sect. 13.—*Salaries, pensions, allowances, etc.: Subsects.* 4 *&* 5.]

149. —— Not moneys paid over by Paymaster-General—Army Act, 1881 (c. 58), s. 141.]—A retired officer of His Majesty's forces kept a separate account at a bank for the sums received by him as pension. On Jan. 1, 1909, there was standing to his credit in this account the sum of £6 13*s.* 8*d.*, being the balance of pension money already received. On the same day the officer sent to the bank a document supplied by the Paymaster-General & signed by the officer, which was on the face of it a receipt for a sum of £17 12*s.* 6*d.* due to the officer as pension. The document had the following note at its foot: "This receipt must be presented for payment by a London banker, but may be negotiated in the country or abroad, & is to be left by the banker at the Paymaster-Generals office one day for examination." Upon the receipt of this document the bank credited the officer with the £17 12*s.* 6*d.* on Jan. 1, but did not collect the sum in question from the Paymaster-General until Jan. 7. On Jan. 1, a garnishee order was served on the bank by a judgment creditor of the officer:—*Held:* (1) the sum of £6 13*s.* 8*d.*, having been paid over by the Paymaster-General, had lost its character of pension, & was liable to be attached under the garnishee order notwithstanding the provisions of the above sect., which prohibits the voluntary alienation of his pension by a retired officer; (2) the document deposited with the bank was not a negotiable instrument, & the sum of £17 12*s.* 6*d.* had not, on Jan. 1, lost its character of pension so as to become attachable under the garnishee order of that date.—JONES & Co. *v.* COVENTRY, [1909] 2 K. B. 1029; 79 L. J. K. B. 41; 101 L. T. 281; 25 T. L. R. 736; 53 Sol. Jo. 734, D. C.

150. —— Within Indian Pensions Act, 1871 (c. xxiii.)—Not annuity to civil servants payable out of Indian revenue.]—An annuity or pension to which a Madras covenanted Indian civil servant was admitted on retirement under East India Annuity Funds Act, 1874 (c. 12), s. 2 is not subject to the restrictions contained in Indian Pensions Act, 1871, ss. 11, 12, & is assignable & liable to be reached by a writ of sequestration to enforce a judgment in the High Ct. in England.—KNILL *v.* DUMERGUE, [1911] 2 Ch. 199; 80 L. J. Ch. 708; 105 L. T. 178; 27 T. L. R. 525; 55 Sol. Jo. 648, C. A.

Annotation:—**Mentd.** *Re* Suarez, Suarez *v.* Suarez (1917), 87 L. J. Ch. 173.

—— **Within Bankruptcy Act, 1883 (c. 52).**]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 929, No. 7604.

151. Government pension to grantee & assigns—Payable by Treasurer of Navy—Out of certain funds.]—A., by marriage settlement, covenanted for payment within four years, to the trustees, of £4,000, the dividends whereof, & of other funds thereby settled, were made payable to himself for life. He afterwards obtained a pension from Govt., by warrant of the Treasury, made payable to him & his assigns by the Treasurer of the Navy out of a certain fund, during the life of the grantee. A. subsequently absconded, being largely indebted to the Crown, & not having paid the £4,000 according to the covenant. Upon his departure, the pension was withdrawn by Order of Council, & the trustees of the settlement stopped payment of the dividends of the other funds to which he was entitled for life under the settlement. A. having granted annuities secured by assignment of his pension & of these dividends, on a bill by the annuitants against the Treasurer of the Navy and the A.-G., for recovery of what was in the hands of the former on account of pension, & against the trustees of the settlement for dividends accrued since A.'s departure:—*Held:* (1) as to the first, the ct. had no jurisdiction, &, as to the second, the trustees, who had no notice of the assignment, were entitled to retain the dividends in satisfaction of the covenant; the equity of the trustees was to stop the dividends, not only immediately on failure of performance of the covenant, but at any time after, at their discretion; (2) the assignee of a chose in action takes it subject to all the equities to which it was liable in the hands of the original grantee.

(3) *Qu.:* whether the pension from Govt. in this case was assignable within the policy of the law.—PRIDDY *v.* ROSE (1817), 3 Mer. 86; 36 E. R. 33.

Annotations:—*As to* (1) **Consd.** *Re* Prior, *Ex p.* Young (1835), 4 Deac. & Ch. 645; Smith *v.* Smith (1835), 1 Y. & C. Ex. 338. **Distd.** Houlditch *v.* Wallace (1838), 5 Cl. & Fin. 629. **Consd.** *Re* Weston, Davies *v.* Tagart, [1900] 2 Ch. 164. **Refd.** *Re* Brown, *Ex p.* Turpin (1832), Mont. 443; Burridge *v.* Row (1844), 13 L. J. Ch. 173; Courtenay *v.* Williams (1844), 3 Hare, 539; Jones *v.* Mossop (1844), 3 Hare, 568; *Re* Good, *Ex p.* Good (1850), 15 L. T. O. S. 50; *Re* Tönnies (1873), 28 L. T. 567; Ballard *v.* Marsden (1880), 14 Ch. D. 374; Dingle *v.* Coppen (1898), 68 L. J. Ch. 337; *Re* Jewell's Settlmt., Watts *v.* Public Trustee, [1919] 2 Ch. 161. *As to* (2) **Refd.** Cole *v.* Muddle (1852), 10 Hare, 186.

152. Granted for public services—To Duke of Marlborough—Out of revenues of Post Office.]—The pension granted by 5 Ann. c. 4, "for the more honourable support of the dignities" of the Duke of M., & his posterity, payable out of the revenues of the Post Office, to such persons severally & successively to whom the same should come by virtue of that Act, with a proviso that the acquittance of every such person should be a sufficient discharge, is inalienable.—DAVIS *v.* MARLBOROUGH (DUKE) (1818), 1 Swan. 74; 36 E. R. 303, L. C.; *subsequent proceedings* (1819), 2 Swan. 108, L. C.

Annotations:—**Consd.** Grenfell *v.* Windsor (1840), 2 Beav. 544; Hill *v.* Paul (1841), 8 Cl. & Fin. 295. **Refd.** Cooper *v.* Reilly (1829), 2 Sim. 560; *Re* Marlborough's Blenheim Estates & Settled Land Acts (1892), 8 T. L. R. 582. **Mentd.** Westmeath *v.* Westmeath (1834), 3 Knapp, 42; *Re* Marlborough's Parliamentary Estates (1891), 8 T. L. R. 179; Cadogan *v.* Lyric Theatre (1894), 63 L. J. Ch. 775.

153. Of county court judge—Payable out of Consolidated Fund—For past services.]—Judgment having been obtained against a county ct. judge for a large sum, a judge's order, under Debtors Act, 1869, (c. 62), s. 5, was made for payment of the judgment debt by quarterly instalments, & there being no other means of enforcing obedience to the order, writs of sequestration were issued under R. S. C., 1875, Ord. 47. Debtor having resigned his office, a pension of £1,000, *per annum* was granted to him under County Courts Act, 1852 (c. 54), s. 15, charged upon & payable out of the Consolidated Fund:—*Held:* this pension, being a reward for past services only, was liable to seizure under the writs of sequestration; & an order was made to restrain debtor from receiving the quarterly payments, & empowering the sequestrators to receive them, to the extent of the moneys due & payable under the judge's order.—WILLCOCK *v.* TERRELL (1878), 3 Ex. D. 323; 39 L. T. 84, C. A.

Annotations:—**Folld.** Sansom *v.* Sansom (1879), 4 P. D. 69. **Distd.** Birch *v.* Birch (1883), 8 P. D. 163. **Refd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127: Crowe *v.* Price (1889), 58 L. J. Q. B. 215. **Mentd.** *Re* Hoare, *Ex p.* Nelson (1880), 14 Ch. D. 41; Robinson *v.* Galland (1889), 37 W. R. 396; Holmes *v.* Millage, [1893] 1 Q. B. 551; Edwards *v.* Picard, [1909] 2 K. B. 903.

154. Of civil servant.]—The ct. in enforcing payment of alimony & costs will authorise sequestrators to receive portions of a civil service pension.—SANSOM *v.* SANSOM (1879), 4 P. D. 69; 48 L. J. P. 25; 39 L. T. 642; 27 W. R. 692.

155. Of officer of court.]—The ct. ordered the proportionate part of a pension granted to one of its officers, to be paid to the assignee of the pension on a day other than either of those mentioned in Court of Chancery Act, 1852 (c. 87), s. 50.—*Re* SUITOR'S FUND IN CHANCERY (1855), 24 L. T. O. S. 285, L. C.

156. —— Compensation to proctors for loss of monopoly—Under Probate Act, 1857 (c. 77).]—BLAKE *v.* HALSE (1892), 8 T. L. R. 789; 36 Sol. Jo. 733.

157. Of retired storekeeper of Ordnance Department—Granted under warrant of Commissioners of Treasury.]—E., a retired storekeeper of the Ordnance Department, having had an annual pension or superannuation allowance granted to him under the warrant of the Comrs. of the Treasury, assigned same to pltfs., the trustees of an insurance co., to secure the repayment of a loan & interest. Default being made in payment by deft., an application was made by the pltfs. to the Paymaster-General, who refused to make any payment to pltfs. Deft. subsequently became insolvent, & presented his petition to the Insolvent Ct., & the Chief Comr. made an order recommending that £50 a year, part of the pension, should be paid by the Paymaster-General to the official assignee. Pltfs. filed a bill, stating that they had not proved, & did not intend to prove, against the estate of E. for their debt, & praying for an injunction to restrain him from receiving the pension, or the balance thereof after such payment to the official assignee, who was not made a party to the suit:—*Held:* pltfs. were entitled to an injunction to restrain deft. from receiving the pension, except so much of it as had been recommended by the comr. to be paid to the official assignee.—LLOYD *v.* EAGLE (1858), 28 L. J. Ch. 389; 32 L. T. O. S. 194; 5 Jur. N. S. 187.

158. Of retired military officers.]—An assignment by a retired military officer of his pension for valuable consideration is void under 47 Geo. 3, sess. 2, c. 25, & the ct. refused an injunction to restrain the officer from applying for or receiving the pension.—LLOYD *v.* CHEETHAM (1861), 3 Giff. 171; 30 L. J. Ch. 640; 4 L. T. 576; 7 Jur. N. S. 1272; 9 W. R. 924; 66 E. R. 370.

Annotation:—**Refd.** Lucas *v.* Harris & Blair (1886), 56 L. J. Q. B. 15.

159. —— In Indian army—Awarded after Government of India Act, 1858 (c. 106).]—A pension was awarded by the Secretary of State for India, subsequently to the above Act, to an officer in Her Majesty's Indian army upon his retirement from service & an annuity was also granted by the Secretary of State for India to the same officer, in addition to his retiring pension:—*Held:* these were assignable.—CAREW *v.* COOPER (1863), 4 Giff. 619; 3 New. Rep. 188; 33 L. J. Ch. 289; 9 L. T. 641; 10 Jur. N. S. 11; 12 W. R. 198; 66 E. R. 854; *subsequent proceedings* (1864), 10 Jur. N. S. 429, L. C.

Annotation:—**Refd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127.

160. —— ——.]—The pension of an officer in the Indian army is not liable to sequestration for payment of costs & permanent maintenance.—BIRCH *v.* BIRCH (1883), 8 P. D. 163; 52 L. J. P. 88; 32 W. R. 96.

Annotations:—**Apprvd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127. **Consd.** Crowe *v.* Price (1889), 22 Q. B. D. 429.

161. —— —— Under Indian Pensions Act, 1871 (c. xxiii).]—The pensions of retired Indian staff-officers, conferred upon them as retiring pensions under the above Act, cannot be taken in execution either by means of the appointment of a receiver or in any other way.—LUCAS *v.* HARRIS (1886), 18 Q. B. D. 127; 56 L. J. Q. B. 15; 55 L. T. 658; 51 J. P. 261; 35 W. R. 112; 3 T. L. R. 106, C. A.

Annotations:—**Apld.** Crowe *v.* Price (1889), 22 Q. B. D. 429. **Distd.** *Re* Saunders, *Ex p.* Saunders, [1895] 2 Q. B. 424. **Consd.** Hollinshead *v.* Hazleton, [1916] 1 A. C. 428. **Refd.** Apthorpe *v.* Apthorpe (1887), 57 L. T. 518; Holmes *v.* Mittage (1893), 9 T. L. R. 217; Jones *v.* Coventry, [1909] 2 K. B. 1029. **Mentd.** Harris *v.* Beauchamp, [1894] 1 Q. B. 801; Minter *v.* Kent, Sussex & General Land Soc. (1895), 72 L. T. 186; *Re* Goudie, *Ex p.* Official Receiver *v.* Strand (1896), 3 Mans. 224; Tilling *v.* Blythe, [1899] 1 Q. B. 557.

162. Granted by East India Company.]—47 Geo. 3, sess. 2, c. 25, making void the assignment of military pensions, does not apply to a pension granted by the late East India Co.—HEALD *v.* HAY (1862), 3 Giff. 467; 31 L. J. Ch. 311; 5 L. T. 740; 8 Jur. N. S. 379; 10 W. R. 264; 66 E. R. 493.

Annotation:—**Refd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127.

163. ——.]—Debtor executed a deed of assignment of all his property, except a pension from the East India Co., to a creditor to secure a past debt:—*Held:* as this pension could not pass to his trustee in bkpcy., it formed no substantial exception from the assignment, & the assignment was an act of bkpcy.—*Re* KEELY, *Ex p.* HAWKER (1872), 7 Ch. App. 214; 41 L. J. Bcy. 34; 26 L. T. 54; 20 W. R. 322, L. JJ.

Annotations:—**Consd.** Crawcour *v.* Salter (1881), 18 Ch. D. 30. **Refd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127. **Mentd.** Philps *v.* Hornstedt (1872), L. R. 8 Exch. 26; *Re* Wood (1872), 7 Ch. App. 302.

164. Of retiring vicar—Under Incumbents Resignation Act, 1871 (c. 44).]—G., a clergyman who had resigned his benefice & was allowed a pension, sued S. his successor, for a half-yearly instalment of pension. Before the resignation S. obtained an assignment of a judgment debt against G. & of a mtge. debt on the advowson, & he pleaded, as set-off & counterclaim, these debts:—*Held:* as the pension was a provision for personal support, these debts could not be set off, nor could be matter of counterclaim against the instalments of pension claimed.—GATHERCOLE *v.* SMITH (1881), 7 Q. B. D. 626; 50 L. J. Q. B. 681; 45 L. T. 106; 45 J. P. 812; 29 W. R. 577, C. A.

165. *S. P.* GATHERCOLE *v.* SMITH (1881), 17 Ch. D. 1; 50 L. J. Ch. 671; 44 L. T. 439; 29 W. R. 434, C. A.

Annotations:—**Consd.** Lucas *v.* Harris (1886), 18 Q. B. D. 127. **Refd.** McBean *v.* Deane (1885), 30 Ch. D. 520; *Re* Saunders, *Ex p.* Saunders, [1895] 2 Q. B. 117; *Re* Fitzgerald, Surman *v.* Fitzgerald, [1904] 1 Ch. 573.

Granted as compensation on abolition of office.]—*See* Sub-sect. 6, *post.*

Appropriation of, in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 927–930, Nos. 7594–7615.

SUB-SECT. 5.—ALLOWANCES.

166. Annual allowance to assistant parliamentary counsel to Lords of the Treasury.]—The ct.

PART III. SECT. 13, SUB-SECT. 4.

158 i. *Of retired military officer—Part of pension.*]—In an action in rescission of a pension granted to a military man for military services:—*Held:* such pensions or a part thereof are not transferable.—*Re* CHRÉTIEN & ROY (1856), 6 L. C. R. 465.—**CAN.**

v. *Of prison officers.*]—The pension of a prison officer is not assignable.—BLAIR *v.* COGHLAN (1898), 33 I. L. T. 20.—**IR.**

w. *Of railway employee.*]—A railway officer in receipt of a retiring allowance under Rys. Act, 1890, s. 93, is not liable to be called upon to resume his duties, & his allowance is assignable.—CROUCH *v.* VICTORIAN RYS. COMRS., [1907] V. L. R. 80.—**AUS.**

x. *Of town clerk—Under Local Officers Superannuation Act (Ireland), 1869.*]—The pension payable to a retired town clerk, under above Act is not assignable.—BRENAN *v.* MORRISSEY (1890), 26 L. R. Ir. 618.—**IR.**

Sect. 13.—*Salaries, pensions, allowances, etc.: Subsects.* 5, 6 & 7. *Sect.* 14.]

will not appoint a receiver of the annual allowance paid to the Assistant Parliamentary Counsel to the Lords of the Treasury, before the hearing:—*Qu.:* whether that allowance be assignable.—COOPER *v.* REILLY (1830), 1 Russ. & M. 560; 39 E. R. 215, L. C.

Annotation:—**Refd.** *Re* Mirams, [1891] 1 Q. B. 594.

167. Superannuation allowance—Granted by Lords of the Treasury.]—The Lords of the Treasury directed A. to be placed on the superannuated list of the Customs, at a retiring allowance of £1,000 *per annum*, payable quarterly by the Receiver-General of Customs. A. assigned the allowance to B. for a valuable consideration:—*Held:* the Receiver-General should be restrained from paying over to A., & A. from receiving from the Receiver-General, moneys in the hands of the latter, on account of the arrears of the allowance.—HALL *v.* LACK (1843), 7 Jur. 527.

168. —— Granted by East India Company—Under East India Co. Act, 1813 (c. 155), s. 93.]—A superannuation allowance, granted by a resolution of the East India Co. to a retired clerk, under the above sect. is only a gratuity, & the grant, to be binding on the co., must be by deed. For both these reasons, the allowance is not a debt which can be attached on behalf of a judgment creditor of the grantee, under C. L. P. Act, 1854 (c. 125).—INNES *v.* EAST INDIA CO. (1856), 17 C. B. 351; 25 L. J. C. P. 154; 26 L. T. O. S. 221; 2 Jur. N. S. 189; 4 W. R. 245; 139 E. R. 1108.

Annotations:—**Distd.** Marchant *v.* Lee Conservancy Board (1873), L. R. 8 Exch. 290; *Re* Hayson, Booth *v.* Trail (1883), 49 L. T. 471. **Refd.** *Re* Keely, *Ex p.* Hawker (1872), 20 W. R. 322; Lucas *v.* Harris (1886), 18 Q. B. D. 127; Wells *v.* Wells (1914), 30 T. L. R. 437.

SUB-SECT. 6.—COMPENSATION ON ABOLITION OF OFFICE.

169. Revocable compensation—Awarded by the Government.]—The Comrs. of Customs, by the direction of the Lords of the Treasury, granted to A., as a compensation for the loss of an office which he had held in the Custom House, £500 a year, payable quarterly by the Receiver-General of Customs. A. assigned the allowance to B., for a valuable consideration, & subsequently took the benefit of the Insolvent Debtors Act, 1826 (c. 57). In a suit by B. against A. & the assignees of his estate, but to which neither the Lords of the Treasury nor the Comrs. of Customs were parties:—*Held:* the Receiver-General should be restrained from paying over to defts. moneys in his hands on account of the arrears of the allowance, unless the Lords of the Treasury or the Comrs. of Customs should order the contrary.

Semble: such compensation allowance, though revocable at the pleasure of the Govt., is assignable.—TUNSTALL *v.* BOOTHBY (1840), 10 Sim. 542; 9 L. J. Ch. 294; 59 E. R. 725, L. C.

170. Granted to public civil officers—Under Superannuation Act, 1834 (c. 24).]—Compensations granted to public civil officers under the above Act on reduction of office, are not assignable.—WELLS *v.* FOSTER (1841), 8 M. & W. 149; 10 L. J. Ex. 216; 5 Jur. 464; 151 E. R. 987.

Annotations:—**Distd.** Spooner *v.* Payne (1852), 1 De G. M. & G. 383. **Consd.** Willcock *v.* Terrell (1878), 3 Ex. D. 323; Hollinshead *v.* Hazleton, [1916] 1 A. C. 428. **Refd.** Dent *v.* Dent (1867), L. R. 1 P. & D. 366; Birch *v.* Birch (1883), 8 P. D. 163; Lucas *v.* Harris (1886), 18 Q. B. D. 127.

171. Pension to clerk on abolition of office.]—C. had assigned a pension which had been granted to him as a compensation in consequence of the Transport Office, in which he held the situation of clerk, being abolished, to R. to secure the payment of an annuity which the former had sold him. Upon the decease of R. his exors. applied to have the pension appropriated to pay the arrears:—*Held:* the pension was assignable.—BARRY *v.* DISNEY (1845), 4 L. T. O. S. 471.

172. Covenant to assign moiety of compensation—Bankruptcy of party entitled before compensation awarded.]—A party, entitled to compensation on the abolition of his office as Country Comr. of Bkpts., covenanted, during his office, that, if it was abolished, he would assign a moiety of such compensation. After the abolition of his office, & before compensation was awarded, he became bkpt., & he & his assignees assigned one moiety to the covenantee. A petition was presented, praying that the Accountant in Bkpcy., to whom the Lords of the Treasury had, pursuant to 5 & 6 Vict. c. 122, paid the compensation, which consisted of several years' arrears of an annuity, & an annuity of £35, might be directed to pay that moiety of the compensation arrears, & that moiety of the compensation annuity to him:—*Held:* the Accountant was at liberty to make such payments or draw such cheques in favour of the petitioner, in respect of the compensation arrears & compensation annuity, as he could have made in favour of the bkpt. if he had not become bkpt.—*Re* COX, *Ex p.* CORSER (1847), 11 Jur. 212.

Annotation:—**Refd.** *Re* Payne, *Ex p.* Spooner (1847), 17 L. J. Bcy. 11.

Annuity as Compensation—Appropriation of in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 929, No. 7609.

SUB-SECT. 7.—PROFITS OF OFFICE.

173. General rule.]—A. executed a deed, conveying & assigning his property to trustees, for the benefit of creditors. The operative part of the deed was in these words: "All & sundry superiorities, lands & heritages, debts heritable & movable, & whole goods, gear, sums of money, & effects; & in general my whole means & estate, heritable & movable, of whatever nature or denomination or wherever situated, presently belonging to me":—*Held:* these words did not pass the profits of a public office at that time filled by the grantor.

Semble: the profits of a public office cannot be assigned for the benefit of creditors.—HILL *v.* PAUL (1841), 8 Cl. & Fin. 295; 8 E. R. 116, H. L.

174. Private secretary to Secretary of State—Office not within Sale of Offices Act, 1551 (c. 16) ss. 2, 3.]—The office of private secretary to a Secretary of State does not fall within the meaning of the above sects., & may be assigned. So an assignment of the profits of all offices which deft. might acquire is legal, as it will be taken to mean of all offices that may be legally assigned.—HARRINGTON *v.* KLOPROGGE (1785), 2 Chit. 475; 2 Brod. & Bing. 678, n.; 6 Moore, C. P. 38, n.; 4 Doug. K. B. 5; 129 E. R. 1127.

Annotation:—**Refd.** Hill *v.* Paul (1841), 8 Cl. & Fin. 295.

175. Clerk of the Peace.]—An assignment by deed to trustees, of all the income, emoluments & profits, which during the life of the assignor, & his continuing to hold the office of Clerk of the Peace for W. should arise or become due to him as such clerk in respect of his office, after deducting the salary or allowance of his deputy for the time being, upon trust to pay interest, which should become due to A. & B. on certain debts due from the assignor to them, & from time to time to render & pay the surplus & residue of the income,

emoluments & profits to the assignor, after satisfying the trusts, is not a good or effectual assignment, nor valid in law, & the trustees are not entitled to receive such income & profits under such assignment.—PALMER *v.* BATE (1821), 2 Brod. & Bing. 673; 6 Moore, C. P. 28; 129 E. R. 1125.

Annotations:—**Apld.** Hill *v.* Paul (1841), 8 Cl. & Fin. 295. **Refd.** Clarke *v.* Richards (1835), 1 Y. & C. Ex. 351; *Re* Mirams, [1891] 1 Q. B. 594.

176. Coroner—Personal covenant to pay percentage of clear profits.]—Deft., being coroner, covenanted with pltf. to pay him a sum of 20 per cent. out of the clear profits of every fee paid to deft. for every inquest which he should hold during nine years, & to make the payment immediately after the receipt of the fee from the county:—*Held:* the covenant was not illegal.

I do not think that this is a covenant for the sale of an office; it is a mere personal covenant to pay a sum of money measured in a particular manner (LORD CAMPBELL, C.J.).—PUGH *v.* CARTTAR (1851), 17 L. T. O. S. 107; *sub nom.* HUGH *v.* CARTARR, 15 J. P. Jo. 322.

SECT. 14.—OTHER CHOSES.

177. Share of partner—Passing to survivor.]—Where joint adventurers enter into a covenant that, on the death of any, his part shall survive to the rest, effect will be given to the covenant, & an assignment of a share, at any rate if not supported by valuable consideration, will be ineffectual upon the death of the assignor.—HAYES *v.* KINGDOME (1681), 1 Vern. 33; 23 E. R. 288, L. C.

178. Interest in partnership—Not assignable at law.]—An interest in a partnership, though not assignable at law, is a thing of value, & may be the subject of a valid contract.—TEMPEST *v.* KILNER (1845), 2 C. B. 300; 3 Ry. & Can. Cas. 790; 15 L. J. C. P. 10; 6 L. T. O S. 152; 9 Jur. 1038; 135 E. R. 960.

179. —— Assignable.]—*Re* BAINBRIDGE, *Ex p.* FLETCHER, No. 12, *ante*.

180. Bail bond—To sheriff on arrest under writ of attachment.]—A bail-bond given to the sheriff on an arrest under a writ of attachment out of the Ct. of Ch. is not assignable by 4 & 5 Anne c. 16, s. 20.—MELLER *v.* PALFREYMAN (1832), 4 B. & Ad. 146; 1 Nev. & M. K. B. 696; 2 L. J. K. B. 49; 110 E. R. 411.

181. Lien on title deeds deposited—As security for debt.]—Where a debtor deposits a title deed with his creditor, as security for a debt, the interest which the creditor thereby acquires in the deed may be assigned by him to a third person.—HOBSON *v.* MELLOND (1841), 2 Mood. & R. 342, N. P.

182. Ticket in Derby lottery.]—A ticket in a Derby lottery, by the rules of which the holder of the winning horse is to receive a certain amount, is not transferable so as to give any party a right to sue the stakeholder for money had & received.—JONES *v.* CARTER (1845), 8 Q. B. 134; 15 L. J. Q. B. 96; 6 L. T. O. S. 170; 10 Jur. 33; 115 E. R. 825.

183. Contract in bill of lading.]—By the law of England, a chose in action is not transferable; by the custom of merchants it is transferable in one instance, that of a bill of exchange; but there is no authority to show that a bill of lading is transferable under such a custom, so as to enable a party to bring an action upon it (PARKE, B.).—THOMPSON *v.* DOMINY (1845), 14 M. & W. 403; 14 L. J. Ex. 320; 5 L. T. O. S. 268; 153 E. R. 532.

Annotations:—**Refd.** Grant *v.* Norway (1851), 10 C. B. 665; Tindall *v.* Taylor (1854), 4 E. & B. 219; Sewell *v.* Burdick (1884), 10 App. Cas. 74. **Mentd.** Crouch *v* Crédit Foncier of England (1873), L. R. 8 Q. B. 374; Bechuanaland Exploration Co. *v.* London Trading Bank, [1898] 2 Q. B. 658.

184. Charterparty—Not assignable at law.]—MANGLES *v.* DIXON, No. 349, *post*.

See, generally, SHIPPING & NAVIGATION.

185. Profits of college fellowship.]—An assignment by a fellow of the profits of his fellowship, by way of mtge., for securing the repayment of a sum of money advanced to him, & interest thereon, is not contrary to public policy, in respect of the duties incident to the situation or office; neither is there anything in the nature of the income of the fellowship from which it can be inferred that the emoluments are not assignable in equity.—FEISTEL *v.* KING'S COLLEGE, CAMBRIDGE (1847), 10 Beav. 491; 16 L. J. Ch. 339; 50 E. R. 671; *sub nom.* FIESTEL *v.* KING'S COLLEGE, 11 Jur. 506.

186. Calls on shares not yet payable—Railway company not expressly prohibited by special Act.]—Defts. signed judgment against a railway co. on Feb. 9, 1866, & on July 31 obtained a garnishee order *nisi* under C. L. P. Act, 1854 (c. 125), whereby it was ordered that all debts due & owing or accruing due from Lord P., a shareholder in the co., should be attached to answer the judgment. On May 12, pltfs., the contractors for the line, received from the co.'s engineer a certificate in the form agreed on by the co., that £96,200 was due to them for work done & materials supplied under the articles of agreement, one of the clauses of which authorised the engineer from time to time to "ascertain the extent & value of the works then executed & the materials then provided for the works by the contractors." Of this a sum of £11,000 represented materials provided for, but not actually affixed to, the line. On June 4, 1866, the co. issued to pltfs. paid-up shares to the amount of £56,200 in part satisfaction of the sum so certified to be due. On June 11 they made a call for £5 per share, payable on July 14, & on July 13 they, by a deed reciting that they were indebted to pltfs. in £40,000, assigned the call to them by way of security, with a power of sale at any time after Oct. 13. Before the garnishee order was made absolute, pltfs. claimed from Lord P. £1,000, being the amount of the call due upon 200 shares held by him; & the judge directed an issue, to try the validity of the assignment. Lord P. had no actual notice of the assignment, but he was present as a director at the board meetings at which it was resolved that the assignment should be made:—*Held:* (1) it was not illegal for a railway co., unless expressly prohibited from doing so by its special Act, to assign, by way of mtge., as security for a debt owing by the co., a call which though made had not become payable, & such assignment was not void by reason of the deed containing a power of sale by the mtgee., since such power might be separated from the rest of the deed; (2) if notice were necessary in such a case, which the ct. inclined to think it was

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PART III. SECT. 14.

a. *Option to purchase given to beneficiary under will.*]—A testator directed his trustees on the death of his wife to "offer to sell & convey to his sons P. M. & J., or such of them as might be then living, as tenants in common," for £1,000, B. property. The testator died in 1878 & P. in 1881. J. in 1889 assigned his interest under the will to pltfs. The testator's widow died in 1891 & the trustees refused to recognise pltfs. in the matter:—*Held:* J.'s interest was assignable.—JACOBS *v.* LARKIN (1892), 13 N. S. W. Eq. 62.—AUS.

b. *Licence to search for minerals.*]—A licence to search for minerals confers a right, & is more than a mere personal privilege; it would be a hardship if the grantee, after expenditure of money, could not assign his rights.—*Re* MILNER'S APPEAL (1877), 2 R. & C. 522.—CAN.

Sect. 14.—*Other choses. Part IV. Sect.* 1: *Subsects.* 1 *&* 2.]

not, Lord P. had such knowledge of the assignment as amounted to notice.—PICKERING *v.* ILFRACOMBE RY. CO. (1868), L. R. 3 C. P. 235; 37 L. J. C. P. 118; 17 L. T. 650; 16 W. R. 458.

Annotations:—*As to* (1) **Refd.** Mosse *v.* Killick (1881), 44 L. T. 149; Baker *v.* Hedgecock (1888), 39 Ch. D. 520; *Re* Burdett, *Ex p.* Byrne (1888), 20 Q. B. D. 310; Brunton *v.* Dixon (1892), 36 Sol. Jo. 556; Royal Exchange Assce. Corpn. *v.* Sjorforsakrings Akt. Vega, [1901] 2 K. B. 567; Stagg *v.* Medway (Upper) Navigation Co., [1903] 1 Ch. 169; Wild *v.* Simpson, [1919] 2 K. B. 544. *As to* (2) **Consd.** Cole *v.* Eley, [1894] 2 Q. B. 180; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Refd.** Robinson *v.* Nesbitt (1868), L. R. 3 C. P. 264; Punchard *v.* Tomkins (1882), 31 W. R. 286; *Re* Leavesley, [1891] 2 Ch. 1. *Generally*, **Mentd.** Farmers & Cleveland Dairies Co. *v.* Riley (1893), 9 T. L. R. 260.

187. Right to sum charged on real estate—Not yet due.]—Trustees of a term in land held the term on trust by sale, demise or mtge. to raise £2,000. H., who was entitled to a part of the £2,000, created an incumbrance on his share. The incumbrancer gave no notice to the trustees of the term. H. afterwards became bkpt.:—*Held:* the assignees in bkpcy. were entitled to the share of H., in priority to the incumbrancer, because the interest of H. was not an interest in the land itself, but in the nature of a chose in action, & notice to the trustees was necessary to complete the incumbrancer's title.—*Re* HUGHES' TRUSTS (1864), 2 Hem. & M. 89; 4 New Rep. 455; 33 L. J. Ch. 725; 10 L. T. 813; 10 Jur. N. S. 900; 71 E. R. 394.

Annotations:—**Consd.** *Re* Richards, Humber *v.* Richards (1890), 45 Ch. D. 589. **Refd.** *Re* Pooley, *Ex p.* Rabbidge (1878), 26 W. R. 646. **Mentd.** Ford *v* Tynte (1865), 34 L. J. Ch. 452; Cooke *v.* Hemming (1868), L. R. 3 C. P. 334.

188. Allowance to committee for lunatic—No obligation to account.]—An order was made that the brother of a lunatic, who was committee of his estate, should be allowed to retain the family mansion & grounds & the heirlooms therein for his own occupation & use, & that of his unmarried sisters, & that £4,000 a year should be allowed him for his expenses in reference thereto. The committee with his sisters occupied the mansion accordingly, & incurred heavy &, as it was alleged, unreasonable expenses about the establishment. The income being insufficient to pay the allowance, it fell into arrear, & the committee mortgaged the arrears. He subsequently was removed from being committee & became bkpt., & a large amount of bills incurred in keeping up the establishment remained unpaid. A surplus having arisen applicable to payment of the arrears, the new committee presented a petition for direction as to its application:—*Held:* although the allowance was made to the former committee without any obligation to account, & with an intention indirectly to confer a benefit on him & his sisters, still it was an allowance made to a person in a fiduciary position for a particular purpose, & which he had no right to mortgage, & the mtgee. could stand in no better position than the committee himself.—*Re* WELD (1882), 20 Ch. D. 451; 51 L. J. Ch. 913; 46 L. T. 397; 30 W. R. 385, C. A.

Voluntary allowance paid to bankrupt—Whether court can attach.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 928, No. 7601.

Choses in reputed ownership of bankrupt.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 749, 750, Nos. 6463–6469.

Rights of vendor under hire-purchase agreement.]—*See* BILLS OF SALE, Vol. VII., pp. 32, 33, Nos. 167, 168.

Property in trade marks.]—*See* TRADE MARKS, TRADE NAMES, & DESIGNS.

Part IV.—What amounts to an Assignment.

SECT. 1.—UNDER JUDICATURE ACTS—"ABSOLUTE ASSIGNMENTS."

SUB-SECT. 1.—ORDERS TO PAY.

189. Cheque—Mere order to pay.]—A cheque is a mere order to pay & is not an assignment of anything. It cannot therefore be an absolute assignment of a debt or legal chose in action within 1873 Act, s. 25 (6).—SCHROEDER *v.* CENTRAL BANK OF LONDON, LTD. (1876), 34 L. T. 735; 24 W. R. 710; 2 Char. Pr. Cas. 77.

Annotations:—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Mentd.** Read *v.* Brown (1888), 22 Q. B. D. 128; *Re* Gunsbourg, *Ex p.* Trustee (1919), 88 L. J. K. B. 479.

——— **Whether equitable assignment.**] — *See* Sect. 2, sub-sect. 1, B. (*f*), *post.*

190. Direction to tenant to pay rent to third party—Until order countermanded.]—A landlord borrowed money of pltf., & gave him a letter addressed to his tenant, of which the tenant had notice, directing him to pay to pltf. the rent until the order should be countermanded by pltf.:—*Held:* this was an absolute assignment under 1873 Act, s. 25 (6) & pltf. could sue the tenant for the rent.—KNILL *v.* PROWSE (1884), 33 W. R. 163, D. C.

191. Written instructions to trustees by beneficiary—To pay balance due to third party.]—Defts., who were exors. & trustees under a will, sent to G., one of the residuary legatees, a statement of account showing a balance to be due to him on account of his share of the residuary estate. G., who lived in Australia, sent this account to pltf., his daughter, with the following direction on it in his handwriting: "I hereby instruct the trustees in power to pay to my daughter, L., the balance shown in the above statement. . . ." Notice in writing of this document was given by pltf. to defts., who agreed to act upon it provided they were satisfied pltf. could give a proper receipt for the money, but they subsequently refused to be bound by it:—*Held:* whether this transaction was to be regarded as an equitable or legal assignment, as the assignor had done all in his power to complete it, & the trustees had accepted the obligation, the assignment was effectual.—HARDING *v.* HARDING (1886), 17 Q. B. D. 442; 55 L. J. Q. B. 462; 34 W. R. 775; 2 T. L. R. 856, D. C.

Annotations:—**Consd.** Brandts *v* Dunlop Rubber Co., [1904] 1 K. B. 387. **Refd.** *Re* Hancock, Hancock *v.* Berrey (1888), 57 L. J. Ch. 793; *Re* Hughes (1888), 59 L. T. 586; *Re* Westerton, Public Trustee *v.* Gray, [1919] 2 Ch. 104.

——.]—*See, generally*, BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., p. 299, Nos. 1992 *et seq.*

PART IV. SECT. 1, SUB-SECT. 1.

c. *How "absolute" character decided.*]—The question whether an order to pay is an "absolute" assignment or not so as to fall under Judicature Ordinance, s. 10, sub-s. 14, must be decided by reference to its form & not to the particular fact which gave rise to the assignment or the consideration upon which it is founded.—WILTON *v.* ROCHESTER GERMAN UNDERWRITERS AGENCY CO., [1917] 2 W. W. R. 732; 35 D. L. R. 262.—CAN.

192. Indorsement of insurance policy—Gift incomplete.]—The owner of a life policy gave it to his housekeeper with the following signed indorsement: "I authorise [naming her] my housekeeper & no other person to draw this insurance in the event of my predeceasing her this being my sole desire & intention at time of taking this policy out & this is my signature." The assignor paid the premiums until his death:—*Held:* the assignment was inoperative on the ground that the assignment was an incomplete gift, being either (1) a revocable mandate or authority which was revoked by the death of the assignor, or (2) if taking effect on the death, a testamentary document not duly executed.—*Re* WILLIAMS, WILLIAMS *v.* BALL, [1917] 1 Ch. 1; 86 L. J. Ch. 36; 115 L. T. 689; 61 Sol. Jo. 42, C. A.

Annotation:—**Consd.** *Re* Westerton, Public Trustee *v.* Gray, [1919] 2 Ch. 104.

See, generally, INSURANCE.

193. Order to bank to pay assignee sum on deposit—Accompanied by unindorsed deposit receipt—Letter to assignee—No notice to bank till after death of assignor.]—(1) About a year before his death, which happened in 1917, testator handed to his landlady, Mrs. G., an envelope addressed to her describing it as a present to her. She was about to open it, when he took it from her hand & said he would keep it for her & locked it up in his despatch box. After testator's death there was found in his despatch box an envelope containing a deposit receipt for £500 deposited with his bank in 1914, an order in writing signed by testator directing the bank to pay to Mrs. G. the sum of £500 then on deposit, & a letter addressed to Mrs. G.: "You have been very kind to me & I desire to make some return by giving you the amount of £500 now on deposit at the . . . bank as per receipt enclosed." The deposit receipt was not indorsed by testator & no notice was given to the bank of any assignment till after his death, the interest on the sum on deposit having been carried by the bank to his current account:—*Held:* there was a valid & complete gift to Mrs. G. of the sum on deposit by way of assignment under 1873 Act, s. 25 (6).

(2) Although before 1873 Act, the rule was that equity would only grant its aid to compel an assignor to allow the assignee to sue at law in his name when valuable consideration had been given for the assignment, s. 25 (6) of that Act has not only improved the position of the assignee as regards procedure by enabling him to sue in his own name, but has also enabled him so to sue in regard to a debt which has been assigned voluntarily.—*Re* WESTERTON, PUBLIC TRUSTEE *v.* GRAY, [1919] 2 Ch. 104; 88 L. J. Ch. 392; 63 Sol. Jo. 410.

Assignments to collect.]—*See* Sub-sect. 3, *post.*

SUB-SECT. 2.—ASSIGNMENTS BY WAY OF SECURITY.

194. Mortgage of debts—Proviso for redemption & reconveyance.]—By a mtge. deed in 1877 premises were assigned to secure payment of £1,380 due from the mtgor. to the mtgee. with interest, & the mtgor. covenanted to pay debt & interest six months thence. The mtgee. in 1878 deposited the deed with his bankers as security for the balance of his banking account, & by deed in 1879 assigned & transferred to them the sum of £1,380 due on the mtge. deed, & all interest thenceforth to become due, & all securities for principal & interest & all benefit & advantage thereof, & all his right, title, interest, & property, therein to secure repayment to the bankers of £939 then due to them on his banking account, & any further sum not exceeding £1,200 which might thereafter become due to them from him, with a proviso for reconveyance of the premises if the assignor should on a day named pay them back the £939 & any further sum not exceeding £1,200 which might be due with interest. The bank having given notice in writing of this assignment to the mtgor. sued him for £984 then due on the assignor's banking account:—*Held:* the assignment to the bank by the deed of 1879 was not an "absolute assignment (not purporting to be by way of charge only)" within 1873 Act, s. 25 (6), & the action could not be maintained.—NATIONAL PROVINCIAL BANK *v.* HARLE (1881), 6 Q. B. D. 626; 50 L. J. Q. B. 437; 44 L. T. 585; 29 W. R. 564.

Annotations:—**Distd. & Dbtd.** Burlinson *v.* Hall (1884), 12 Q. B. D 347. **Distd.** Ibberson *v.* Neck (1886), 2 T L. R. 427. **N.F.** Tancred *v.* Delagoa Bay & East Africa Ry. (1889), 23 Q. B. D. 239. **Refd.** Durham *v.* Robertson, [1898] 1 Q. B. 765; Hughes *v.* Pump House Hotel Co., [1902] 2 K. B. 190.

195. —— ——.]—A mtge. of debts due to the mtgor., made in the ordinary form with a proviso for redemption & reconveyance upon repayment to the mtgee., is "an absolute assignment (not purporting to be by way of charge only)" within 1873 Act, s. 25 (6).—TANCRED *v.* DELAGOA BAY & EAST AFRICA RY. CO. (1889), 23 Q. B. D. 239; 58 L. J. Q. B. 459; 61 L. T. 229; 38 W. R. 15; 5 T. L. R. 587, D.C.

Annotations:—**Apprvd.** Durham *v.* Robertson, [1898] 1 Q. B. 765. **Distd.** Mercantile Bank of London *v.* Evans, [1899] 2 Q. B. 613. **Consd.** Hughes *v.* Pump House Hotel Co. [1902] 2 K. B. 190. **Refd.** Cronk *v.* M'Manus (1892), 8 T. L. R. 449; English & Scottish Mercantile Investment Trust *v.* Brunton, [1892] 2 Q. B. 1.

196. —— ——.]—(1) A mtge. of debts due to the mtgor., made in the ordinary form with a proviso for redemption & reassignment upon repayment to the mtgor, is "an absolute assignment (not purporting to be by way of charge only)" within 1873 Act, s. 25 (6).

(2) Where there is an absolute assignment of a debt, but by way of security, a right to a reassignment on redemption will be implied, & 1873 Act, s. 25 (6) is applicable to such an assignment.

(3) *Qu.:* whether an assignment of part of an entire debt is within the enactment.

(4) A firm of builders delivered to pltfs. a document in the following terms: "Re Building Contract, S. R.—In consideration of money advanced from time to time we hereby charge the sum of £1,080 which will become due to us from R. on the completion of the above buildings, as security for the advances, & we hereby assign our interest in the above mentioned sum until the money with added interest be repaid to you." Pltfs. gave notice to R. & brought this action against him to recover the amount:—*Held:* the document was not "an absolute assignment (not purporting to be by way of charge only)" within 1873 Act, s. 25 (6), & pltfs. could not recover in the action.

(5) To operate as an equitable assignment no particular form of words is required in the document; an engagement or direction to pay, out of a debt or fund, a sum of money constitutes an equitable assignment, though it does not operate

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d. *Indorsement on instrument—Accompanied by delivery of instrument.*]—A direction in writing to pay the amount due on an instrument, indorsed on such instrument by the payee thereof, coupled with delivery of the instrument so indorsed to the person to whom payment is directed, is an assignment of such document within Transfer of Property Act, 1882, s. 130.—RAMA IYEN *v.* VENKATACHELLAM PATTER (1906), I. L. R. 30 Mad. 75.—IND.

Sect. 1.—*Under Judicature Acts—"Absolute Assignments": Sub-sects.* 2 & 3. *Sect.* 2: *Sub-sect.* 1, *A. & B.* (*a*).]

as an assignment of the whole fund or debt (CHITTY, L.J.).—DURHAM BROTHERS *v.* ROBERTSON, [1898] 1 Q. B. 765; 67 L. J. Q. B. 484; 78 L. T. 438, C. A.

Annotations:—*As to* (1) **Consd.** *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38. **Refd.** Bateman *v.* Hunt, [1904] 2 K. B. 530; Jones *v.* Woodward (1917), 116 L. T. 378. *As to* (3) **Refd.** Mercantile Bank of London *v.* Evans (1898), 79 L. T. 496; Jones *v.* Humphreys, [1902] 1 K. B. 10; Torkington *v.* Magee, [1902] 2 K. B. 427; Nelson *v.* Nelson Line (Liverpool), [1906] 2 K. B. 217; Skipper & Tucker *v.* Holloway & Howard, [1910] 2 K. B. 630; *Re* Steel Wing Co., [1921] 1 Ch. 349. *As to* (4) **Consd.** Hughes *v.* Pump House Hotel Co., [1902] 2 K. B. 190. **Refd.** Brandts *v.* Dunlop Rubber Co., [1904] 1 K. B. 387. *As to* (5) **Apld.** *Re* Griffin, Griffin *v.* Griffin, [1899] 1 Ch. 408.

197. Transfer of right to equity of redemption.]—CRONK *v.* M'MANUS (1892), 8 T. L. R. 449.

198. Interest in solicitor's bill of costs—Undertaking to assist in recovery.]—IBBERSON *v.* NECK (1886), 2 T. L. R. 427.

199. To bank as security for advances—Assignee entitled to sue in assignor's name.]—Pltfs. made an advance to a customer who, in consideration thereof, assigned to them the whole of his rights & interest under an agreement between himself & others, of whom deft. was one, as security for the repayment on demand of the advance, & by the assignment he appointed pltfs. his nominees in pursuance of the provisions of the agreement, with power to exercise all his rights thereunder either in his name or in pltfs.' own name, & he appointed them his attorneys in that behalf. In an action to recover from deft. moneys alleged to be due under the agreement:—*Held:* the assignment was not an absolute assignment within 1873 Act, s. 25 (6).—MERCANTILE BANK OF LONDON *v.* EVANS, [1899] 2 Q. B. 613; 68 L. J. Q. B. 921; 81 L. T. 376; 15 T. L. R. 535, C. A.

Annotations:—**Distd.** Hughes *v.* Pump House Hotel Co., [1902] 2 K. B. 190; Brandts *v.* Dunlop Rubber Co. (1904), 90 L. T. 106. **Mentd.** Russell *v.* Fryers (1909), 25 T. L. R. 414.

200. —— Whole right & interest in moneys payable under building contract.]—A contractor for certain building works executed an instrument in writing, by which, in consideration of bankers continuing a banking account with him, & by way of continuing security to them for all moneys due or to become due to them from him on the said account, he assigned to them all moneys due, or to become due, to him from the building owners under the building contract, & he thereby empowered them on his behalf, & in his name, to settle & adjust all accounts in connection with the works, to give effectual receipts for the moneys thereby assigned, which should discharge the person paying the same from being concerned to see to the application thereof, & also, if necessary, to sue for, or take such other steps as they might think necessary for enforcing payment of the moneys thereby assigned, & he further thereby undertook at their request & his own cost to do & execute all such further acts, deeds, & things as they might reasonably require for giving full effect to the security thereby created. Notice in writing of this assignment was given to the building owners:—*Held:* the above-mentioned instrument having the effect of passing the whole right & interest of the assignor in the moneys payable under the building contract to the assignees by way of security, it was an absolute assignment (not purporting to be by way of charge only) within 1873 Act, s. 25 (6).—HUGHES *v.* PUMP HOUSE HOTEL CO., [1902] 2 K. B. 190; 71 L. J. K. B. 630; 86 L. T. 794; 50 W. R. 660; 18 T. L. R. 654, C. A.

Annotations:—**Consd.** Horwood *v.* Millars Timber & Trading Co. (1916), 114 L. T. 792. **Refd.** Bateman *v.* Hunt, [1904] 2 K. B. 530; Russell *v.* Fryers (1909), 25 T. L. R. 414; *Re* Steel Wing Co., [1921] 1 Ch. 349.

SUB-SECT. 3.—ASSIGNMENTS TO COLLECT.

201. Assignee to pay himself out of proceeds—Surplus for assignor.]—A deed by which debts were assigned to pltf. upon trust that he should receive them, & out of them pay himself a sum due to him from the assignor, & pay the surplus to the assignor:—*Held:* (1) an absolute assignment (not purporting to be by way of charge only) within 1873 Act, s. 25 (6); (2) pltf. might sue in his own name for the debts.—BURLINSON *v.* HALL (1884), 12 Q. B. D. 347; 53 L. J. Q. B. 222; 50 L. T. 723; 48 J. P. 216; 32 W. R. 492, D. C.

Annotations:—*As to* (1) **Folld.** Tancred *v.* Delagoa Bay & East Africa Ry. (1889), 23 Q. B. D. 239. **Consd.** Hughes *v.* Pump House Hotel Co., [1902] 2 K. B. 190. **Refd.** Ibberson *v.* Neck (1886), 2 T. L. R. 427; Cronk *v.* M'Manus (1892), 8 T. L. R. 449; Russell *v.* Fryers (1909), 25 T. L. R. 414.

202. Assignee to pay over all moneys received.]—An assignment of debts by tradesmen conditioned that the assignee should pay over to them all moneys recovered:—*Held:* an absolute assignment within 1873 Act, s. 25 (6).—COMFORT *v.* BETTS, [1891] 1 Q. B. 737; 60 L. J. Q. B. 656; 64 L. T. 685; 55 J. P. 630; 39 W. R. 595; 7 T. L. R. 475, C. A.

Annotations:—**Folld.** Wiesener *v.* Rackow (1897), 76 L. T. 448. **Distd.** Mercantile Bank of London *v.* Evans, [1899] 2 Q. B. 613. **Consd.** Hughes *v.* Pump House Hotel Co., [1902] 2 K. B. 190. **Folld.** Fitzroy *v.* Cave, [1905] 2 K. B. 364.

203. ——.]—A foreigner resident abroad assigned to pltf. a debt, due to him from deft., by a deed which purported, in consideration of £50, paid by pltf., to assign the debt absolutely. In fact, the assignment was made to pltf. in order to enable him to sue in England in his own name to recover the debt for the benefit of the assignor, & pltf. had not paid any sum by way of consideration to the assignor:—*Held:* there was an absolute assignment in writing within 1873 Act, s. 25 (6) which entitled pltf. to sue in his own name.—WIESENER *v.* RACKOW (1897), 76 L. T. 448; 13 T. L. R. 358; 41 Sol. Jo. 422, C. A.

204. Letter authorising collection of freight due—Given by owners of steamer.]—Pltfs., carrying on business at C. as ships' brokers & agents, sued defts. for £317 as freight payable for the carriage of goods from R. to C. per SS. B., a German ship, for which pltfs. were acting as agents, defts. being the consignees of a portion of the cargo. The ship arrived at C. on July 20, 1914. The freight could not be ascertained until the cargo had been measured, & pltfs. following the practice at the port of C. took from the master of the B. a document in the following terms, which was signed by the master: "Dear Sirs, I hereby

PART IV. SECT. 1, SUB-SECT. 2.

199 i. *To bank as security for advances—Assignee entitled to sue without joining assignor—Judicature Act*, 1898 (*c.* 21), *s.* 10—*Statute Law Amendment Act*, 1907 (*c.* 5), *s.* 7.]—IMPERIAL BANK OF CANADA *v.* GEORGES & SON, GEORGES & SON *v.* KIDD (1909), 12 W. L. R. 398.—**CAN.**

199 ii. *S. P.* FARNEY *v.* CANADIAN CARTAGE CO., [1917] 3 W. W. R. 758.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.

202 i. *Assignee to pay over all moneys received.*]—Pltf., in C., & contractors in U.S.A., had performed work in C., for which the employer refused to pay. The contractors, without pltf.'s knowledge, assigned their claims to him absolutely, for collection by him. This was communicated to pltf., who assented to the arrangement:—*Held:* not an "absolute assignment" within Judicature Act, 1897, s. 51, s. 58 (5).—MILLS *v.* SMALL (1907), 9 O. W. R. 421; 14 O. L. R. 105.—**CAN.**

authorise [pltfs.] to collect the freight due to my steamer the SS. B. on the cargo of timber from R. on my steamer." On the strength of that document pltfs. made disbursements on behalf of the ship & collected some of the freight, some of which they remitted to Germany, after which a balance was still due to pltfs. in respect of disbursements. Pltfs. gave defts. due notice of the master's letter, which they relied upon as an assignment :—*Held :* the document was not an assignment at all, but if it were it was at most an equitable assignment, &, as the assignees had not been joined, pltfs. were not entitled to recover.—HARPER (H. G.) & Co. *v.* BLAND (J.) & Co., LTD. (1914), 84 L. J. K. B. 738 ; 112 L. T. 724 ; 31 T. L. R. 116 ; 13 Asp. M. L. C. 49 ; 20 Com. Cas. 143.

Whether amounting to equitable assignment.]—*See* Sect. 2, sub-sect. 1, B. (*b*), *post.*

SECT. 2.—APART FROM JUDICATURE ACTS—"EQUITABLE ASSIGNMENTS."

SUB-SECT. 1.—EXPRESSION OF INTENTION.

A. In General.

205. Form immaterial—Where intention to transfer debt to third person clear.]—Pltfs., who were as bankers financing a firm, which imported india-rubber, had accepted bills drawn by the sellers abroad for the price of india-rubber bought by the firm, & afterwards resold by them to defts. When the india-rubber was delivered to defts., the firm sent to pltfs. a document consisting of two parts, which were detachable from one another, & were in substance as follows. The first part was a letter signed by the firm, & addressed to defts., requesting them to sign & forward to pltfs. the attached letter, which formed the other part of the document. That letter was addressed to pltfs., & stated that the undersigned begged to confirm that they would remit the price of the india-rubber due from them to the firm direct to pltfs. for account of the firm. Pltfs. forwarded the document to the works belonging to defts., where the letter attached was signed by defts.' manager, who returned it to pltfs. The manager had no authority from defts. to sign such a document. He omitted to advise defts. of the fact that he had signed the letter, & they consequently paid the price of the india-rubber to the firm, who afterwards became bkpt. In an action brought by pltfs. against defts. for the price of the india-rubber :—*Held :* (1) there was evidence of an equitable assignment of the debt to pltfs. with notice to defts., & pltf. could recover the debt from defts.

(2) To constitute a good equitable assignment of a debt all that is necessary is that debtor should be given to understand that the debt has been made over by the creditor to some third person, & if debtor disregards such notice he does so at his peril.

An equitable assignment does not always take the form of an assignment. It may be addressed to debtor. It may be couched in the language of command. It may be a courteous request. It may assume the form of mere permission. The language is immaterial if the meaning is plain. All that is necessary is that debtor should be given to understand that the debt has been made over by the creditor to some third person. If debtor ignores such a notice, he does so at his peril. If the assignment be for valuable consideration & communicated to the third person, it cannot be revoked by the creditor or safely disregarded by debtor (LORD MACNAGHTEN).

(3) [1873 Act] does not forbid or destroy equitable assignments or impair their efficacy in the slightest degree. Where the rules of equity & the rules of the common law conflict, the rules of equity are to prevail. Before the statute there was a conflict as regards assignments of debts & other choses in action. At law it was considered necessary that debtor should enter into some engagement with the assignee. That was never the rule in equity (LORD MACNAGHTEN).—BRANDT'S (WILLIAM) SONS & CO. *v.* DUNLOP RUBBER CO., [1905] A. C. 454 ; 74 L. J. K. B. 898 ; 93 L. T. 495 ; 21 T. L. R. 710 ; 11 Com. Cas. 1, H. L. ; *revsg.*, [1904] 1 K. B. 387, C. A.

Annotations :—As to (1) **Apld.** Wilson *v.* Ragosine (1915), 84 L. J. K. B. 2185. **Refd.** Kleinwort *v.* Dunlop Rubber Co. (1907), 97 L. T. 263 ; *Re* Steel Wing Co., [1921] 1 Ch. 349. *As to* (2) **Apld.** Shaw *v.* Moss Empires & Bastow (1908), 25 T. L. R. 190. **Refd.** Continental Caoutchouc & Gutta Percha Co. *v.* Kleinwort (1904), 90 L. T. 474 ; Saunderson *v.* Clark (1913), 29 T. L. R. 579 ; *Re* Williams, Williams *v.* Ball, [1917] 1 Ch. 1 ; *Re* Gunsbourg, *Ex p.* Trustee (1919), 88 L. J. K. B. 479. *As to* (3) **Consd.** German *v.* Yates (1915), 32 T. L. R. 52.

206. —— No particular words necessary.]—ROW *v.* DAWSON, No. 262, *post.*

207. —— ——.]—WHITFIELD *v.* FAUSSET, No. 55, *ante.*

208. —— ——.]—WILKINSON *v.* WILKINSON, No. 618, *post.*

209. —— ——.]—DURHAM BROTHERS *v.* ROBERTSON, No. 196, *ante.*

B. Sufficiency of Orders, Directions, etc., to pay.

(a) Mere Intimation.

210 To fundholder—Of claims of third party on fund.]—In order to constitute an equitable assignment there must be an engagement to pay out of the particular fund.

A person, indebted on bond, being entitled to certain prize-money, & being pressed by his creditor for payment, promised that the debt should be paid out of the prize-money, & delivered to him the following written order, addressed to "Col. D. : My dear Friend, As I shall leave to you the distribution of the prize-money as soon as it shall be issued for me, I have to mention, that the exors. of the late S. are claimants on that fund for a bond debt, with interest, faithfully yours, H."—*Held :* the debt was not an equitable charge on the prize-money.—WATSON *v.* WELLINGTON (DUKE) (1830), 1 Russ. & M. 602 ; 8 L. J. O. S. Ch. 159 ; 39 E. R. 231.

Annotations :—**Consd.** Rodick *v.* Gandell (1852), 1 De G. M. & G.

PART IV. SECT. 2, SUB-SECT. 1.—A.

205 i. *Form immaterial—Where intention to transfer debt to third person clear.*]—No particular form of words is necessary to constitute an equitable assignment, provided it appears there is an intention of transferring the chose in action to the assignee.—BEECHAM *v.* PATER (1890), 16 V. L. R. 13.—**AUS.**

205 ii. —— ——.]—An order addressed to no one to "pay bearer" amount of salary due from Govt. is not an assignment of the salary unless it is shown to have been intended as such.—BRADLEY *v.* R. (1874), 1 P. E. I. 454.—**CAN.**

205 iii. —— ——.]—MCMASTER *v.* CANADA PAPER CO. (1884), 1 Man. L. R. 309.—**CAN.**

205 iv. —— ——.]—HILDITCH *v.* YOTT (1908), 9 W. L. R. 53.—**CAN.**

205 v. —— ——.]—NICKSON CO., LTD. *v.* DOMINION CREOSOTING CO., [1917] 2 W. W. R. 330.—**CAN.**

205 vi. —— ——.]—VAN DER MERWE *v.* FRANCK (1885), 2 S. A. R. 26.—**S. AF.**

205 vii. —— —— *Inference from words or acts sufficient.*]—HUGHES *v.* CHAMBERS (1902), 14 Man. L. R. 163.—**CAN.**

205 viii. —— —— ——.]—*Re* MCRAE ESTATE (1903), 6 O. L. R. 238.—**CAN.**

205 ix. —— —— *Without further action.*]—The intention to effect the cession should be clear & beyond doubt, & no further action should be necessary to complete the cession.—WRIGHT & CO. *v.* COLONIAL GOVERNMENT (1891), 8 S. C. 260.—**S. AF.**

Sect. 2.—Apart from Judicature Acts—"Equitable Assignments": Sub-sect. 1, B. (a), (b) & (c).]

763; Elkin *v.* Baker (1862), 11 C. B. N. S. 526. **Refd.** Burn *v.* Carvalho (1839), 4 My. & Cr. 690; *Re* Thornton (1862), 13 L. T. 568.

(b) Mere Authority to collect and pay.

211. Letter by creditor to solicitor of debtor—To receive debt & pay it to third party—Promise by solicitor to pay on receipt.]—(1) An agreement between a debtor & a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order directing such person to pay such funds to the creditor, will operate as an equitable assignment of such debt or funds.

(2) In equity, there may be a valid assignment of funds or property to be subsequently acquired, even in cases where the acquisition depends on contingencies & possibilities only.

(3) A railway co. was indebted to A., their engineer, who was greatly indebted to his banker: the latter having pressed for payment or security, A., by letter to the solrs. of the co., authorised them to receive the money due to him from the railway co., & requested them to pay it to the banker: the solrs., by letter, promised the banker to pay him such money on receiving it:—*Held:* this did not amount to an equitable assignment of the debt.—RODICK *v.* GANDELL (1852), 1 De G. M. & G. 763; 42 E. R. 749, L. C.

Annotations:—*As to* (1) **Apld.** Riccard *v.* Prichard (1855), 1 K. & J. 277. **Consd.** *Re* Gunsbourg, *Ex p.* Trustee (1919), 88 L. J. K. B. 479. **Refd.** *Re* Sheward, Sheward *v.* Brown, [1893] 3 Ch. 502; New Travellers' Chambers *v.* Cheese & Green (1894), 70 L. T. 271. *As to* (3) **Distd.** Brice *v.* Bannister (1878), 3 Q. B. D. 569.

212. Letter by debtor to solicitor directing payment of unpaid legacy to third person—Forwarded by solicitor to holders of fund.]—*Re* RUSSELL, RUSSELL *v.* OAKES (1893), 37 Sol. Jo. 212.

213. Instructions to solicitor to hold proceeds of action at disposal of third party—Subsequent deed of assignment for benefit of creditors.]—F., being the debtor of C. & the creditor of W., instructed his solrs., who were suing W. to hold the proceeds at the disposal of C. Subsequently F. called his creditors together, & a deed of assignment was executed by C. with the other creditors. The solrs. received part of the money due from W. before the execution of the deed by C., & the remainder afterwards. The deed contained a clause that it was not to prejudice the rights of creditors in respect of securities held against any person but the debtor:—*Held:* this was a good equitable assignment of the whole of the proceeds of the debt of W. & C. was entitled as against the trustee of the deed.—PALMER *v.* CULVERWELL, BROOKS & CO. (1901), 85 L. T. 758.

Letter authorising collection of freight due—Given by owner of steamer.]—*See* No. 204, *ante*.

See, also, Sect. 1, sub-sect. 3, *ante*.

(c) Order upon Debtor or Fundholder.

214. General rule.]—RODICK *v.* GANDELL, No. 211, *ante*.

215. To agent to deliver goods to assignee's agent—Letter sent at assignor's request.]—A., a merchant in P., being indebted to B., a merchant in L., on Apr. 11 sent, at B.'s request, an order, by letter, to C., his agent at B., to deliver to B.'s agent there all the goods belonging to A. in his, C.'s, hands. On May 23, A. committed an act of bkpcy., on which a commission issued. The order did not reach C. at B. till after May 23:—*Held:* the letter of Apr. 11 was an equitable assignment of the goods, & that B. was entitled.—BURN *v.* CARVALHO (1839), 4 My. & Cr. 690; 9 L. J. Ch. 65; 3 Jur. 1141; 41 E. R. 265, L. C.

Annotations:—**Apld.** Best *v.* Argles (1834), 2 Cr. & M. 394. **Consd.** Malcolm *v.* Scott (1843), 3 Hare, 39; Flint *v.* Walker (1847), 5 Moo. P. C. C. 178; Toulmin *v.* Reid (1851), 14 Beav. 499. **Distd.** Rodick *v.* Gandell (1852), 1 De G. M. & G. 763; Farley *v.* Turner (1857), 5 W. R. 666. **Consd.** Elkin *v.* Baker (1862), 3 Jur. N. S. 915. **Expld. & Distd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Apld.** Steele *v.* Stuart (1864), 3 New Rep. 686. **Refd.** *Re* Geering, *Ex p.* Sparks (1850), 14 L. T. O. S. 548; Bell *v.* L. & N. W. Ry. (1852), 15 Beav. 548; Pariente *v.* Lubbock (1855), 20 Beav. 588; Acraman *v.* Bates (1860), 6 Jur. N. S. 294; Sichel *v.* Raphael (1864), 3 New Rep. 662; *Re* Thornton (1865), 13 L. T. 568; Addison *v.* Cox (1872), 8 Ch. App. 76; Percival *v.* Dunn (1885), 29 Ch. D. 128: *Re* Sheward, Sheward *v.* Brown, [1893] 3 Ch. 502; Palmer *v.* Culverwell Brooks (1901), 85 L. T. 758. **Mentd.** Anon. (1849), 14 L. T. O. S. 138; *Re* Sparke, *Ex p.* Cohen (1870), 40 L. J. Bcy. 14; Calisher *v.* Forbes (1871), 25 L. T. 772.

216. Upon executor of debtor — Promise by executor to discharge on receiving assets.]—R. before her bkpcy., being pressed to discharge a debt, gave to her creditor a draft on the exor. of a debtor of hers, which draft the exor. promised to discharge on receiving assets:—*Held:* a good equitable assignment of the debt, & available against the assignees of R.—*Ex p.* ALDERSON (1815), 1 Madd. 53; 56 E. R. 21.

217. Authorising payment of sums accruing due—Notice to assignee.]—Monies were made payable by A. to B. at stated periods; B. gave a written authority to A. to pay parts of the money to C., & notice of the authority was given to A. by C.:—*Held:* such authority was an equitable assignment, & A. was bound to pay the money to C.—LETT *v.* MORRIS (1831), 4 Sim. 607; 1 L. J. Ch. 17; 58 E. R. 227.

Annotations:—**Consd.** Bell *v.* L. & N. W. Ry. (1852), 15 Beav. 548. **Refd.** Burn *v.* Carvalho (1839), 4 My. & Cr. 690; *Re* Geering, *Ex p.* Sparks (1850), 14 L. T. O. S. 548; Rodick *v.* Gandell (1852), 1 De G. M. & G. 763; Brice *v.* Bannister (1878), 3 Q. B. D. 569; Greenway *v.* Atkinson (1881), 29 W. R. 560. **Mentd.** MacGowan *v.* Smith (1856), 4 W. R. 690.

218. —— Notice to debtor.]—A., being indebted to B., gave him a written authority addressed to C., from whom certain sums of money were accruing due to A. authorising C. to pay those sums to B. Notice of this instrument was given to C.:—*Held:* it was an equitable assignment of the moneys in C.'s hands to B., creating a lien or charge upon them which might be successfully set up by C. when served with a garnishee order by a subsequent judgment-creditor of A.—SAUNDERSON *v.* PERRIN (1870), 22 L. T. 419.

219. —— Portions of instalments—Part payment at special request of assignor.]—A. owed B. money upon a contract. The money was payable by instalments. B. gave an order upon A. for payment of a portion of such money to C. A., at the request in writing of B., made two payments

PART IV. SECT. 2, SUB-SECT. 1.—B. (b).

e. Order authorising collection of money due.]—Where a person agrees to assign to a creditor money accruing due to him under a contract, and gives him an order authorising him to receive the amount, & sign a receipt for it, this effects an equitable assignment.—*Re* TAUPIRI EXTENDED COAL-MINING CO., LTD., *Ex p.* WHANGAREI COAL-MINING CO., LTD. (1887), 6 N. Z. L. R. 195.—N.Z.

PART IV. SECT. 2, SUB-SECT. 1.—B. (c).

f. Letter by creditor to debtor directing payment to third person.]—A. gave a draft on a corpn. indebted to him, & wrote to the corpn. directing them to pay the draft from the fund coming to him:—*Held:* the letter was a good equitable assignment.—ROBERTSON *v.* GRANT (1871), 3 Ch. Ch. 331.—CAN.

217 i. Authorising payment of sums accruing due.]—It is no objection to an assignment in equity of a claim against a third person, that the work upon which the claim is to arise has yet to be performed.—BUNTIN *v.* GEORGEN (1872), 19 Gr. 167.—CAN.

under the order to C., but refused to be personally bound by the terms of it. B. became insolvent, & some money was still due to C. under the order. C. filed a bill against A. & the assignees of B. for an account & payment :—*Held :* the order operated as an equitable assignment, & C. was entitled to an account of the money then due under it, without regard to any payments made by A.—MCGOWAN *v.* SMITH (1856), 26 L. J. Ch. 8 ; 4 W. R. 690.

Annotations :—**Distd.** *Re* Adams, *Ex p.* Shellard (1873), L. R. 17 Eq. 109. **Folld.** Greenway *v.* Atkinson (1881), 29 W. R. 560.

220. —— Money payable on completion of contract.]—An order in the following form given by a debtor to his creditor, & addressed to persons indebted to him, "We shall be obliged by your paying to S. the sum of £200 out of moneys payable to us on the completion of our contract" :—*Held :* a bill of exchange & not an equitable assignment.—*Re* ADAMS, *Ex p.* SHELLARD (1873), L. R. 17 Eq. 109 ; 43 L. J. Bcy. 3 ; 29 L. T. 621 ; 38 J. P. 260 ; 22 W. R. 152.

Annotations :—**Consd.** Buck *v.* Robson (1878), 3 Q. B. D. 686. **Apprvd.** *Re* Whitting, *Ex p.* Rowell (1878), 48 L. J. Bcy. 46. **Refd.** Fisher *v.* Calvert (1879), 27 W. R. 301.

See, further, BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., p. 495 Nos. 3135 *et seq.*

221. —— Future rents—Bankruptcy of assignor before rents due.]—A. wrote to his tenant, "When your Michaelmas rent becomes due to me, I hereby authorise & request you to pay to B. £200." Before the rent was due A. became bkpt. : —*Held :* though this was a good equitable assignment of £200, out of the rents, yet it was one that could not be specifically enforced by B., as the trustee in bkpcy. was entitled to the rents.—*Re* WHITTING, *Ex p.* HALL (1879), 10 Ch. D. 615 ; 48 L. J. Bcy. 79 ; 40 L. T. 179 ; 27 W. R. 385, C. A. ; *affg.* S. C. *sub nom. Re* WHITTING, *Ex p.* ROWELL (1878), 48 L. J. Bcy. 46.

Annotations :—**Expld. & Distd.** Greenway *v.* Atkinson (1881), 29 W. R. 560 ; Brandts *v.* Dunlop Rubber Co., [1904] 1 K. B. 387. **Refd.** Percival *v.* Dunn (1885), 29 Ch. D. 128. **Mentd.** Mounsey *v.* Rankin (1885), Cab. & El. 496 ; McManus *v.* Cooke (1887), 35 Ch. D. 681.

222. Authorising payment of whole amount due.]—A., having obtained a loan from B., gave him the following instrument, addressed to his, A.'s, debtor :—"I hereby authorise you to pay B. £365, being the amount of my contract, B. having advanced me that sum."—*Held :* a valid equitable assignment.—DIPLOCK *v.* HAMMOND (1854), 5 De G. M. & G. 320 ; 2 Eq. Rep. 738 ; 23 L. J. Ch. 550 ; 23 L. T. O. S. 181 ; 2 W. R. 500 ; 43 E. R. 893, L. JJ.

Annotations :—**Distd.** *Re* Adams, *Ex p.* Shellard (1873), L. R. 17 Eq. 109. **Consd.** *Re* Whitting, *Ex p.* Hall (1879), 10 Ch. D. 615. **Refd.** Brandts *v.* Dunlop Rubber Co., [1905] A. C. 454.

223. Assigning money due or to become due—Under contract.]—T. contracted with J. to build for him a steam launch for the sum of £80, the price to be paid when the boat should be completed & delivered. T., after receiving £40 on account, addressed a letter to J. as follows : "I hereby assign to R. the sum of £40 now due or that may hereafter become due in respect of the steam launch which I am building for you : "—*Held :* T.'s letter was not an order for the payment of money, but an assignment of a debt.—BUCK *v.* ROBSON (1878), 3 Q. B. D. 686 ; 48 L. J. Q. B. 250 ; 39 L. T. 325 ; 26 W. R. 804.

Annotations :—**Consd.** *Re* Whitting, *Ex p.* Rowell (1878), 48 L. J. Bcy. 46 ; Fisher *v.* Calvert (1879), 27 W. R. 301 ; Walker *v.* Bradford Old Bank (1884), 12 Q. B. D. 511. **Refd.** London Clearing Bankers Committee *v.* I. R. Comrs., [1896] 1 Q. B. 542 ; Mercantile Bank of London *v.* Evans (1898), 79 L. T. 496 ; *Re* Gunsbourg, *Ex p.* Trustee (1919), 88 L. J. K. B. 479.

224. —— Under will.]—T. being indebted to deft. in about £150, a legacy of £100 was left to his wife, whereupon T. & his wife signed & sent the following instrument to deft. : "We hereby authorise the exors. of A. to pay you any legacy or money that he may have bequeathed to us or either of us, in part payment of the various sums you have so kindly lent us, & your receipt shall be to them a sufficient discharge for same. There appears to be about £150 due to you." Deft. communicated to the exor. his claim to the legacy before T. petitioned for his discharge under Insolvent Debtors' Act, 1826 (c. 57), but the exor. then said he would pay the legatee. Before T. was discharged the exor. paid to T.'s wife her legacy, which she immediately handed to deft. :—*Held :* as it was doubtful whether the authority would operate in equity as an assignment to deft., divesting T. & his wife of all interest in the legacy, the interest in the legacy passed to the assignee of T. under Insolvent Act.—BEST *v.* ARGLES (1834), 2 Cr. & M. 394 ; 4 Tyr. 256 ; 3 L. J. Ex. 117 ; 149 E. R. 813

Annotations :—**Consd.** Tibbits *v.* George (1836), 5 Ad. & El. 107. **Refd.** Burn *v.* Carvalho (1839), 4 My. & Cr. 690 ; Liversidge *v.* Broadbelt (1859), 28 L. J. Ex. 332. **Mentd.** Vanderstegen *v.* Witham (1840), 6 M. & W. 457.

225. —— ——.]—M. being indebted to pltfs. gave them an unstamped document addressed to C., who was trustee of his father's will, in the following words :—"I hereby authorise & direct you to pay to pltfs. or their order the sum of £140 out of the moneys now due or hereafter to become due to me under the will of my late father, & before making any payment to me thereout" : —*Held :* such document was an equitable assignment.—FISHER *v.* CALVERT (1879), 27 W. R. 301.

Annotation :—**Mentd.** *Re* Whitting, *Ex p.* Hall (1879), 10 Ch. D. 615.

226. Letter to lessee of tithes directing arrears to be paid to mortgagee—Order to be discharged in settling accounts.]—The interest of a sum secured by a mtge. of tithes being in arrear, the mtgor. wrote & gave to the mtgee. a letter to the lessee of the tithes, desiring him to pay the sum in arrear to the mtgee. & to charge it to the mtgor. in settling for the tithes of the current year. The mtgor. sent the letter to the lessee, who undertook to pay the amount within a certain time. The payment, however, was never made :—*Held :* the letter was not an assignment in equity to the mtgee. of a debt due from the lessee to the mtgor. —BRAYBROOKE (LORD) *v.* MEREDITH (1843), 13 Sim. 271 ; 12 L. J. Ch. 289 ; 7 Jur. 144 ; 60 E. R. 106.

Annotation :—**Refd.** Diplock *v.* Hammond (1854), 2 Sm. & G. 141.

227. Agreement to pay if specified portion of debt unpaid—Assented to by debtor.]—In 1842 W., type-founders, were indebted to G., pltf.'s testator, in £6,000 for money lent. Deft., a member of the firm of E., printers, had been accustomed to purchase of W. large quantities of type, for which quarterly accounts used to be sent, & it was expected that those dealings would be continued. W. being applied to by G. for payment, delivered to him the following order, signed by them, & directed to deft. : "We hereby authorise you to pay on our account to the order of G. £6,000 at the

222 i. *Authorising payment of whole amount due.*]—Defender owed a small account to H., who indorsed on the back of it : "Pay within account to L" :—*Held :* the indorsement was like a letter directing payment to a person's servant or factor ; & operated as an effectual conveyance.—LAURIE *v.* OGILVY (1810), 15 Fac. Coll. 561.—SCOT.

222 ii. ——.]—RITCHIE *v.* M'LACHLAN (1870), 8 Macph. (Ct. of Sess.) 815 ; 42 Sc. Jur. 477.—SCOT.

Sect. 2.—Apart from Judicature Acts—"Equitable Assignments": Sub-sect. 1, B. (c), (d), (e), (f) & (g).]

following periods, deducting the amount from the quarterly accounts for type furnished to you & to E. *viz.* Nov. 11, 1843, £1,000; Nov. 11, 1844, £1,000; Nov. 11, 1845, £1,000; Nov. 11, 1846, £1,500; Nov. 11, 1847, £1,500." Deft., on receiving this order, wrote underneath—"Having received the foregoing authority from W. I undertake to make you the payments as above stated." The instalments were paid up to Nov. 11, 1844, but no other part of the £6,000 was paid. W. continued to furnish deft. with type, the quarter's account of which, up to Dec. 31, 1845, amounted to £651 0*s.* 9*d.* On Dec. 18, 1845, deft. wrote to W. stating that he considered himself bound to see all the amounts due from him to them applied in payment of the debt due to G.:—*Held:* (1) the documents amounted to an agreement that, if any of the specified portions of debt mentioned therein were at any time unpaid by W. to G., & if, after that event had occurred & come to the knowledge of deft., any quarterly accounts for type should become due from deft. to W., deft. would, so far as those accounts would extend, pay the debt due from W. to G.; (2) such agreement, when assented to by all parties, was irrevocable, & pltfs. were entitled to recover the £651. 0*s.* 9*d.*—HAMILTON *v.* SPOTTISWOODE (1849), 4 Exch. 200; 18 L. J. Ex. 393; 14 L. T. O. S. 108; 154 E. R. 1182.

Annotations:—*As to* (1) **Distd.** Greenway *v.* Atkinson (1881), 29 W. R. 560. *As to* (2) **Distd.** Liversidge *v.* Broadbent (1859), 4 H. & N. 603.

228. Authorising debtor to pay specified sum to assignee—Out of amount due—Acceptance of authority by debtor.]—Messrs. K. were indebted in the sum of £100 to pltfs., who declined to allow time for payment unless they received further security. Deft. was indebted to Messrs. K. in respect of work done by them for him. In consequence of negotiations between Messrs. K. & pltfs., K. on July 31, 1879, brought to deft. a document signed by Messrs. K., & authorising him to pay to pltfs. the sum of £100., to be deducted from the money due from deft. to Messrs. K. Deft. wrote on the document, "I accept this authority," & on the following day Messrs. K. handed it to pltfs. On Aug. 2, deft. received a notice from Messrs. K. to the effect that pltfs. having taken bills in satisfaction of the debt, they cancelled the authority given by them to deft. Messrs. K. subsequently failed, & deft. who had no previous communication with pltfs., received from them a notice that they held the document in question, & requested payment of the amount. Deft. refused to pay, &, in an action for the amount, judgment was entered for pltfs.:—*Held:* (1) the document of July 31 was in itself a sufficient equitable assignment of the debt due from deft., but (2) an account should be taken by an official referee, who should report to the ct. as to what was, in fact, due from deft. to Messrs. K., at that date.—GREENWAY *v.* ATKINSON (1881), 29 W. R. 560, C. A.

Authorising payment out of specified fund.]—*See* Sub-sect. 2, *post.*

Whether amounting to bill of exchange.]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., Part II., Sects. 1, 2, Part XXV., Sect. 1, sub-sect. 1.

(d) Powers of Attorney.

229. Agreement in nature of letter of attorney—Assigning wages as security for debt.]—A seaman assigned his wages to S. as a security for a debt he owed to S. & died intestate:—*Held:* this was only an agreement in nature of a letter of attorney, & determined by the seaman's death.—MITCHELL *v.* EDES (1700), 2 Vern. 391; Prec. Ch. 125; 23 E. R. 851.

Annotation:—**Refd.** Lepard *v.* Vernon (1813), 2 Ves. & B. 51.

230. Power of attorney to creditor to receive debt—No accompanying assignment—Declaration that creditor to apply money to debt.]—A power of attorney to a creditor to receive a debt, not accompanying any assignment of it, nor making part of any security given, but with declarations that it was to enable the creditor to apply the money to his debt:—*Held:* not an appropriation.—LEPARD *v.* VERNON (1813), 2 Ves. & B. 51; 35 E. R. 237.

Annotations:—**Distd.** Gurnell *v.* Gardner (1863), 3 New Rep. 59. **Mentd.** Gaunt *v.* Taylor (1843), 2 Hare, 413; Sneesby *v.* Thorne (1855), 3 Eq. Rep. 662; *Re* Ingham, Jones *v.* Ingham, [1893] 1 Ch. 352; Astbury *v.* Astbury, [1898] 2 Ch. 111.

231. Deed poll in form of power of attorney.]—A deed poll in the form of a power of attorney:—*Held:* in equity, to amount to an assignment or to a covenant to assign.—BENNETT *v.* COOPER (1846), 9 Beav. 252; 15 L. J. Ch. 315; 7 L. T. O. S. 299; 10 Jur. 507; 50 E. R. 340.

Annotations:—**Consd.** *Re* Clarke, Coombe *v.* Carter (1887), 36 Ch. D. 348. **Mentd.** *Re* Seager's Estate, Seager *v.* Aston (1857), 29 L. T. O. S. 154; Tailby *v.* Official Receiver (1888), 13 App. Cas. 523.

(e) Bills of Exchange and Directions relating thereto.

232. Drawn for exact amount of debt—Funds in hands of drawee.]—B. had a fund in his hands belonging to C.:—*Held:* a bill of exchange drawn by C. on B. for the exact amount of the fund was

PART IV. SECT. 2, SUB-SECT. 1.—B. (d).

g. Power of attorney to collect—Intention to assign fund.]—A power of attorney authorising the attorney to collect a sum of money does not *per se* operate as an equitable assignment of the fund; if, however, it appears from all the surrounding circumstances that it was the intention of the parties that the fund should be assigned, an equitable assignment is established.—TRADERS BANK *v.* MCKAY (1909), 2 Alta. L. R. 31.—**CAN.**

h. —— & pay—Absence of intention to assign fund.]—S. executed a power of attorney to D. empowering him to recover all moneys payable to S. for paying his debts. The power was to continue in force until notice of death or revocation. S. also gave D. a letter addressed to the fundholders, to whom it subsequently was delivered informing them that he had instructed D. to pay his creditors & requesting them to pay to D. all future moneys to which S. might be entitled. The intention of S. & D. was that the relation between them should be that of principal & agent:—*Held:* the documents did not constitute an assignment.—SMITH *v.* PERPETUAL TRUSTEE CO. (1910), 11 C. L. R. 148.—**AUS.**

230 i. Power of attorney to creditor to receive debt—Creditor to apply moneys to debt.]—A., writing to a creditor, authorised him to collect money & apply it on account of his debt, & declared that the power should not be revoked by the debtor's death. The debtor died before collection:—Held: the writing was not an equitable assignment, but a power of attorney revocable by the grantor's death.—*Ex p.* WELCH, CHAPMAN *v.* GILFILLAN (1900), 2 N. B. Eq. Rep. 129; 21 C. L. T. Occ. N. 96.—**CAN.**

k. Power of attorney to solicitors to receive money—& pay a third party.]—S., a creditor of the estate of a deceased person which was being administered by the ct., gave a power of attorney to his solicitors to receive all moneys coming to him under a decree, & by a letter authorised them, after satisfying their own claims to pay any balance to M. The solicitors in the presence of M., agreed to draw the money & pay M.:—*Held:* S. had made a valid equitable assignment to M.—SHAIK MULL *v.* SINGARAVELU MUDALI (1883), I. L. R. 6 Mad. 294.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (e).

232 i. Drawn for exact amount of debt.]—Deft. purchased goods from L., who drew on deft. through M. Bank. The manager of the bank discounted the bill for L. on the faith of L.'s representation that deft. owed him the money & would call & accept it:—*Held:* this was not sufficient to constitute an equitable assignment of the debt by L. to the bank.—LAMB *v.* SUTHERLAND, LAMB *v.* ALLEN (1875), 37 U. C. R. 143.—**CAN.**

not an equitable assignment.—SHAND *v.* DU BUISSON (1874), L. R. 18 Eq. 283; 43 L. J. Ch. 508; 22 W. R. 483.

Annotation :—**Mentd.** Levy *v.* Lovell (1880), 14 Ch. D. 234.

233. Drawn against consignment — Bills of lading sent to consignee—Priority of consignee's lien.]—The general lien of a consignee cannot be set up against the express directions of the consignor given to him at the time when the cargo is accepted.

B. consigned a cargo to defts., & sent to them the bill of lading in a letter, saying: "The present serves to cover bill of lading for, &c., shipped per C., against which we have valued on you at six months in favour of F., for £1,200 which please kindly protect." On the same day B. sent to F. the bill of exchange which was drawn on deft. to the order of F., & concluded "place the same with or without advice to account consignment per C." After the bill of lading arrived F. presented the bill, but defts. refused to accept it. Shortly afterwards B. stopped payment, & afterwards the cargo arrived :—*Held :* it was effectually appropriated to meet the bill & F. had a lien upon it in priority to the claim of defts. for the balance due to them on their general account as consignees.—FRITH *v.* FORBES (1862), 4 De G. F. & J. 409; 32 L. J. Ch. 10; 8 Jur. N. S. 1115; 11 W. R. 4; 1 Mar. L. C. 253; 45 E. R. 1242, L. JJ.

Annotations :—**Distd.** Robey Perseverance Ironworks *v.* Ollier (1872), 7 Ch. App. 695. **Expld.** *Re* Entwistle, *Ex p.* Arbuthnot (1876), 3 Ch. D. 477. **Distd.** Ranken *v.* Alfaro (1877), 5 Ch. D. 786; *Re* Suse, *Ex p.* Dever (1884), 13 Q. B. D. 766. **Consd.** Brown, Shipley *v.* Kough (1885), 29 Ch. D. 848. **Distd.** Phelps, Stokes *v.* Comber (1885), 29 Ch. D. 813.

Directions on bill — To charge same on account of specific consignments.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 705, 706, Nos. 6190, 6191; BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 297–299, Nos. 1982–1988.

(f) Cheques, Letters of Credit, Deposit Receipts, etc.

234. Cheque.]—A cheque is not an equitable assignment of the drawer's balance at his bankers.—HOPKINSON *v.* FORSTER (1874), L. R. 19 Eq. 74; 23 W. R. 301.

Annotations :—**Refd.** Schroeder *v.* Central Bank of London (1876), 34 L. T. 735; *Re* Beaumont, Beaumont *v.* Ewbank, [1902] 1 Ch. 889.

235. ——.]—SCHROEDER *v.* CENTRAL BANK OF LONDON, LTD., No. 189, *ante*.

236. —— **Delivery of, to donee.**]—The delivery of a donor's own cheque to a donee does not operate as an equitable assignment to the donee of any part of the donor's balance at the bank.—*Re* BEAUMONT, BEAUMONT *v.* EWBANK, [1902] 1 Ch. 889; 71 L. J. Ch. 478; 86 L. T. 410; 50 W. R. 389; 46 Sol. Jo. 317.

Annotation :—**Mentd.** *Re* Leaper, Blythe *v.* Atkinson, [1916] 1 Ch. 579.

237. Letter of credit — Conditional on receipt of certificate.]—A letter from a banker stating that a special credit for a specified amount has been opened in favour of a particular person, does not constitute an equitable assignment of, or impress a trust upon funds in the banker's hands to that amount.

Resp. entered into a contract in E. with the F. Govt. for the supply of a large number of cartridges, to be paid for through the ambassador upon the production of certificates of approval from the agents of the govt. The contract specified the times & quantities of each delivery, & time was to be of the essence of the contract. Applts., bankers in E., who had in their hands funds belonging to the F. Govt., wrote to resp. that a special credit for £40,000 had been opened in his favour, & would be paid him on receipt of the certificates. Some cartridges were supplied & paid for, others were delivered, but the certificates were refused on the ground that the contract time had expired :—*Held :* the letter did not amount to an equitable assignment of the £40,000.—MORGAN *v.* LARIVIÈRE (1875), L. R. 7 H. L. 423; 44 L. J. Ch. 457; 32 L. T. 41; 23 W. R. 537, H. L.; *revsg.* S. C. *sub nom.* LARIVIÈRE *v.* MORGAN (1872), 7 Ch. App. 550, L. C.

Annotations :—**Mentd.** The Charkieh (1873), L. R. 4 A. & E. 59; Foreign Bondholders Corpn. *v.* Pastor (1874), 23 W. R. 109; Twycross *v.* Dreyfus (1877), 5 Ch. D. 605; The Parlement Belge (1880), 5 P. D. 197; Aksionairnoye Obschestvo Luther *v.* Sagor, [1921] 3 K. B. 532.

238. Banker's deposit receipt — Indorsed & delivered with intention to make a gift.]—(1) The indorsement & delivery over of a banker's deposit receipt, with intention to make a gift, constitute a good equitable assignment, even though the receipt itself is on its face declared to be not transferable, & no notice is given to the bank.

(2) Such an assignment, even if incomplete, is perfected after the death of the assignor by the appointment of the assignee as his exor.—*Re* GRIFFIN, GRIFFIN *v.* GRIFFIN, [1899] 1 Ch. 408; 68 L. J. Ch. 220; 79 L. T. 442; 15 T. L. R. 78; 43 Sol. Jo. 96.

Annotations :—*Generally*, **Consd.** *Re* Westerton, Public Trustee *v.* Gray, [1919] 2 Ch. 104. **Mentd.** *Re* Smith, Bull *v.* Smith (1901), 84 L. T. 835.

239. Directions to bank to credit trustees — No communication to trustees.]—A., having certain funds standing to his credit at his bankers, by letter, directed them to carry some parts of such funds to the account of certain persons, as trustees for his wife, &, after her decease, for his son, & other parts thereof to the account of certain persons, as trustees for his son: such sums were accordingly carried over by the bankers to the account of such persons in their books, & the dividends were from time to time carried to the same accounts. Testator never communicated the facts to the trustees. There was some evidence that testator had directed the transfers under an impression that he should be able, by that means, to evade the legacy duty, & that he had shown an intention to exercise some acts of ownership over the funds :—*Held :* the appropriations were void. Testator might at any time have revoked them.—GASKELL *v.* GASKELL (1828), 2 Y. & J. 502; 148 E. R. 1017.

Annotations :—**Distd.** Vandenberg *v.* Palmer (1858), 4 K. & J. 204. **Refd.** Hughes *v.* Stubbs (1842), 1 Hare, 476; Stapleton *v.* Stapleton (1844), 14 Sim. 186; Roberts *v.* Roberts (1865), 13 L. T. 492. **Mentd.** Kekewich *v.* Manning (1851), 1 De G. M. & G. 176.

See, generally, BANKERS & BANKING, Vol. III., pp. 175, 178.

(g) Directions to credit Account at Bank.

240. Authority to trustees to pay in share of trust fund—As security for overdraft—Irrevocable.]—B. being beneficially interested in a fund lying at a bank in the names of trustees, & having overdrawn his own account kept at the same bank, & being pressed by the bank to reduce such account, offered to give the bank a lien on his share of the fund. This offer the bank accepted, & B. sent a

PART IV. SECT. 2, SUB-SECT. 1.—B. (g).

1. *Direction to pay in money due or becoming due—As security for overdraft.*]—C., as security for advances made by a bank, directed I. to pay the bank all moneys due or to become due to him. The bank made advances & received payments:—*Held :* there was an equitable assignment which operated on the money as it became due.—*Re* COSTIN, *Ex p.* COMMERCIAL BANK CO. OF SYDNEY (1866), 1 Q. S. C. R. 153.—**AUS.**

Sect. 2.—*Apart from Judicature Acts*—"*Equitable Assignments*": *Sub-sect.* 1, *B.* (*g*); *sub-sect.* 2, *A. & B.*]

written authority to one of the trustees to pay to the credit of his account at the bank his share in the fund:—*Held:* the authority so given by B. was irrevocable & created an equitable assignment of B.'s share in the fund in favour of the bank.—*Re* BLAKE, *Ex p.* STEWARD (1843), 3 Mont. D. & De G. 265; 7 Jur. 116, Ct. of R.

241. Direction to pass cheques due to "account with bank."]—BELL *v* LONDON & NORTH WESTERN RY. CO., No. 62, *ante*.

242. No fund specified.]—In 1917 pltf. had an account with a bank in M. & had £27,000 to his credit. The M. bank had that amount, or more, to its credit with deft. bank in L., &, as pltf. wished to transfer his money to F. bank, the M. bank wrote to defts. a letter asking them by order of pltf. to "credit the account with you of F., £27,000 to our debit." The F. bank subsequently instructed defts. to hold the £27,000 at the disposal of pltf. on application, but defts. refused to pay him. In an action to recover the amount:—*Held:* the letter did not constitute an equitable assignment, & the action failed.—RATNER *v.* LONDON JOINT CITY & MIDLAND BANK (1922), 38 T. L. R. 253.

SUB-SECT. 2.—SPECIFIED FUND OR SUBJECT-MATTER.

A. In General.

243. Necessity to specify funds or subject-matter.]—WATSON *v.* WELLINGTON (DUKE), No. 210, *ante*.

244. ——.]—AN order by a creditor to his debtor to pay a sum of money to a third person is not an equitable assignment unless it specifies the fund or debt out of which the payment is to be made.

A., a builder, being a debtor to pltf., P., but a creditor of deft., handed to P. the following order signed by A. & addressed to deft., who received due notice thereof: "Please pay P. the amount of his account, £42, for goods supplied":—*Held:* the order did not operate as an equitable assignment.—PERCIVAL *v.* DUNN (1885), 29 Ch. D. 128; 54 L. J. Ch. 570; 52 L. T. 320.

Annotation:—**Follo.** *Re* Gunsbourg, *Ex p.* Trustee (1919), 88 L. J. K. B. 479.

245. ——.]—BLAKE *v.* HALSE (1892), 8 T. L. R. 789; 36 Sol. Jo. 733.

246. —— **Mere request to pay insufficient.**]—A trader wrote to resp., one of his debtors, asking him to pay a sum of money to a third party, & saying simply, "& debit our account." There was no evidence as to the state of accounts between the trader & resp., although resp. admitted he was indebted to the trader. A second letter was written by the trader to resp. asking him to pay another sum of money to the same third party "out of the balance of our account with you." Both the letters were written before the act of bkpcy. on which the receiving order was made, & when resp. had no notice of any available act of bkpcy.:—*Held:* (1) the first letter was not a good equitable assignment, as it was a mere request to pay, &, there being no evidence of the state of accounts, there was no subject-matter to be assigned; (2) the second letter was a good equitable assignment, as it did specify such a fund.—*Re* GUNSBOURG, *Ex p.* TRUSTEE (1919), 88 L. J. K. B. 479; [1918–19] B. & C. R. 99, C. A.

247. When fund specified—Assent of debtor unnecessary.]—MORRELL *v.* WOOTTEN, No. 280, *post*.

248. Funds appropriated by fundholder—Recognition of assignee's demand.]—L., an officer, retired from the army. His commission became saleable. Indebted to pltf. in a sum of £500, he gave him a letter to C., army agents, requesting them to pay balance of price of his commission to pltf., who sent the letter, with another of his own, to C., requesting payment, but they had not then received any money. Pltf. having heard that an ensign had been gazetted, again applied for payment, & received a letter informing him that the ensign gazetted was not in succession of L., but that after June 14 he might draw on C. for £408 10*s.* 11*d.*, balance arising from sale of the commission. Meantime M. obtained a foreign attachment from the Mayor's Ct. against L. for

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PART IV. SECT. 2, SUB-SECT. 2.—A.

243 i. *Necessity to specify funds or subject-matter—General rule.*]—To constitute an equitable assignment of money in the hands of a third party, there must be a particular existing fund dealt with at the time, & there must also be a specific appropriation intended of the whole or part of such particular fund.—*Re* FARRELL (1860), 10 I. Ch. R. 304.—IR.

243 ii. —— ——.]—*Re* THORNTON (1865), 13 L. T. 568.—IR.

246 i. —— *Mere order to pay insufficient.*]—B. was owed money by A. who notified B. by letter that his account would be paid by H. B. Co.: B. then wrote to C. enclosing A.'s letter together with an order to H. B. Co. to pay C. the amount B. owed him. On presentation of the order payment was refused: there was no evidence that H. B. Co. owed B. anything or that they held a specific fund to which he was entitled:—*Held:* there had not been an effective equitable assignment to C.—GALT *v.* SMITH (1888), 1 Terr. L. R. 129.—CAN.

246 ii. —— ——.]—A. gave to creditors orders upon defts. for sums due to him, in the following form: "Pay to D. M. the sum of $——":—*Held:* these orders were not good equitable assignments of portions of the funds in the hands of defts.—LANE *v.* DUNGANNON AGRICULTURAL DRIVING PARK ASSOCN. (1892), 22 O. R. 264.—CAN.

246 iii. —— ——.]—RITCHIE *v.* JEFFREY (1915), 31 W. L. R. 221; 8 W. W. R. 729.—CAN.

m. —— *Where only one fund from which payment possible.*]—Contractors having a contract with a corpn. & desiring advances from a bank, assigned "all or any money or moneys due or which may become due from the corpn. of the town;" & thereafter the cheques for all moneys coming to the contractors, payable to their order, were handed to the bank. The bank knew that there was but one contract upon which the contractors would be entitled to receive money from the corpn., & that the assignments were simply taken as security for advances:—*Held:* the assignments to the bank were good equitable assignments.—SOVEREIGN BANK *v.* INTERNATIONAL PORTLAND CEMENT CO. (1907), 10 O. W. R. 161; 14 O. L. R. 511.—CAN.

n. —— ——.]—Order by contractor upon owner given to a sub-contractor held to be a good equitable assignment, though the fund out of which the amount due to the contractor was not designated on the face of the order on the ground that there was only one fund out of which the order could be paid, & that the nature of that fund and its origin were known to all parties.—CONRAD *v.* KAPLAN (1914), 28 W. L. R. 464; 6 W. W. R. 1061; 18 D. L. R. 37; 24 Man. L. R. 368.—CAN.

247 i. *When fund specified—Assent of debtor unnecessary.*]—A gave D., an order on defts., of which they were notified: "Please pay to the order of D. $306 out of certificate of money due to me on June 1. This the defts. refused to accept:—*Held:* there was a good equitable assignment in favour of D. of money due on June 1.—BANK OF BRITISH NORTH AMERICA *v.* GIBSON (1892), 21 O. R. 613.—CAN.

247 ii. —— ——.]—QUICK *v.* COLCHESTER (SOUTH) TOWNSHIP (1899), 30 O. R. 645.—CAN.

248 i. *Funds appropriated by fundholder—Recognition of assignee's demand.*]—M. had accepted the following order drawn upon him by a firm to whom he was indebted: "Please pay to C. $270, & charge the same to my account for plastering P., in full to date"; upon which order deft. indorsed a memorandum addressed to W. as follows: "Please pay that order & charge to my account on contract for R.":—*Held:* there was an assignment specifically appropriating to C. the sum in question.—BRITISH COLUMBIA MILLS LUMBER & TRADING

£500 due on a bill of exchange, & attached the moneys, etc., of L. in hands of C. Pltf. then filed a bill, & upon application for an injunction to restrain C. from parting with the money :—*Held :* (1) C. had recognised pltf.'s demand ; (2) their recognition amounted to an appropriation of the money to arise from sale of the commission.—L'ESTRANGE *v.* L'ESTRANGE (1850), 13 Beav. 281 ; 20 L. J. Ch. 39 ; 16 L. T. O. S. 481 ; 15 Jur. 114 ; 51 E. R. 108.

249. —— Repayment of loan to building society.]—Pltf. advanced money to a building society for the repayment of which the funds & property of the society were made liable, & brought an action for a receiver & declaration of charge. The society alleged that pltf. had no cause of action as a secured creditor, & moved to stay proceedings : —*Held :* the funds of the society being appropriated for the repayment of the loan, there was a good equitable assignment.—BAKER *v.* LANDPORT & MID-SOMERSET BENEFIT BUILDING SOCIETY (1912), 56 Sol. Jo. 224.

B. Proceeds of Sale.

250. Order to pay out of purchase money.]—The holder of a note gave it up on receiving an order to pay out of purchase money. It was not accepted, but the purchaser verbally agreed to give notice to attend, when the deeds & money were ready. He did attend accordingly, but before the business was over, the drawer was arrested, & soon after was made bkpt. :—*Held :* the holder had a lien, the order not being given in contemplation of bkpcy., though he knew the drawer to be insolvent at the time.—YEATES *v.* GROVES (1791), 1 Ves. 280 ; 30 E. R. 343, L. C.

Annotations :—**Refd.** Burn *v.* Carvalho (1839), 4 My. & Cr. 690 ; Rodick *v.* Gandell (1852), 1 De G. M. & G. 763. **Mentd.** Best *v.* Argles (1834), 2 Cr. & M. 394 ; Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375.

251. Directions to consignee to sell & pay proceeds to assignee—No notice to assignee—Mandate revocable at pleasure of consignor.]—H. of Madras made a consignment of pearls to B., with directions to sell & pay the proceeds to P., to whom H. was at the time indebted, on account. B. acknowledged the receipt of the consignment, & undertook to perform the directions, but no notice was given by either party to P. H. subsequently wrote to B., requesting the pearls to be sent to America, & there disposed of, & afterwards, being insolvent, made an assignment of all his effects in trust for the benefit of his creditors :—*Held :* the directions accompanying the consignment did not constitute an appropriation, but amounted to no more than a mere mandate, revocable at the pleasure of the consignor, which was actually revoked by the subsequent disposition of the property.—SCOTT *v.* PORCHER (1817), 3 Mer. 652 ; 36 E. R. 250.

Annotations :—**Distd.** Bailey *v.* Culverwell (1828), 8 B. & C. 448. **Folld.** Brind *v.* Hampshire (1836), 1 M. & W. 365. **Distd.** Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375. **Refd.** Fitzgerald *v.* Stewart (1828), 2 Sim. 333 ; Garrard *v.* Lauderdale (1831), 2 Russ. & M. 451 ; Baron *v.* Husband (1833), 4 B. & Ad. 611 ; *Re* Douglas & Anderson, *Ex p.* Cotterell, Hill (1837), 3 Deac. 12 ; Malcolm *v.* Scott (1845), 3 Hare, 39 ; Frith *v.* Forbes (1862), 4 De G. F. & J. 409. **Mentd.** Sims *v.* Brutton (1850), 5 Exch. 802.

252. Consignments to answer annuity—Consignee giving notice of arrangement to annuitant—Some payments made by consignee.]—Where consignments have been made from abroad to answer an annuity which the owner of the property consigned is liable to pay, & the consignee in this country gives notice of the arrangement to the annuitant, & makes payments in pursuance of it, the consignee is not afterwards at liberty to discontinue such payments, so long as he has any proceeds of the consignments in his hands. The circumstances of such a transaction constitute an implied trust, which the ct. will enforce against the consignee, for the benefit of the annuitant.—FITZGERALD *v.* STEWART (1831), 2 Russ. & M. 457 ; 39 E. R. 467, L. C.

Annotations :—**Refd.** Burn *v.* Carvalho (1839), 4 My. & Cr. 690 ; Kirwan *v.* Daniel (1847), 5 Hare, 493. **Mentd.** Rodick *v.* Gandell (1852), 1 De G. M. & G. 763.

253. Letter authorising payment from net proceeds of shipment—Agreement by consignee to pay over full amount—Specific appropriation.]—Defts. carried on business as a commission house at L., & were connected with several houses abroad in which they were partners, but the foreign partners were not partners in the L. house. H. & J. were in the habit of consigning goods to defts., to be sent abroad to their foreign houses for sale, & the proceeds were remitted to defts. on account of H. & J. H. & J. being indebted to R., wrote to defts. as follows : "We now authorise you to pay to R., having revoked the former order in their favour, after you have paid yourselves the balance we owe you from the net proceeds of our shipments to your foreign establishments to the present date, one half of the remainder of the proceeds of said shipments, provided same shall not exceed the sum of £3,000." Defts. thereupon wrote to R., stating they would pay the money accordingly on receiving their guarantee, which R. thereupon gave. Before the proceeds were received by defts., H. & J. became bkpts., & their assignees gave defts. notice not to pay anything on account of bkpts. :—*Held :* on the goods being afterwards received & sold by defts., the proceeds were not recoverable by the assignees, as the letter of H. & J. contained a specific appropriation or an equitable assignment to R., which was not revocable by bkpts. or their assignees.—HUTCHINSON *v.* HEYWORTH (1838), 9 Ad. & El. 375 ; 1 Per. & Dav. 266 ; 1 Will. Woll. & H. 730 ; 8 L. J. Q. B. 17 ; 112 E. R. 1254.

Annotation :—**Consd.** Belcher *v.* Capper (1842), 4 Man. & G. 502.

254. Directions to account for proceeds of cargo to third party—Absolute order transferring proceeds.]—Pltf., a merchant at S., having given an order to B., at D., for a cargo of wheat, wrote to request that B. would hold it at the disposal of defts., merchants of L., who would lodge the necessary credits for the remaining balance, & communicated this to defts. A few days afterwards, & before the wheat was shipped from D., pltf. wrote to defts. as follows : "We request you will account to S. for the proceeds of the wheat we have consigned to you, lying at D., in B.'s possession, which we wrote about to you a few days ago." Defts. assented to this order, & informed S., who was largely indebted to them, that they held the wheat to his account, & on its arrival, they rendered accounts of the sale of it to S., & placed the balance

CO. *v.* MITCHELL (1901), 21 C. L. T. Occ. N. 363 ; 8 B. C. R. 71.—CAN.

248 ii. —— ——.]—A. gave to F. the following order on defts. : "Pay F. £705 & charge to my account on building L." Deft. said, "It would be all right" :—*Held :* a good equitable assignment.—FARQUHAR *v.* ZWICKER (1908), 41 S. C. R. 30 ; 6 E. L. R. 73.—CAN.

248 iii. —— ——.]—A. directed B., his debtor, in writing to pay the money to C., & directed C. to pay the money when collected to D. C. undertook to do so & received the money from B., & informed D. that he had collected a sum of money for him, although the sum he mentioned was not the full amount which he had actually collected :—*Held :* there was a complete assignment in equity by A. to D. of the money actually collected from B. by C.—WATERLOO MANUFACTURING CO. *v.* KIRK (1911), 21 Man. L. R. 457.—CAN.

Sect. 2.—Apart from Judicature Acts—"Equitable Assignments": Sub-sect. 2, B. & C.]

of the proceeds to the credit of his account with them :—*Held :* pltf.'s order to account to S. was an order transferring the proceeds to him, & not a mere order to pay to him, & was not revocable after defts. had acted upon it.—DICKINSON *v.* MARROW (1845), 14 M. & W. 713 ; 6 L. T. O. S. 156.

255. Letter authorising agents to hold proceeds at disposal of assignee—Conditional agreement by agents—Notice to assignee.]—A mercantile firm at C., by a letter dated Jan. 16, 1841, directed their L. correspondents to hold a sum of money payable on Nov. 19 following out of remittances & consignments on the general account at the disposal of a creditor of the C. firm in P. The C. firm at the same time acquainted the creditor of the directions which they had given. The L. firm informed the creditor that they had received & registered the order, & after stating that they were in advance for the C. firm, & declining to accept bills for any part of the amount, said, that if remittances should come forward to enable them to meet the wishes of the C. firm, they would lose no time in advising the creditor. The L. firm also, in acknowledging to the C. firm the receipt of the order, said that the state of the accounts did not then warrant them in meeting the requisition, but they would meet it, if in a position to do so, before Nov. :—*Held :* the correspondence raised no case of equitable assignment.—MALCOLM *v.* SCOTT (1850), 3 Mac. & G. 29 ; 20 L. J. Ch. 17 ; 15 Jur. 21 ; 42 E. R. 171, L. C.

256. Directions to agent to sell & pay moiety of proceeds to assignee—Authority revoked after assent of agent.]—M. & Co. & B. entered into an agreement to purchase gold-dust on a joint speculation, the purchases of each to be disposed of in a certain manner, & that M. & Co. should give to B. half the profits of that which they purchased, & that B. should give to M. & Co. half the profits of that which he purchased. In pursuance of this agreement M. & Co. purchased 728 oz. of gold-dust, & B. purchased 365 oz. A second agreement was come to that the gold-dust so purchased should be consigned to pltf. invoiced as property in which M. & Co. & B. were jointly interested, with direction to sell it, & to divide the net proceeds between M. & Co. & B. Pltf. received the 728 oz. consigned by M. & Co. with a direction from them to sell them, & to give a moiety of the proceeds to B. B. consigned the 365 oz. of gold-dust to pltf. for sale, & this parcel was sold by him, & a moiety of the proceeds of such sale was paid over to M. & Co. B. having neglected to give pltf. authority to credit M. & Co. with a moiety of the proceeds of the sale of the 365 oz. which he had consigned to pltf. on Feb. 4, 1852, one of the partners of M. & Co. wrote to pltf. as follows : "I have no doubt that B. has written that half the profits of the 365 oz. of gold-dust shipped to you is to go to M. & Co. in the same way as half of the profits of the 728 oz. is to go to his credit. If, however, he should not . . . have done so, you will not pass the half profits of the 728 oz. to his credit." M. & Co. became bkpt. & pltf. refused to give B. half the profits of the sale of the 728 oz. received from M. & Co. but credited the latter with the whole profits from such sale, claiming that the letter of Feb. 4 was a revocation of the authority previously given by M. & Co. to pltf. as to the disposal of the proceeds of the 728 oz. In an action for money lent, etc. :—*Held :* that which passed between M. & Co. & pltf. amounted to an equitable assignment of such moiety to B.—ELKIN *v.* BAKER (1862), 11 C. B. N. S. 526 ; 31 L. J. C. P. 177 ; 8 Jur. N. S. 915 ; 142 E. R. 902. *Annotation :*—**Mentd.** Thornton *v.* Maynard (1875), L. R. 10 C. P. 695.

257. Letter charging proceeds in favour of creditor—Acknowledged by auctioneers holding funds.]—A firm of auctioneers sold a brewery for a customer, the proceeds of sale remaining in their hands subject to their claim for the sale charges. They had also in their hands the proceeds of sale of furniture sold by them for the same customer. The customer, by letter, charged the proceeds of sale of the brewery in favour of W., creditor of the customer, & the auctioneers wrote to the creditor acknowledging the receipt of the letter of charge. The auctioneers afterwards paid the customer the price of the furniture, & appropriated the proceeds of sale of the brewery to the payment of their charges :—*Held :* the letter of charge & the acknowledgment thereof amounted to a good equitable assignment in favour of the creditor.—WEBB *v.* SMITH (1885), 30 Ch. D. 192 ; 55 L. J. Ch. 343 ; 53 L. T. 737 ; 1 T. L. R. 225, C. A.

258. Agreement to assign interest in goods as security—Consignee notified of assignment—Direction to pay over proceeds from time to time.]—LONDON & YORKSHIRE BANK, LTD. *v.* WHITE (1895), 11 T. L. R. 570 ; 39 Sol. Jo. 708, D. C.

259. Letters directing payment of balance of proceeds—After specified sum paid to another creditor—Assignee advised of directions.]—A firm of merchants in South America, being indebted to pltf., consigned a quantity of ores to defts., the agents of the South American firm in England, & instructed them by letter to sell the ores & to pay to pltf. the balance of the proceeds remaining after payment of a specified sum to another creditor ; they also wrote to pltf. advising him of what they had done. Before either of the letters arrived in England the firm in South America became bkpt. & the syndic in the bkpcy. telegraphed instructions to defts. which amounted to a revocation of the directions given in the letter of the consignors as to the disposal of the proceeds of the sale of the cargo :—*Held :* upon the posting of the letters in South America there was a binding equitable assignment of the balance of the proceeds to pltf. which remained unaffected by the supervening bkpcy. of the consignors.—ALEXANDER *v.* STEINHARDT, WALKER & Co., [1903] 2 K. B. 208 ; 72 L. J. K. B. 490 ; 8 Com. Cas. 209 ; 10 Mans. 258.

260. Directions to purchaser to remit price to assignee—& forward signed documents undertaking to do so.]—K. sold rubber to defts. K. had rubber in the hands of pltfs., who had advanced money to him under an arrangement by which they had a lien upon the rubber. At the request of K., pltfs. delivered part of the rubber to defts. & K., in accordance with his arrangement with pltfs., directed defts. to remit the price to pltfs., &

PART IV. SECT. 2, SUB-SECT. 2.—B.

257 i. *Agreement charging proceeds in favour of creditor—& order on fundholder—Acceptance by him.*]—A master of a ship with the representative of the owners borrowed money from W., giving as security an agreement which provided that any money received by the master on account of the sale of the vessel or cargo should be applied in repayment. Subsequently when the ship had to be sold the master & representative gave W. an order on the adjuster for the amount of the loan ; the adjuster accepted the order payable when in funds :—*Held :* the agreement & order were good equitable assignments.—HALIFAX GRAVING DOCK CO. *v.* WILLIAMS (1908), 6 E. L. R. 333.—**CAN.**

257 ii. ——.]—An agreement by a debtor that moneys, the proceeds of goods sent to England through an agent for sale, shall be paid to a creditor in consideration of past & future advances is a good equitable assignment of the moneys to be received by the agent, & his assent is not necessary.—WATERS *v.* LEVIN (1886), 5 N. Z. L. R. 146.—**N.Z.**

requested defts. to sign & forward to pltfs. a document undertaking to do so. Defts. signed & forwarded this document. There had been previous similar transactions between K. & defts.:—*Semble:* (COLLINS, M.R.) there was a complete equitable assignment, which, if the technical formalities had been properly complied with, would have enabled pltfs. to insist upon this right against defts.—KLEINWORT, SONS & CO. *v.* REDDAWAY & CO. (1904), 9 Com. Cas. 292, C. A.

261. Letter to purchasers requiring them to sign undertaking to pay debt to assignee—Documents transmitted to purchasers by assignee.]—BRANDT'S (WILLIAM) SONS & CO. *v.* DUNLOP RUBBER CO., No. 205, *ante*.

Agent's liability in respect of money received for use of or directed to be paid to third party.]—*See* AGENCY, Vol. I., pp. 673–677.

Property held by bankrupt on trust—Equitably assigned.] —*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 708–710, Nos. 6205 *et seq.*

Property in order or disposition of bankrupt.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 750 *et seq.*

C. Other Particular Sources.

262. Draft upon fund due out of Exchequer.]—(1) A. borrowed money of B. & gave him a draft upon a fund due to A. out of the Exchequer, & became bkpt.:—*Held:* an assignment thereof to B. for valuable consideration. (2) [This] is a credit on this fund, & must amount to an assignment of so much of the debt, any words will do; no particular words being necessary thereto (LORD HARDWICKE, C.).—ROW *v.* DAWSON (1749), 1 Ves. Sen. 331; cited in 1 De G. M. & G. 774; 27 E. R. 1064, L. C.

Annotations:—As to (1) **Consd.** Priddy *v.* Rose (1817), 3 Mer. 86; Best *v.* Argles (1834), 2 Cr. & M. 394. **Apld.** Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375. **Consd.** Rodick *v.* Gandell (1852), 1 De G. M. & G. 763; Addison *v.* Cox (1872), 8 Ch. App. 76. **Refd.** Morrell *v.* Wootten (1852), 16 Beav. 197; Diplock *v.* Hammond (1854), 2 Eq. Rep. 738; Brice *v.* Bannister (1878), 3 Q. B. D. 569; Fitzroy *v.* Cave, [1905] 2 K. B. 364. *As to* (2) **Refd.** *Re* Severn, *Ex p.* Colville (1831), 9 L. J. O. S. Ch. 56; Burn *v.* Carvalho (1839), 4 My. & Cr. 690.

263. Order to pay "balance due"—Debtor promising to pay on ascertainment.]—S. being indebted to J., & G. to S., S. by letter requested G. to pay J. the balance due to him, S., & stated that J.'s receipt should be a sufficient discharge; G. promised to do so when the amount had been ascertained. After the balance due was ascertained, but before the amount was paid, S. became bkpt.:—*Held:* there had been an equitable assignment of the debt.—CROWFOOT *v.* GURNEY (1832), 9 Bing. 372; 2 Moo. & S. 473; 2 L. J. C. P. 21; 131 E. R. 655.

Annotations:—**Distd.** Best *v.* Argles (1834), 2 Cr. & M. 394. **Consd.** Rodick *v.* Gandell (1852), 1 De G. M. & G. 763; Liversidge *v.* Broadbent (1859), 4 H. & N. 603. **Refd.** Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375.

264. Agreement by partner to pay proportion to retired partner—On dissolution of partnership.]—C. & S. traded in partnership, & in the course of business lent money to R. In 1894 the partnership was dissolved by deed, whereby the assets of the partnership were assigned to C. who agreed to pay over to S. one-fifth part of any money which he might receive from R. in respect of R.'s debt to the firm. In 1898 C. became bkpt. S. gave no notice to R. of his interest in the debt due from R. to the firm under his agreement with C. In 1900 the trustee in C.'s bkpcy. received from R. £150 in settlement of R.'s debt. S. now claimed to recover one-fifth of this sum from the trustee:—*Held:* the agreement between C. & S. amounted to a valid equitable assignment to S.—*Re* CROUCH, *Ex p.* SMITH (1901), 83 L. T. 746.

Equitable assignment of partnership share.]—*See* BANKERS & BANKING, Vol. III., p. 283, No. 871.

265. "Out of balance of our account with you"—Request to pay.]—*Re* GUNSBOURG, *Ex p.* TRUSTEE, No. 246, *ante*.

266. Agreement between debtor & creditor—For payment of debt out of specific fund coming to debtor.]—RODICK *v.* GANDELL, No. 211, *ante*.

267. —— For payment of judgment debt & interest out of claims against third parties—Valid charge on moneys when recovered.]—An agreement that a certain judgment debt & interest thereon should be paid to pltf. out of any moneys which might be recovered by deft. in respect of certain claims which he had against third parties:—*Held:* to create a valid equitable charge upon these moneys when recovered.—RICCARD *v.* PEICHARD (1855), 1 K. & J. 277; 1 Jur. N. S. 750; 69 E. R. 462.

Annotation:—**Refd.** Parish *v.* Poole (1884), 53 L. T. 35.

268. —— Debtor undertaking to "pay over" all dividends—On proof against bankrupt's estate.]—A., for good consideration, gave B. a written undertaking to "pay over" to him all dividends that he should receive on his proof against a bkpt.'s estate. A. became bkpt., & B. then gave notice of his claim to the trustees in the first bkpcy.:—*Held:* there was a good equitable assignment of the dividends.—*Re* IRVING, *Ex p.* BRETT (1877), 7 Ch. D. 419; 47 L. J. Bcy. 38; 37 L. T. 507; 26 W. R. 376.

Annotation:—**Folld.** West & Wright *v.* Newing (1900), 82 L. T. 260.

269. —— To hold debt due from third party at disposal of creditor—No notice to third party.]—A limited co. being indebted to H. on an acceptance, wrote to H. a letter in Jan. 1885, in the following terms:—"We hold at your disposal the sum of £425 due from C. for goods delivered by us to them up to Dec. 31, 1884, until the balance of our acceptance for £660 has been paid." No notice was given by H. to C. until Nov. 5, 1885, which was after a petition for winding up the co. had been presented:—*Held:* the letter was an immediate equitable assignment to H. of all the debt due from C. to the amount of £425, & was complete, as between the assignor & the assignees without any notice to C.—GORRINGE *v.* IRWELL INDIA RUBBER & GUTTA PERCHA WORKS (1886), 34 Ch. D. 128; 56 L. J. Ch 85; 55 L. T. 572; 35 W. R. 86, C. A.

Annotations:—**Distd.** *Re* Hughes (1888), 59 L. T. 586. **Refd.** *Re* Sheward, Sheward *v.* Brown, [1893] 3 Ch. 502.

270. —— Debtor promising to pay half of commission received—Mere personal contract to pay.]—T. an undischarged bkpt., who had, prior to his bkpcy. been a wine merchant, while not a professional public-house broker, had since his bkpcy. habitually endeavoured to earn money by introducing buyers to vendors of public-houses, introduced to R. a purchaser for R.'s public-house, & on Apr. 20, 1897, obtained a judgment against R. for £258 commission. On May 6, 1897, the trustee in bkpcy. gave notice to T. & R. claiming

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PART IV. SECT. 2, SUB-SECT. 2.—C.

c. Out of proceeds of loan.]—G. assigned money due under an agreement of sale, to W. to secure a loan & gave an order to W. to pay P. "out of the proceeds of the loan coming" to G.; when the order was received by W. all money due under the loan had been paid out. G. obtained a further loan from the manager of W.:—*Held:* the order to W. was not an equitable assignment of the money due under the agreement of sale.—PARTRIDGE *v.* WINNIPEG INVESTMENT CO., LTD., [1917] 2 W. W. R. 332; 35 D. L. R. 420.—CAN.

Sect. 2.—Apart from Judicature Acts—"Equitable Assignments": Sub-sect. 2, C.; sub-sect. 3. Sects. 3, 4 & 5.]

the money for the estate, & on May 7, obtained a stop-order. The trustee was subsequently informed of two claims by C. & V. against this fund. C.'s claim was based on a letter by T. promising C. one half the commission earned by T. on the sale by T. of public-houses introduced by C. to T. V.'s claim arose out of a written assignment by T. of his claim against R. executed two days prior to the trial of T.'s action against R. Neither C. nor V. had given notice of assignment to R., but R. in the course of the action became informed of C.'s claim:—*Held:* C.'s claim was not a charge or assignment on the particular fund, but a mere personal contract to pay money in certain events. —MERCER *v.* VANS COLINA (1897), [1900] 1 Q. B. 130, n.; 67 L. J. Q. B. 424; 78 L. T. 21; 4 Mans. 363.

Annotations:—**Refd.** *Re* Beall, *Ex p.* Official Receiver, [1899] 1 Q. B. 688; *Re* Behrend's Trust, Surman *v.* Biddell, [1911] 1 Ch. 687. **Mentd.** Shoolbred *v.* Roberts, [1899] 2 Q. B. 560; *Re* Roberts, [1900] 1 Q. B. 122; Affleck *v.* Hammond, [1912] 3 K. B. 162.

271. —— Debtor undertaking to indorse & hand over cheques received—On payment of accounts.]—A contract for the sale of flour contained the following: "I also agree to indorse the cheques from the asylum & hand over to you as received by me in payment of the accounts": —*Held:* this constituted an equitable assignment of the moneys from the cheques as & when received from the asylum.—WEST & WRIGHT *v.* NEWING (1900), 82 L. T. 260; 16 T. L. R. 177.

272. —— For payment on receiving commission expected—Subsequent acknowledgment that debt payable out of funds indicated.]—HORNE *v.* CAMPBELL (1900), 44 Sol. Jo. 329.

273. —— For payment of commission, etc., from salary.]—An artist who had obtained employment with M. through pltfs.' agency, gave pltfs. a letter in the following terms:—"In consideration of your having procured for me an engagement (which I agree to accept through you) with M. . . . I hereby agree to pay you or your assigns 10 per cent. commission on [my] salary & on all moneys which should accrue under the said engagement or a prolongation of the same . . . and hereby authorise M. to deduct & pay the commission from my salary in any manner you may deem expedient. . . ." Notice of this letter was given to M.:—*Held:* the letter constituted a valid equitable assignment.—SHAW & CO. *v.* MOSS EMPIRES, LTD. & BASTOW (1908), 25 T. L. R. 190.

274. Promise to pay—When debtor receives debt due from third person.]—A promise to pay money when the debtor receives a debt due to him from a third person, does not constitute an equitable assignment, so as to charge the debt in the hands of such third person.

A. having a cargo of wheat brought by the M. in the hands of a factor for sale, obtained from B. a loan of £500, for which he gave B. his acceptance at two months, describing the consideration to be "value received in wheat ex M.," & they verbally agreed that the bill was to be renewed from time to time until A. should receive from the factor the proceeds of the wheat:—*Held:* this did not charge the fund in the hands of the factor, so as to amount to an equitable assignment of, or an equitable charge upon, the fund.—FIELD *v.* MEGAW (1869), L. R. 4 C. P. 660.

Property held by bankrupt for special purpose.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 700–706.

Solicitor's costs due from action.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 775, Nos. 6660, 6661.

SUB-SECT. 3.—OTHER CASES.

275. Indorsement on receipt for subscription to shares—No delivery—Revocation by subsequent declaration.]—Receipt for a subscription to a navigation, with an indorsement, signed by the owner, declaring, that he thereby assigned to his daughter A. all his interest, found among the papers of his extrix.: no evidence, that he ever parted with the paper; & a declared intention of satisfaction by a marriage portion. Bill for an assignment dismissed.—ANTROBUS *v.* SMITH (1805), 12 Ves. 39; 33 E. R. 16.

Annotations:—**Apprvd.** Edwards *v.* Jones (1836), 1 My. & Cr. 226; Dillon *v.* Coppin (1839), 4 My. & Cr. 647. **Consd.** Meek *v.* Kettlewell (1843), 1 Ph. 342; Kekewich *v.* Manning (1851), 1 De G. M. & G. 176; Airey *v.* Hall (1856), 3 Sm. & G. 315; Cheale *v.* Kenward (1858), 3 De G. & J. 27. **Expld.** Gilbert *v.* Overton (1864), 4 New Rep. 420. **Refd.** Cotteen *v.* Missing (1815), 1 Madd. 176; McFadden *v.* Jenkyns (1842), 1 Hare, 458; Bridge *v.* Bridge (1852), 16 Beav. 315; Voyle *v.* Hughes (1854), 2 Sm. & G. 18; Parnell *v.* Hingston (1856), 3 Sm. & G. 337; Pearson *v.* Amicable Assce. Office (1859), 27 Beav. 229. **Mentd.** Moore *v.* Moore (1874), L. R. 18 Eq. 474; *Re* Shield, Pethybridge *v.* Burrow (1885), 53 L. T. 5.

276. Incomplete testamentary instrument.]—A. was possessed of a policy of insurance on his own life. Having made a will in 1880, by which he gave the income of his property to his wife B., he fell ill in 1887, &, while in anticipation of death, signed the following document: "Mar. 1887, I give all my insurance money that is coming to me to my wife B., for her own use as well as £200 in the bank. This is my wish. Witness, C." This document was placed at A.'s request with his will, & remained there until his death in Apr. 1887: —*Held:* effect could not be given to the document as an immediate assignment by A. to B. of the property therein mentioned.—*Re* HUGHES (1888), 59 L. T. 586; 36 W. R. 821, C. A.

Annotations:—**Apld.** *Re* Davis, Griffith *v.* Davis (1902), 86 L. T. 889. **Mentd.** *Re* Leaper, Blythe *v.* Atkinson, [1916] 1 Ch. 579.

277. Garnishee orders—Not operative as assignments—As between garnishor & garnishee.]—A garnishee order does not create, as between the garnishor & garnishee, any debt either at law or in equity.

A person who has obtained a garnishee order absolute, directing a co. to pay to him a debt due by them to a creditor of his against whom he had recovered judgment, does not thereby himself become a creditor of the co.—*Re* COMBINED WEIGHING & ADVERTISING MACHINE CO. (1889), 43 Ch. D. 99; 59 L. J. Ch. 26; 61 L. T. 582; 38 W. R. 67; 6 T. L. R. 7; 1 Meg. 393, C. A.

Annotations:—**Apld.** Cairney *v.* Back, [1906] 2 K. B. 746; Norton *v.* Yates, [1906] 1 K. B. 112. **Refd.** *Re* Montgomery Moore Ship Collision Doors Syndicate (1903), 72 L. J. Ch. 624; Simott *v.* Bowden, [1912] 2 Ch. 111; *Re* Steel Wing Co., [1921] 1 Ch. 349. **Mentd.** Pritchett *v.* English & Colonial Syndicate, [1899] 2 Q. B. 428; *Re* Greenwood, Sutcliffe *v.* Gledhill (1901), 70 L. J. Ch. 326; *Re* Anglesey, De Galve *v.* Gardner, [1903] 2 Ch. 727; Geisse *v.* Taylor, [1905] 2 K. B. 658.

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p. Order charging interest in administration suit.]—A. instituted proceedings against B. & her first husband, B. took out administration to her late husband. A. obtained judgment against B. & her second husband, & an order was made in that action charging B.'s interest in the administration suit with the amount of A.'s judgment debt:—*Held:* this order amounted to an equitable assignment of B.'s interest in the estate of her late husband.—M'EVOY (DECEASED). ELLIOTT *v.* M'EVOY (1900), 34 I. L. T. 154.—IR.

278. —— —— ——.]—A garnishee order does not amount to an assignment, either absolute or by way of security, of the garnished debt. Its effect is to direct the garnishee to pay, not the debt itself, but a sum equivalent to it, to the garnishor. But the debt remains the property of the judgment debtor, & the right of the garnishor is subject to the rights & equities existing over it when the garnishee order is obtained.

A co. had issued debentures giving a floating security over all its property, & a receiver was appointed in a debenture-holders' action two days after a judgment creditor of the co. had served a garnishee order *nisi* attaching a debt due to the co. *Held:* the receiver was entitled, as against the garnishor, to payment of moneys which had been paid into ct. by the garnishee, under an order, to abide further order.—NORTON *v.* YATES, [1906] 1 K. B. 112; 75 L. J. K. B. 252; 54 W. R. 183; 50 Sol. Jo 95.

Annotations:—**Apld.** Cairney *v.* Back, [1906] 2 K. B. 746. **Consd.** Evans *v.* Rival Granite Quarries, [1910] 2 K. B. 979. **Apld.** Sinnott *v.* Bowden, [1912] 2 Ch. 414.

279. Deed signed by one partner — Authority to bind firm —Assignment of book debts.]—One of the two partners of a firm purported by deed to assign the book debts of the firm as security for a debt due by the firm & signed the deed in his individual name & also, without authority, in the name of his partner:—*Held:* whether or not the deed was valid as a deed it operated as a good equitable assignment for that it was, within Partnership Act, 1890 (c. 39), s. 6, an act or instrument relating to the business of the firm & done in a manner showing an intention to bind the firm by a partner who by reason of the partnership had authority to bind the firm.—*Re* BRIGGS & Co., *Ex p.* WRIGHT, [1906] 2 K. B. 209; 75 L. J. K. B. 591; 95 L. T. 61; 50 Sol. Jo. 514.

Assignment of patent.]—*See* PATENTS & INVENTIONS.

SECT. 3.—COMMUNICATION TO ASSIGNEE.

Communication to debtor or fundholder.]—*See* Part V., *post.*

280. Necessity for communication to & assent by assignee—To make assignment between assignor & assignee.]—(1) Where A., having money in the hands of B., directs a payment generally to C., & B. consents, C. may enforce payment against B., but it is necessary that A.'s order should be communicated to C.

(2) Where A., having money in the hands of B., directs him to pay a sum out of that particular fund to C., this amounts to an equitable assignment, & the assent of B. is unnecessary to give it validity.

(3) By an order in a suit, A. was ordered to pay a sum to B. After A. had appealed, B.'s bankers induced B. to enforce the order & pay the amount to his account, the bankers undertaking to repay it if, on the appeal, B. should be ordered to repay it. The order was reversed, & B. directed his bankers to pay the amount to A., but the direction was not communicated to A. The bankers had also said they were quite ready to pay the money to A., & B. had said, "There it is for you," *viz.*, at the bankers. B. became bkpt.:—*Held:* neither the agreement, nor the order, nor the statements so made, gave to A. any claim upon the fund in the hands of the bankers.—MORRELL *v.* WOOTTEN (1852), 16 Beav. 197; 31 E. R. 753.

Annotation:—*As to* (2) **Distd.** Greenway *v.* Atkinson (1881), 29 W. R. 560.

—— ——.]—*See, also,* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1093, 1179-1182, Nos. 8932, 8933, 9532-9534, 9536-9549.

281. —— To make assignment valid in garnishee proceedings—Against judgment creditor—Relation back.]—An assignment by a judgment debtor may be valid in garnishee proceedings against the claim of the judgment creditor, although at the date of the garnishee proceedings the assignment has not yet been executed by the assignee, provided that he afterwards assents to & executes it, when its validity relates back to the date of its execution by the assignor.—EDMUNDS *v.* EDMUNDS, [1904] P. 362; 73 L. J. P. 97; 91 L. T. 568.

Annotations:—**Consd.** Glegg *v.* Bromley (1911), 81 L. J. K. B. 334. **Refd.** Wells *v.* Wells (1914), 30 T. L. R. 437.

See, generally, EXECUTION.

282. Effect of communication acted on by debtor —Creates trust in favour of assignee.]—Where a consignee undertakes with his consignor to make certain payments mentioned, to creditors of the consignor out of the produce of property consigned to him from abroad, & in pursuance pays an annuity to one of the creditors named, a trust is created by such payment in favour of the annuitant, & the consignee cannot afterwards discontinue such payment, so long as he has any proceeds of consignments in his hands.

An annuity, though from its nature payable by instalments is, nevertheless, an entire sum; & a payment of one instalment in the above circumstances creates a trust which a court of equity will enforce in favour of a stranger.—KIRWAN *v.* DANIEL (1847), 5 Hare, 493; 16 L. J. Ch. 191; 8 L. T. O. S. 554; 11 Jur. 235; 67 E. R. 1006; *subsequent proceedings* (1849), 7 Hare, 347.

Annotations:—**Folld.** Harland *v.* Binks (1850), 15 Q. B. 713. **Refd.** Siggers *v.* Evans (1855), 5 E. & B. 367. **Mentd.** Cochrane *v.* Willis (1864), 9 L. T. 792.

Revocation by assignor of assignment before communication.]—*See,* No. 251, *ante;* AGENCY, Vol. I., p. 675, No. 2858, p. 678, No. 2884, p. 697, No. 3046, p. 698, Nos. 3055, 3056; BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1179, 1180, Nos. 9532, 9533, 9534, 9536-9539.

SECT. 4.—COMMUNICATION TO DEBTOR OR FUNDHOLDER.

See Part V., *post.*

SECT. 5.—CONCURRENCE OF DEBTOR OR FUNDHOLDER.

283. Whether essential—Equitable assignment.]—An assignment of a debt requires not, for its validity in equity, a contract with debtor.—*Re* ROW, *Ex p.* SOUTH (1818), 3 Swan. 392; 36 E. R. 907, L. C.

Annotations:—**Consd.** Burn *v.* Carvalho (1839), 4 My. & Cr. 690; Rodick *v.* Gandell (1852), 1 De G. M. & G. 763; Addison *v.* Cox (1872), 8 Ch. App. 76; Brandts *v.* Dunlop Rubber Co., [1905] A. C. 454. **Refd.** Best *v.* Argles (1834), 2 Cr. & M. 394; Tibbits *v.* George (1836), 5 Ad. & El. 107; WILLISTON (1845), 3 Kerr, 58.—CAN.

PART IV. SECT. 5.

283 i. *Whether essential—Equitable assignment.*]—B. agreed to deliver goods to A. by a certain day, before that day A. assigned the contract to C.:—*Held:* B. was not bound to recognise the assignment.—GREEN *v.*

283 ii. —— ——.]—A. gave to a creditor an order on B. for a portion of his demand. B. was notified of the order but did not accept it:—*Held:* the order & notice formed a good equitable assignment.—FARQUHAR *v.* TORONTO CITY (1865), 12 Gr. 186.—CAN.

283 iii. —— ——.]—LYNCH *v.* CLOUGHER (1884), 1 Man. L. R. 293.—CAN.

Sect. 5.—Concurrence of debtor or fundholder. Sects. 6 & 7.]

Bell *v.* L. & N. W. Ry. (1852), 15 Beav. 548; Morrell *v.* Wootten (1852), 16 Beav. 197; Diplock *v.* Hammond (1854), 2 Eq. Rep. 738.

284. —— ——.]—(1) If A., in order to pay B. a sum of money, assigns to B. all his interest in a debt due from C., it is not necessary that a strictly formal notice of such assignment should be given to C.

M., owing £404 to T., became bkpt. Deft. advanced £105 to T., who was then solvent, on a *bonâ fide* verbal agreement that he should be repaid out of the debt from M. to T., & the dividends thereon; & A., the solr. to M.'s commission, was privy to the bargain; but it did not appear that A. acted for M.'s assignees in the transaction, or communicated it to them, or that they knew of it, till after T. was taken in execution on a judgment recovered against her in an action commenced more than three months after the time of the agreement. Within three months before the arrest, & before the verdict in the action but after its commencement, T. gave deft. a written order on M.'s assignees to pay the £105 to deft. After the verdict, but before the arrest T. assigned in writing to deft. the debt due to her from M., & the dividends; &, on the same day, T., for the first time, proved her debt against M.'s estate. The dividends amounted to £80, which deft. received from M.'s assignees. Afterwards T. was discharged by the Insolvent Ct., & her assignee sued deft. for money had & received:—*Held:* (2) the transfer to deft. of the right to part of the debt due from M. to T. was not void, under 7 G. 4, c. 57, s. 32, the *bonâ fide* verbal agreement being sufficient to pass it, & the assent of M., or his assignees, not being necessary to give deft. an equitable title; (3) the legal property in such part of the debt was not in pltf., deft. being equitably entitled to that specific part at the time of the imprisonment, although a contingent residue of the whole debt might ultimately come to pltf.—TIBBITS *v.* GEORGE (1836), 5 Ad. & El. 107; 2 Har. & W. 154; 6 Nev. & M. K. B. 804; 6 L. J. K. B. 255; 111 E. R. 1107.

Annotations:—As to (1) **Distd.** *Re* Gibbs, *Ex p.* Price (1844), 13 L. J. Bcy. 15. **Refd.** West *v.* Reid (1843), 2 Hare, 249; Belcher *v.* Campbell (1845), 15 L. J. Q. B. 11; Bell *v.* L. & N. W. Ry. (1852), 15 Beav. 548. *As to* (2) **Refd.** Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375; Parish *v.* Poole (1884), 53 L. T. 35.

285. —— ——.]—BELL *v.* LONDON & NORTH WESTERN RY. CO., No. 62, *ante*.

286. —— ——.]—MORRELL *v.* WOOTTEN, No. 280, *ante*.

287. —— **Assignment under 1873 Act.**]—BRICE *v.* BANNISTER, No. 63, *ante*.

Assent by agent.]—*See* AGENCY, Vol. I., pp. 676, 677, Nos. 2870–2881.

SECT. 6.—CONSIDERATION FOR ASSIGNMENT.

See, generally, CONTRACT.

288. Whether necessary — In equity.] — An assignment of a chose in action, which was void at law, not supported in equity in the absence of consideration.—SUFFOLK (EARL) *v.* GREENVILL (LADY) (1631), Freem. Ch. 146; Nels. 15; 3 Rep. Ch. 89; 21 E. R. 778.

289. —— ——.]—The ct. will not protect the assignment of any chose in action, unless in satisfaction of some debt due to the assignee; but not when the debt or chose in action is assigned to one to whom the assignee owes nothing precedent, so that the assignment is voluntary or for money then given.—ANON. (1667–1672), Freem. Ch. 145; 22 E. R. 1118.

290. —— ——.]—(1) A man possessed of a chose in action in his own right may assign it, though without a consideration.

(2) A husband possessed of a chose in action in right of his wife may assign it for a valuable consideration. *Semble:* it is otherwise, if there be no consideration.—CARTERET (LORD) *v.* PASCHAL (1733), 3 P. Wms. 197; 24 E. R. 1028, L. C.; *affd. sub nom.* PASCHALL *v.* THURSTON (1734), 2 Bro. Parl. Cas. 2nd ed. 10, H. L.

Annotations:—As to (1) **Refd.** Willis *v.* Brady (1740), Barn. Ch. 64; Voyle *v.* Hughes (1854), 2 Eq. Rep. 42. *As to* (2) **Consd.** Bates *v.* Dandy (1741), 3 Russ. 72, n.; Ellison *v.* Elwin (1843), 13 Sim. 309. **Refd.** Gayner *v.* Wilkinson (1773), Dick. 492; Mitford *v.* Mitford (1803), 9 Ves. 87. *Generally,* **Refd.** Salwey *v.* Salwey (1770), Amb. 692. **Mentd.** Morrice *v.* Bank of England (1736), Cas. *temp.* Talb. 217.

291. —— ——.]—Choses in action & possibilities are assignable in equity, if made upon a consideration.—ROBINSON *v.* BAVASOR (1734), 2 Eq. Cas. Abr. 90; 22 E. R. 78, L. C.

292. —— **Past & future advances—Assignment by company.**]—In Mar. 1877, the H. Co. mortgaged (*inter alia*) "all the undertaking" of the co. to the D. Co. The H. Co. afterwards borrowed money of P. & E., who had notice of the mtge., to enable it to complete a contract with the M. Co. for the construction of pontoons, the purchase-money of which was payable by instalments. In Aug. 1878, the H. Co. in consideration of past & future advances, assigned to P. & E. all sums due in respect of the contract with the M. Co. Notice of that assignment was given to the M. Co.:—*Held:* notwithstanding the mtge. to the D. Co. the assignment of the debt to P. & E. was a good equitable assignment, the advances, in consideration of which it was made, having been made by P. & E. to enable the H. Co. to keep on as a going concern.—*Re* HAMILTON'S WINDSOR IRONWORKS, *Ex p.* PITMAN & EDWARDS (1879), 12 Ch. D. 707; 39 L. T. 658; 27 W. R. 445.

*Annotations:—***Consd.** Wheatley *v.* Silkstone & Haigh Moor Coal Co. (1885), 29 Ch. D. 715. **Refd.** *Re* Anglo-American Leather Cloth Co. (1880), 42 L. T. 504. **Mentd.** General Auction Estate & Monetary Co. *v.* Smith, [1891] 3 Ch. 432.

293. —— **Existing rights—Future rights.**]—Pltf.'s wife, having lent S. £100 & taken from her an I.O.U., afterwards asked S. to pay M. the £100 when due. S. agreed & pltf.'s wife tore up the I.O.U., & S. gave M. a new I.O.U. for £100 payable to M. Pltf.'s wife then died, & pltf., as the administrator of her estate, brought an action against S. & M. to recover the amount:—*Held:* (1) there was a good equitable assignment of the £100 as there was sufficient consideration to support it, & the action failed.

(2) *Semble:* the rule that for every equitable assignment there must be consideration applies only to rights of property which are not yet in existence, & though such an assignment of existing rights, if it is made without consideration, is revocable by the assignor, yet, if he dies without revoking it, it is binding on his exor.—GERMAN *v.* YATES (1915), 32 T. L. R. 52.

294. —— **Future debt.**]—HAMBLETON *v.* BROWN, No. 71, *ante*.

—— —— **Effect of 1873 Act, s. 25 (6).**]—*See* Part II., Sect. 1, *ante*.

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q. —— *Assignment under R. S. M.* 1913, *s.* 26.]—ELLIOTT *v.* FORRESTER, [1918] 2 W. W. R. 220.—**CAN.**

PART IV. SECT. 6.

288 i. *Whether necessary.*]—In an action by the assignees of a chose in action, a plea that the assignment was made without consideration was ordered to be struck out.—BAIN *v.* MCCARTHY, 13 C. L. J. N. S. 298.—**CAN.**

295. Sufficiency of — Forbearance to sue assignor.]—A. was indebted to B. in £20 & C. was indebted to A. in £30. A., in satisfaction of the debt, which he owed to B., assigned the debt of £30, which C. owed to him, & made a letter of attorney to sue in his name. A. & B. acquainted C. with the agreement, & C. promised to B. in consideration that he would forbear till such a day that he would pay him the money. Upon that promise B. brought an action against C., who pleaded *non assumpsit*, & judgment was given for pltf. — *Held:* the consideration was not sufficient, for B. had only an authority to sue, which was at all times countermandable by A., & judgment should be entered for deft.—POTTER *v.* TURNER (1621), Win. 8; Palm. 185; 124 E. R. 7.

Annotations:—**Consd.** Morton *v.* Burn (1837), 7 Ad. & El. 19. **Mentd.** Clipsam *v.* Morrice (1669), 1 Sid. 396.

296. —— ——.]—GERMAN *v.* YATES, No. 293, *ante*.

297. —— Payment of debts of & annuity to assignor.] — One of the presumptive next of kin assigned the share to which he might become entitled in the personal estate of a lunatic who was then living, on trust to pay the costs, & any sums which might be advanced for the purposes of the trust, then to pay an annuity to the assignor, & afterwards to pay his debts. No creditor was party to the deed. The trustees made some payments in advance. On the death of the lunatic, the trustees of the deed filed a bill against the administrator & the assignor for payment of the assignor's share:—*Semble:* there was a sufficient consideration for the deed.—HINDE *v.* BLAKE (1840), 3 Beav. 234; 9 L. J. Ch. 346; 49 E. R. 91.

298. —— Felonious taking by assignor of assignee's property.]—A felonious taking by a person of the property of another constitutes such a debt from the former to the latter as may be made the consideration for an assignment, before conviction, to the latter of property belonging to the former to secure such debt.—CHOWNE *v.* BAYLIS (1862), 31 Beav. 351; 31 L. J. Ch. 757; 6 L. T. 739; 26 J. P. 579; 8 Jur. N. S. 1028; 11 W. R. 5; 54 E. R. 1174.

Voluntary assignments.]—*See* Part VIII., *post*.

SECT 7.—CONSTRUCTION OF ASSIGNMENT.

See, generally, CONTRACT; DEEDS & OTHER INSTRUMENTS.

Extent of consideration.]—*See* Sect. 6, *ante*.

299. What passes under assignment—Of pension during life of reigning sovereign—Not pension continued by succeeding sovereign.]—A pension during pleasure was granted by Geo. 3. Geo. 4 upon his accession granted by a fresh warrant a pension of equal amount to the same person:—*Held:* an assignment of the pension made during the life of Geo. 3, did not give the assignee any right to the existing pension.—CLAY *v.* ST. JOHN (1824), 2 Sim. & St. 32; 2 L. J. O. S. Ch. 151; 57 E. R. 257.

Annotation:—**Mentd.** Westmeath *v.* Westmeath (1834), 3 Knapp, 42.

300. —— Of interest in sum invested in consols —Increase in value.]—Testator directed his exors. to invest £20,000, & pay the interest to his wife for life, & after her death to pay £2,000 part thereof amongst the children of J. living at the death of the widow. Pltf. being one of the two children of J. put up for sale by public auction what he described to be £1,000 principal money, part of £20,000 principal money invested in consols. Deft. became the purchaser, & pltf., by an indenture, which recited the will, investment, & purchase, assigned £1,000 sterling part of the legacy of £20,000. At the death of the tenant for life, the £1,000 in consols were worth £1,420:—*Held:* deft. was entitled to the whole £1,420.—LUCAS *v.* BOND (1837), 2 Keen, 136; 6. L. J. Ch. 259; 48 E. R. 580; *affd.* (1838), 7 L. J. Ch. 207, L. C.

301. —— Of moiety of annuity—Not books & papers lodged with solicitor to sue for annuity.]—A solr. being employed to prosecute a suit for the recovery of an annuity, afterwards took an assignment of a moiety thereof. Pltf. in the cause employed another solr., & gave notice to the former solr. to deliver the bill to be taxed, & obtained an order upon payment to deliver up books & papers. It was objected that the books & papers belonged to the solr., the assignee of the moiety of the annuity, as much as to pltf., that he could employ & hand them over to another solr. to prosecute the suit for his interest, & that they could not be given up without his consent:—*Held:* the assignment of the moiety did not assign books & papers.—FRASER *v.* PIPPARD, FRASER *v.* RUDD (1839), 3 Jur. 815, L. C.

302. —— Of reversionary interest in stock—Bonus.]—An assignment for valuable consideration of a reversionary interest in stock carries with it any bonus which may be added between the assignment & the falling of the interest into possession.—*Re* ARMSTRONG'S TRUSTS (1857), 3 K. & J. 486; 26 L. J. Ch. 658; 30 L. T. O. S. 61; 3 Jur. N. S. 612; 5 W. R. 699; 69 E. R. 1201.

303. —— Of all assignor's interest under will—All money or property paid or appropriated by trustees to assignor.]—Testator directed his trustees, after the death of his wife, to apply the income of his estate "in & towards the maintenance, education, & advancement of my children in such manner as they shall deem most expedient until the youngest of my children attains the age of twenty-one years," & on the happening of that event he directed them to divide his estate equally among all his children then living. Testator left four children, two of whom at the death of the widow in 1884 were of age, & the youngest was in his seventh year. After the decease of the widow the trustees paid each of the adult children one-fourth of the income, & applied the other two-fourths for the benefit of the minors equally till 1886, when J., the eldest son, made an absolute assignment for value of all his interest under testator's will to H. The trustees declining to pay one-fourth of the income to H., he took out a summons to have the construction of the will determined:—*Held:* (1) no child of testator was entitled, prior to the attainment of twenty-one by the youngest of testator's children, to the payment

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297 i. *Sufficiency of—Payment of debts of assignor.*]—HUNTER *v.* WILKINSON PLOUGH CO. (1903), 2 O. W. R. 1029.—**CAN.**

PART IV. SECT. 7.

r. *What passes under assignment—Of all moneys due under building contract—Sums in estimates & percentages.*]—*Re* BUNYAN & CANADIAN PACIFIC RY. CO. (1905), 5 O. W. R. 242.—**CAN.**

s. —— *Of interest in estate under will—Not share of such estate assigned to assignor by another legatee.*]—One of the devisees of an estate sold her interest therein to her brother, & executed an instrument authorising the assignee for his own benefit to receive from the exor. all moneys which might become payable to her by virtue of all bequests under the will of her father. She was then entitled to a share of another brother's portion of the estate by assignment from him:—*Held:* the instrument had not the effect of transferring the share of the wife in the portion of the brother so assigned.—PHERRILL *v.* PHERRILL (1864), 10 Gr. 530.—**CAN.**

Sect. 7.—Construction of assignment. Part V. Sect. 1: Sub-sects. 1 & 2. A., B. & C.; sub-sect. 3.]

of any part of the income, & the trustees were entitled to apply the income for the maintenance, education, or advancement of the children, including J., in their absolute discretion; (2) H. was entitled to no interest in the income except such money or property, if any, as might be paid or delivered or appropriated for payment or delivery by the trustees to J., & the trustees could not pay or deliver J. money or goods forming part of the income or purchased out of the income, for such money & goods so paid or delivered, or appropriated to be paid or delivered, would pass by the assignment.—*Re* COLEMAN, HENRY *v.* STRONG (1888), 39 Ch. D. 443; 58 L. J. Ch. 226; 60 L. T. 127, C. A.

Annotations:—As to (2) **Refd.** *Re* Bullock, Good *v.* Lickorish (1891), 60 L. J. Ch. 341; *Re* Fitzgerald, Surman *v.* Fitzgerald, [1904] 1 Ch. 573. *Generally,* **Refd.** *Re* Neil, Hemming *v.* Neil (1890), 62 L. T. 649.

304. —— Of debts due & securities for same—Not bills & cheques.]—H. sold to H. & Co. his business as it existed on Dec. 31, 1887, & "all book & other debts due to the vendor in connection with the business & the full benefit of all securities for such debts." On Jan. 1, 1888, H. held bills & cheques which had been given to him by debtors to the business before that date. H. subsequently received the proceeds of the bills & cheques:—*Held:* (1) debts which had been paid conditionally or unconditionally at the date of the taking over of the business by the co. did not pass to the co. under the terms of the agreement; (2) the debts in respect of which the bills & cheques had been given were conditionally paid at the date of the taking over of the business, & the conditions having been fulfilled by the bills being honoured & the cheques met, the debts must be taken to have been paid as from the date the bills & cheques were given; (3) the bills & cheques were not "securities" for debts in the sense in which the word was used in the agreement, in which the term "securities" meant those held for debts which had not been paid either conditionally or unconditionally at the date of the taking over of the business.—HADLEY (FELIX) & CO. *v.* HADLEY, [1898] 2 Ch. 680; 67 L. J. Ch. 694; 79 L. T. 299; 47 W. R. 238; 42 Sol. Jo. 655.

Annotation:—As to (2) **Refd.** Marreco *v.* Richardson, [1908] 2 K. B. 584.

305. —— Of share under settlement "& all other" assignor's interest in trust fund—Not interest under subsequent appointment—Property to be held on trusts of settlement.]—The assignment by a person of his share under a settlement & all other his interest in the trust funds for the time being subject to the trusts of the settlement does not pass his interest under a subsequent appointment of property afterwards bequeathed, & directed to be held upon the trusts of the settlement.—*Re* WALPOLE'S MARRIAGE SETTLEMENT, THOMSON *v.* WALPOLE, [1903] 1 Ch. 928; 72 L. J. Ch. 522; 88 L. T. 419; 51 W. R. 587.

*Annotation:—***Mentd.** *Re* Beaumont, *Re* Trusts of Indenture of 29th April 1904, Beaumont-Nesbit *v.* Packer (1913), 57 Sol. Jo. 283.

306. —— Of business goodwill & "all book & other debts, effects, contracts & engagements"—Claim for damages for breach of contract.]—A trader had a claim against applt. co., arising out of business transactions, for unliquidated damages for breach of contract. He became bkpt., & the trustee in bkpcy. by deed assigned to resp. the goodwill of his business, & also "all the book & other debts, securities, credits, effects, contracts & engagements belonging or appertaining to the business:"—*Held:* these words were sufficient to pass to the assignee bkpt.'s claim for damages for the breach of contract.—OGDENS, LTD. *v.* WEINBERG (1906), 95 L. T. 567; 22 T. L. R. 729, H. L.; *affg.* S. C. *sub nom.* WEINBURG *v.* OGDENS, LTD. (1905), 93 L. T. 729, C. A.

*Annotation:—***Consd.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

307. —— Of chattel or proceeds of sale thereof—Severability.]—A customer, as security for an overdraft at his bank, gave authority in writing to a motor engineer, on the written instructions of the bank manager, to hold his car "at present in your hands to the order of the bank or the proceeds when sold after deducting your account." An action having been brought by the bank to enforce their rights as assignees:—*Held:* the proceeds of sale were only assigned with & representing the chattel, & the legal incidents attached to the assignment of the proceeds of sale must be held to arise out of & to be inseparable from those governing the assignment of the chattel.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. *v.* LINDSELL (1921), 66 Sol. Jo. (W. R.) 11.

308. —— In general terms—Of all assignor's personal effects—Not contingent reversionary interest in legacy.]—Assignment by A. of "all his ready money, securities for money," etc., "& all other his personal estate & effects whatsoever or wheresoever, of, or belonging, or due or owing to him:"—*Held:* the general words passed only property *ejusdem generis* with that specified, & they did not carry a contingent reversionary interest in a legacy.—*Re* WRIGHT'S TRUSTS (1852), 15 Beav. 367; 18 L. T. O. S. 268; 51 E. R. 580.

309. —— Wrong description of property assigned.]—A. mortgaged to B. his reversionary interest in a sum of £3,681 stock, which the deed represented as standing in the name of two exors. to secure three annuities. A. gave notice to the exors. There was no such sum standing in the name of the exors., but there was one sum of £2,080 standing in the name of testator, & a second sum of £2,451 in the name of one of the exors., to answer the annuities. A subsequent incumbrancer on the whole fund also gave notice to the exor.:—*Held:* B.'s security was limited to £3,681 stock.—WOODBURN *v.* GRANT (1856), 22 Beav. 483; 52 E. R. 1194.

—— Of book debts.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 231, Nos. 2165, 2166, Vol V., p. 968, Nos. 7921, 7922.

—— Of future property.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 695–697, Nos. 6122–6129; BILLS OF SALE, Vol. VII., pp. 122, 124, 125, Nos. 696, 705, 706.

—— By bill of sale.]—*See* BILLS OF SALE, Vol. VII., pp. 32, 33, 122, 124, 125, Nos. 166–171, 696, 705, 706.

t. —— *Of money which may become payable under contract—Damages for breach of contract.]*—GRAHAM *v.* BOURQUE (1903), 2 O. W. R. 1132.—**CAN.**

u. —— *Of debts, etc., vested in company—Not debts collected in course of business.]*—A co. assigned "all debts, demands & choses in action then due or thereafter to become due, or which might be vested in the co." to M. bank as security for its current account. The co. collected debts & paid the proceeds into another bank:—*Held:* debts collected by the co. in the ordinary course of business were not within the operation of the assignment, & that the debt due from the second bank to the co. was not included.—*Re* COPE FRUIT CO., LTD., BANK OF MONTREAL'S CLAIM, [1917] 1 W. W. R. 881.—**CAN.**

w. —— *Of debts due from bank—Not money paid into court by assignor & deposited in bank.]*—GROSSENBACK *v.* GOODYEAR & SUTHERLAND, [1920] 1 W. W. R. 725; 30 Man. L. R. 397.—**CAN.**

—— **By deed of arrangement.**]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1090, 1091, Nos. 8918, 8921–8923.

Assignment of interest "free from incumbrances"—Incidence of legacy duty.]—*See* ESTATE & OTHER DEATH DUTIES.

Part V.—Notice of Assignment.

SECT. 1.—NECESSITY FOR NOTICE TO DEBTOR OR FUNDHOLDER.

SUB-SECT. 1.—AS BETWEEN ASSIGNOR AND ASSIGNEE.

310. Assignment—As security—Of mortgage debt.]—The transfer of a chose in action by the mtgee. by way of deposit of securities is a simple mtge., & it is not necessary that notice of such deposit should be given to the original debtor by the transferee of the mtgee. in order to vest the debt in such transferee.—*Re* BULLER, *Ex p.* WORNALD (1860), 2 L. T. 544.

311. —— —— Of debts.]—GORRINGE *v.* IRWELL INDIA RUBBER & GUTTA PERCHA WORKS, No. 269, *ante*.

312. —— —— ——.]—BRANDT'S (WILLIAM) SONS & CO. *v.* DUNLOP RUBBER CO., No. 205, *ante*.

313. —— —— Of interest in goods for sale.]—LONDON & YORKSHIRE BANK, LTD. *v.* WHITE (1895), 11 T. L. R. 570; 39 Sol. Jo. 708, D. C.

—— **Voluntary assignment.**]—*See* Part VIII., *post*.

314. Mortgage—Of reversionary interest in stock.]—On a purchase from a mtgee. of a fund standing in the name of trustees, it is not an essential blot on the title that notice of the incumbrance was not given to the trustees, if it can be shown that no subsequent incumbrancer has given notice.—HOBSON *v.* BELL (1839), 2 Beav. 17; 8 L. J. Ch. 241; 3 Jur. 190; 48 E. R. 1084.

Annotations:—**Mentd.** Blacklow *v.* Laws (1842), 2 Hare, 40; Morley *v.* Cook (1842), 2 Hare, 106; Borell *v.* Dann (1843), 2 Hare, 440; Falkner *v.* Equitable Reversionary Soc. (1858), 4 Drew. 352; Thurlow *v.* Mackeson (1868), 9 B. & S. 975; Want *v.* Stallibrass (1873), L. R. 8 Exch. 175.

Communication to assignee.]—*See* Part IV. Sect. 3, *ante*.

SUB-SECT. 2.—AS AGAINST THIRD PARTIES IN SAME POSITION AS ASSIGNOR.

A. Judgment Creditors.

See Sect. 10, *post*.

B. Volunteers.

See case, *infra*.

C. Trustees in Bankruptcy and Liquidators.

315. To defeat title of trustee in bankruptcy—Assignment of reversionary interest in trust fund—Indian Insolvency Act, 1847 (c. 21).]—By deed poll, dated in Nov. 1847, A., for valuable consideration, assigned a reversionary interest, contingent upon his surviving a tenant for life in a trust fund, to which he was entitled under testator's will, to B., & in Apr. 1849, while resident at Bombay, A. became insolvent there. He thereupon petitioned the Insolvent Ct. at Bombay for his discharge from prison, & by an order of the ct. made on Apr. 16, upon that petition, all his estate & effects became, under the above Act, s. 7, vested in the official assignee of the ct. In 1850 the tenant for life of the fund died, & then B., for the first time, gave notice of the deed of assignment of Nov. 1847, to the surviving trustee of the fund:—*Held*: as against the official assignee, B. was entitled to the fund comprised in her security.—*Re* POLE'S TRUST, *Ex p.* HULME (1856), 3 Sm. & G. 325; 25 L. J. Ch. 862; 27 L. T. O. S. 247; 2 Jur. N. S. 685; 4 W. R. 685; 65 E. R. 679.

Annotation:—**Expld.** Day *v.* Day (1857), 23 Beav. 391.

——.]—*See, also*, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 634, 635, 638, Nos. 5705–5708, 5710–5712, 5733, 5734.

To take chose in action out of order & disposition of bankrupt assignor.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 694, 770–776, 785, 787, 800, 1002, Nos. 6118, 6615–6634, 6636, 6640–6663, 6666, 6728, 6749, 6836–6838, 8179.

To defeat title of liquidator.]—*See* COMPANIES.

SUB-SECT. 3.—AS BETWEEN ASSIGNEE AND DEBTOR OR FUNDHOLDER.

316. Equitable assignment.]—MEUX *v.* BELL, No. 329, *post*.

317. Equitable mortgage—Of railway shares.]—If a valid equitable mtge. can be made of railway shares, notice is necessary in the same way as in the case of other choses in action.—*Re* SKETCHLEY, *Ex p.* BOULTON (1857), 1 De G. & J. 163; 26 L. J. Bcy. 45; 29 L. T. O. S. 71; 3 Jur. N. S. 425; 5 W. R. 445; 44 E. R. 685, L. JJ.

Annotations:—**Consd.** *Re* Rawbone's Trust (1857), 3 K. & J. 476; *Re* Shelley, *Ex p.* Stewart (1864), 4 De G. J. & Sm. 543; *Re* Worcester, *Ex p.* Agra Bank (1868), 3 Ch. App. 555; Soc. Générale de Paris *v.* Tramways Union Co. (1884), 14 Q. B. D. 424. **Mentd.** Bartlett *v.* Bartlett (1857), 1 De G. & J. 127; *Re* Young, *Ex p.* Riddle (1859), 33 L. T. O. S. 347; Cory *v.* Eyre (1863), 1 De G. J. & Sm. 149; Colonial Bank *v.* Whinney (1886), 11 App. Cas. 426.

See, generally, COMPANIES; MORTGAGE.

See, also, No. 396, *post*.

Assignment—By trustee in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 976, No. 7991.

—— **Of shares in company.**]—*See* COMPANIES.

—— **Of insurance policy.**]—*See* INSURANCE.

318. Assignment by operation of law—Bankruptcy—Whether notice by trustee in bankruptcy necessary.]—Assignees of the comrs. of bkpts. may bring action without giving notice of the assignment.—TURNER *v.* MAINE (1699), 5 Mod. Rep. 444; 87 E. R. 755.

—— —— ——.]—*See, also*, BANKRUPTCY & INSOLVENCY, Vol. IV., p. 211, No. 1956, Vol. V., pp. 633, 634, No. 5704.

Whether concurrence of debtor or fundholder necessary.]—*See* Part IV., Sect. 5, *ante*.

PART V. SECT. 1, SUB-SECT. 2.—B.

a. *As affecting priority.*]—As between volunteers, giving notice to the debtor of an assignment of the debt does not affect priorities.—JUSTICE *v.* WYNN (1860), 12 I. Ch. R. 289.—IR.

PART V. SECT. 1, SUB-SECT. 2.—C.

315 i. *To defeat title of trustee in bankruptcy—Assignment of debt.*]—A. sued B. as executrix of C., for work & labour done for C. in his lifetime. Deft. pleaded the insolvency of A. The reply was that before his insolvency he had assigned the debt for good consideration, no notice thereof was given C.:—*Held*: the debt passed to A.'s assignees in insolvency.—HUNTER *v.* HUNTER (1868), I. R. 3 C. L. 138; 3 I. L. T. Jo. 99.—IR.

Sect. 1.—*Necessity for notice to debtor or fundholder: Sub-sects.* 4 & 5. *Sects.* 2 & 3: *Sub-sects.* 1 & 2, *A. & B.*]

SUB-SECT. 4.—AS AGAINST SUBSEQUENT INCUMBRANCERS.

Priority—Obtained by notice.]—*See* Sect. 9, sub-sect. 1, *post.*

—— **Obtained by stop order.**]—*See* Sect. 9, sub-sect. 2, *post.*

SUB-SECT. 5.—AS AGAINST THE CROWN.

319. Assignment — As security—Of interest in fund in court.]—A. by deed assigned certain sums represented by a fund in ct. to B., in trust to apply same in payment & discharge of money then due from A. to B., & in further payment of all & every the sums of money which B. might advance to A., &, subject thereto, in trust for A. A. died indebted to B. in the sum of £3,000, due at the date of the assignment, & also largely indebted to the Crown. A. was further indebted to a banking firm, of which B. was a partner, in a sum which was treated by the partnership as a bad debt, & in respect of which B.'s share of the loss amounted to £3,914, & a further sum of £2,313 was paid after the death of B. by his exor. to the Crown, upon process being issued against the estate of B., who had been a surety to the Crown for A. The Crown claimed priority as to the whole fund in ct., insisting that the property comprised in the deed consisted of choses in action, & that no notice had been given to the trustees of the fund:—*Held:* the estate of B. was entitled to the benefit of the deed in respect of the sum due at the date of it, & the sum paid by A.'s exor., but not to the sum representing B.'s share of the loss in the partnership transaction.—FOSTER *v.* HARGREAVES (1836), 1 Keen, 281; 48 E. R. 314.

See, also, No. 438, *post.*

SECT. 2.—**BY WHOM NOTICE GIVEN.**

320. Beneficiary having no right of possession himself—Only able to assert claim to receive fund through trustees.]—HILL *v.* PETERS, No. 408, *post.*

321. Executor of sub-assignee—After death of assignee.]—BATEMAN *v.* HUNT, No. 369, *post.*

Trustee in bankruptcy of assignor.]—*See* BANKRUPTCY & INSOLVENCY, Vol. 5, pp. 634, 635, Nos. 5710–5712.

SECT. 3.—**TO WHOM NOTICE GIVEN.**

SUB-SECT. 1.—IN GENERAL.

322. Party by whom money payable—Assignment of debt.]—Where a trader assigns a debt, the only person to whom notice of the assignment need be given, in order to vest a good equitable title in the assignee, is the party from whom the trader was to have received payment of the money; in other words, the party holding the property at the order & disposition of the trader.—GARDNER *v.* LACHLAN (1838), 4 My. & Cr. 129; 8 L. J. Ch. 82; 2 Jur. 1050: 41 E. R. 51, L. C.

Annotation:—**Consd.** Cooke *v.* Hemming (1868), L. R. 3 C. P. 334.

Married woman.]—*See* No. 335, *post.*

To take chose in action out of order & disposition of bankrupt assignor.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 782, Nos. 6709, 6710, 6712, 6714.

Manager of company.]—*See* No. 205, *ante.*

Servants—Of companies generally.]—*See* COMPANIES.

—— **Of insurance companies.**]—*See* INSURANCE.

SUB-SECT. 2.—TRUSTEES, EXECUTORS AND ADMINISTRATORS.

A. In General.

323. Executor—Assignment by beneficiary of stock standing in names of trustees—One trustee made executor of testator—Notice to trustees alone not sufficient.]—A sum of stock, standing in trustees' names, of which A. was the absolute beneficial owner, was bequeathed by A. to B. One of the trustees was the sole executor of A. B. encumbered the fund:—*Held:* before assent, notice of the incumbrance must be given to the exor., & notice to the other trustee alone was not enough.—HOLT *v.* DEWELL (1845), 4 Hare, 446; 15 L. J. Ch. 14; 9 Jur. 1005; 67 E. R. 723.

Annotation:—**Folld.** Stephens *v.* Green, Green *v.* Knight, [1895] 2 Ch. 148.

324. —— Sole executor afterwards renouncing.]—In 1897 D. charged his expectant interest in a legacy bequeathed to him by the will of his father, who was then living, in favour of S., & in 1898 he charged it in favour of B. The father died in 1902, D. being named his sole exor. In Jan. 1903, D., who had never acted as exor., renounced probate, & on Mar. 4 administration, with the will annexed, was granted to his sister. On the following day B. gave notice to the administratrix of his charge. On Mar. 12 S., who then became aware for the first time of the grant of administration, gave the administratrix notice of his charge. Subsequently the legacy, which had been in ct., was paid out to the administratrix:—*Held:* (1) although S.'s delay in giving notice to the administratrix was not due to any negligence on his part, yet, applying the rule in *Dearle* v. *Hall,* No. 393, *post,* B. was entitled to priority through his having been the first to give notice to the administratrix as being the first person having legal dominion of the fund after it had come into existence by the death of the testator; (2) the case was governed by *Johnstone* v. *Cox,* No. 404, *post,* & the circumstance that on the death of testator, when the fund charged came into existence, there was no trustee or other person having the legal dominion of the fund to whom effective notice could be given, was immaterial to alter the priority obtained by notice given to the person who subsequently had such legal dominion.

(3) Notice given by an assignee of a fund to the person who is himself the assignor is not an effectual notice so as to alter priorities.

(4) *Semble:* notice given by an incumbrancer to an exor., who afterwards renounces without having in any way acted in the office, is invalid.—*Re* DALLAS, [1904] 2 Ch. 385; 73 L. J. Ch. 365; 90 L. T. 177; 52 W. R. 567; 48 Sol. Jo. 260, C. A.

Annotation:—*As to* (2) **Expld. & Distd.** Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257.

325. Trustee—Himself assignor.]—*Re* DALLAS, No. 324, *ante.*

See, also, Nos. 334–337, *post.*

326. —— Of original settlement—Not trustees of derivative settlement.]—(1) Stock was transferred into the names of trustees, &, by a settle-

323 i. *Personal representatives—Assignment by legatee.*]—The personal representative of deceased is the proper party to have notice of the assignment of a legacy, though payable out of a debt to the estate.—MOLLOY *v.* FRENCH (1849), 13 I. Eq. R. 261.—IR.

ment made in 1799, settled upon trust for A. for life, & after his death in trust for other persons. By another settlement, dated in 1829, the reversionary interest under the first settlement was assigned to trustees upon trust for B. for life, & other persons. During the lifetime of A., B. mortgaged his interest to C. & D. successively. C. gave notice of his assignment to the trustees of the settlement of 1799. D. gave notice to the trustees of the settlement of 1829 :—*Held :* C. thereby retained his priority over D.

(2) *Semble :* it is the duty of a trustee parting with a fund to a new trustee to inform him of all notices he has received affecting the fund.—*Re* BOOTH'S SETTLEMENT (1853), 21 L. T. O. S. 239 ; 1 W. R. 444.

Annotation :—As to (1) **Dbtd.** Stephens *v.* Green, Green *v.* Knight, [1895] 2 Ch. 148. If *Re Booth's Settlement* decided, as it seems to have decided, that the notice given to the trustee of the original settlement was a notice which gave priority to a subsequent assignee, I am not prepared to follow it (KAY, L.J.).

327. —— —— ——.]—The priority of assignments of the equitable interest in personal estate settled upon such trusts as A. shall appoint, & appointed by A. to trustees in trust for the assignor, depends upon priority of notice to the trustees of the original settlement, so long as the trust estate is under their control ; & a mtgee. of such interest, who gave notice of his mtge. to the trustees under the appointment, but not to the trustees of the original settlement, was postponed to a subsequent mtgee. without notice of the prior mtge., who gave notice to both sets of trustees.—BRIDGE *v.* BEADON (1867), L. R. 3 Eq. 664 ; 36 L. J. Ch. 351 ; 15 W. R. 527.

*Annotation :—***Consd.** Stephens *v.* Green, Green *v.* Knight, [1895] 2 Ch. 148.

328. —— **Of derivative settlement—Not trustees of original settlement.**]—A son was entitled under the will of his father to a contingent interest in a fund paid into ct. in an action to administer the father's estate. The son died while the interest was still contingent, having bequeathed a share of such interest to his daughter, who assigned such share successively to A. & B. B., who had no notice of A.'s assignment, obtained a stop order on the fund in ct. A. gave notice of his assignment to the son's legal personal representative. Upon the interest falling into possession :—*Held :* (1) for the purpose of determining the priority between A. & B. the stop order had the same effect as notice to the father's exors. would have had if the fund had not been in ct. ; (2) the proper person to receive notice of the assignments was the trustee of the assignor, namely, the legal personal representative of the son, & A. had priority over B.—*Re Booth's Settlement*, No. 326, *ante*, overd.—STEPHENS *v.* GREEN, GREEN *v.* KNIGHT, [1895] 2 Ch. 148 ; 64 L. J. Ch. 546 ; 72 L. T. 574 ; 43 W. R. 465 ; 39 Sol. Jo. 448 ; 12 R. 252, C. A.

Duty on receipt of notice.]—*See* Sub-sect. 5, *post*.

B. Where Several Trustees of Fund.

329. Notice to one only of several trustees.]—(1) It is not necessary to give notice of an equitable incumbrance to more than one of several trustees of the property, so long as the circumstances of the case remain unaltered, by the death of that trustee, or his ceasing to continue such trustee, or otherwise.

(2) On the question of notice, where there is actual knowledge, the ct. will not distinguish between knowledge acquired in one character, & that obtained in another.

(3) Notice of an equitable assignment, to the trustee or one of several trustees of the property, is necessary in order to perfect the assignment, & to acquire & maintain priority.—MEUX *v.* BELL (1841), 1 Hare, 73 ; 11 L. J. Ch. 77 ; 6 Jur. 123 ; 66 E. R. 955.

Annotations :—As to (1) **Consd.** Ward *v.* Duncombe, [1893] A. C. 369. **Refd.** Deering & McQuestron *v.* Hibernian Joint-Stock Banking Co. (1868), 16 W. R. 573 ; *Re* Wasdale, Brittin *v.* Partridge, [1899] 1 Ch. 163. *As to* (3) **Consd.** *Re* Wyatt, White *v.* Ellis, [1892] 1 Ch. 188. **Refd.** Langton *v.* Horton (1842), 1 Hare, 549 ; Meeke *v.* Kettlewell (1842), 11 L. J. Ch. 293 ; Pinkett *v.* Wright (1842), 2 Hare, 120 ; Etty *v.* Bridges (1843), 2 Y. & C. Ch. Cas. 486 ; Kekewich *v.* Manning (1851), 1 De G. M. & G. 176 ; *Re* Plimmer, *Ex p.* Plimmer's Assignees (1853), 1 Bankr. & Ins. R. 83 ; Stocks *v.* Dobson (1853), 4 De G. M. & G. 11 ; Ward *v.* Duncombe, [1893] A. C. 369 ; *Re* Dallas (1903), 52 W. R. 313.

330. ——.] — A. being entitled to a reversionary interest in the proceeds of real & personal estate, directed by the will of testator to be sold on the death of his widow, mortgaged same, first to B. & afterwards to C. C. gave notice of his mtge. to testator's widow, who was one of the trustees for sale, & she communicated such notice to the other trustee for sale, but B. gave no notice of his mtge. to the trustees for sale or either of them :—*Held :* the notice which had been given by C. was, in the circumstances, sufficient, & C. was entitled to priority over B.—CONSOLIDATED INVESTMENT & INSURANCE CO. *v.* RILEY (1859), 1 Giff. 371 ; 29 L. J. Ch. 123 ; 1 L. T. 209 ; 5 Jur. N. S. 1283 ; 8 W. R. 102 ; 65 E. R. 961.

331. —— **Death of such trustee—Subsequent assignee giving notice to surviving trustees.**]—A., one of several exors., who alone acted, took an assignment of his son's interest in the residuary estate of testator, as a security for advances made by A. to his son, without giving notice of the assignment to his co-exors. After the death of A. & the institution of a suit by a surviving exor. for the administration of testator's estate, the son assigned the same interest, without notice of the prior assignment, for valuable consideration to B., who gave notice of his assignment to the surviving exor. :—*Held :* the knowledge which one of several exors. had of an assignment made to himself by a legatee was not sufficient to prevail against a subsequent assignee of the same interest who gave notice to a surviving exor., & the assignment to B. was entitled to priority.—TIMSON *v.* RAMSBOTTOM (1837), 2 Keen, 35 ; 48 E. R. 541.

*Annotations :—***Expld.** Meux *v.* Bell (1841), 1 Hare, 73. **Distd.** Etty *v.* Bridges (1843), 2 Y. & C. Ch. Cas. 486. **Expld.** Holt *v.* Dewell (1845), 15 L. J. Ch. 14. **Consd.** *Ex p.* Perrin & Guildford, Warburton *v.* Hill (1854), 23 L. T. O. S. 57 ; Warburton *v.* Hill (1854), Kay, 470. **Dbtd.** Ward *v.* Duncombe, [1893] A. C. 369. **Distd.** *Re* Wasdale, Brittin *v.* Partridge, [1899] 1 Ch. 163. **Refd.** *Re* Plimmer, *Ex p.* Plimmer's Assignees (1853), 1

328 i. *Trustee—Of derivative funds—Not trustee of original funds.*]—Priorities, as between mortgagees of the distributive share of one of the next-of-kin of an intestate, rank according to the dates of the notices given to the administrator after administration has been taken out. Notice given before administration has been taken out to a possible or future administrator, even if he be also the holder of a fund out of which moneys may be payable to the future administrator, is ineffectual for the purpose of obtaining priority as against other mortgagees who give notice to the administrator after he has obtained administration.—*Re* KINAHAN'S TRUSTS, [1907] 1 I. R. 321. —IR.

PART V. SECT. 3, SUB-SECT. 2.—B.

331 i. *Notice to one only of several trustees—Death of such trustee—Subsequent assignee giving notice to surviving trustees.*]—Notice of assignment of a trust fund, effected by the *cestui que trust*, was given to one only of two trustees, who afterwards died in the lifetime of his co-trustee :—*Held :* ineffectual to give priority over a subsequent incumbrance, of which notice was given to the surviving trustee.—*Re* HALL (1880), 7 L. R. Ir. 180.—IR.

Sect. 3.—To whom notice given : Sub-sect. 2, B.; Sub-sect. 3.]

Bankr. & Ins. R. 83 ; *Re* Barr's Trusts (1858), 4 K. & J. 219 ; Freeman *v.* Laing (1899), 68 L. J. Ch. 586 ; *Re* Dallas, [1904] 2 Ch. 385.

332. —— —— ——.] — In a contest for priority between assignees of a reversionary interest in a trust fund where one only of several trustees has notice of an assignment & dies, a subsequent assignee who gives notice of his assignment to the then existing trustees is entitled to priority over the prior assignee.—*Re* PHILLIPS' TRUSTS, [1903] 1 Ch. 183 ; 72 L. J. Ch. 94 ; 88 L. T. 9.

333. —— —— **Before fall of assigned interest into possession.**] — A married woman, who had settled a reversionary share of a trust fund to which she was entitled, joined with her husband in mortgaging the share without disclosing the settlement. One of the trustees of the fund had notice of the settlement ; the other had not. The mtgees. before taking their security made inquiries of the trustees as to the incumbrances, & received from the trustee who had notice an answer which conveyed no information. They then completed the mtge., & gave notice of it to both trustees. The trustee who had notice of the settlement died before the fund came into possession. In a contest for priority between the marriage settlement & the mtge. :—*Held :* the settlement took priority, & such priority was not changed by the death of the trustee.—WARD *v.* DUNCOMBE, [1893] A. C. 369 ; 62 L. J. Ch. 881 ; 69 L. T. 121 ; 42 W. R. 59 ; 1 R. 224, H. L. ; *affg.* S. C. *sub nom. Re* WYATT, WHITE *v.* ELLIS, [1892] 1 Ch. 188, C. A.

Annotations :—**Consd.** Stephens *v.* Green, Green *v.* Knight, [1895] 2 Ch. 148 ; *Re* Wasdale, Brittin *v.* Partridge, [1899] 1 Ch. 163 ; Marchant *v.* Morton, Down, [1901] 2 K. B. 829 ; *Re* Dallas, [1904] 2 Ch. 385 ; Higgins *v.* Pawson (1917), 33 T. L. R. 233. **Reid.** Mack *v.* Postle, [1894] 2 Ch. 449 ; Freeman *v.* Laing (1899), 68 L. J. Ch. 586 ; Lloyd's Bank *v.* Pearson, [1901] 1 Ch. 865 ; Taylor *v.* London & County Banking Co., London & County Banking Co. *v.* Nixon, [1901] 2 Ch. 231 ; Montefiore *v.* Guedalla, [1903] 2 Ch. 26 ; Hill *v.* Peters, [1918] 2 Ch. 273.

334. —— **Trustee himself assignor.**] — (1) Notice by an incumbrancer on a fund to one trustee of it is sufficient.

(2) Where a trustee is himself the assignor, notice to him is not sufficient.

(3) Where a trustee is himself the assignee, the fact of the assignment is sufficient notice.

(4) Notice to a trustee need not be formal, but a mere casual observation is not sufficient.

(5) Notice of an assignment of an interest in a fund may be given at any time, & lapse of time only is not sufficient to ignore its existence.—BROWNE *v.* SAVAGE (1859), 4 Drew. 635 ; 5 Jur. N. S. 1020 ; 7 W. R. 571 ; 62 E. R. 244.

Annotations :—*As to* (1) **Apld.** Forward *v.* Edginton (1860), 8 W. R. 206. **Consd.** Willes *v.* Greenhill (No. 2) (1860), 29 Beav. 387 ; Low *v.* Bouverie, [1891] 3 Ch. 82. **Reid.** Willes *v.* Greenhill (No. 1) (1860), 29 Beav. 376. *As to* (2) **Expld. & Apld.** Forward *v.* Edginton (1860), 8 W. R. 206. **Consd.** Willes *v.* Greenhill (No. 1) (1860), 29 Beav. 376 ; Newman *v.* Newman (1885), 28 Ch. D. 674. **Expld. & Foild.** Lloyd's Bank *v.* Pearson, [1901] 1 Ch. 865 ; *Re* Dallas, [1904] 2 Ch. 385.

335. —— —— **Trustee wife of assignor—Assignment by husband in right of wife of wife's interest.**]—Where a husband, in right of his wife, who is one of the representatives of an intestate's estate, assigns his share in the estate for value, & becomes insolvent, notice to the wife, if proved, is not notice to both the representatives.

The principle applicable to a trustee who is also a *cestui que trust* & assignor of a fund, applies also to a *feme covert*, on the question of notice.—FORWARD *v.* EDGINTON (1860), 1 L. T. 395 ; 8 W. R. 206.

336. —— —— **Trustee husband of assignor—Husband joining in wife's assignment.**] — The husband of a legatee beneficially entitled under a will to a share of testator's residuary estate was one of the trustees of the will & joined with his wife in mortgaging her share. The mtgee. served notice of the deed upon the mtgor.-trustee, but gave no other notice of the incumbrance :—*Held :* the notice was sufficient as against subsequent incumbrancers, although the latter had given formal notice of their incumbrances to every trustee.—WILLES *v.* GREENHILL (1861), 4 De G. F. & J. 147 ; 31 L. J. Ch. 1 ; 5 L. T. 336 ; 7 Jur. N. S. 1134 ; 10 W. R. 33 ; 45 E. R. 1139, L. C.

Annotations :—**Consd.** Quartermaine *v.* Selby (1889), 5 T. L. R. 223 ; Ward *v.* Duncombe, [1893] A. C. 369. **Expld.** Lloyd's Bank *v.* Pearson, [1901] 1 Ch. 865. **Consd.** *Re* Phillips' Trusts, [1903] 1 Ch. 183. **Reid.** Rickards *v.* Gledstanes (1861), 31 L. J. Ch. 142 ; Newman *v.* Newman (1885), 28 Ch. D. 674 ; *Re* Wasdale, Brittin *v.* Partridge, [1899] 1 Ch. 163. **Mentd.** *Re* Palmer, Palmer *v.* Clarke (1894), 13 R. 220 ; *Re* Langham, Otway *v.* Langham (1896), 74 L. T. 611 ; *Re* Watson, Turner *v.* Watson, [1896] 1 Ch. 925 ; *Re* Goy, Farmer *v.* Goy, [1900] 2 Ch. 149 ; *Re* Brown & Gregory, Shepheard *v.* Brown & Gregory, Andrews *v.* Brown & Gregory, [1904] 1 Ch. 627 ; *Re* Rhodesia Goldfields, Partridge *v.* Rhodesia Goldfields, [1910] 1 Ch. 239 ; *Re* Melton, Milk *v.* Towers (1917), 87 L. J. Ch. 18.

See, generally, HUSBAND & WIFE.

337. —— ——.]—LLOYD'S BANK *v.* PEARSON, No. 122, *ante*.

338. —— **Trustee himself assignee.**]—BROWNE *v.* SAVAGE, No. 334, *ante*.

339. —— —— **Not informing subsequent assignee of such assignment.**]—W. & A. were appointed joint receivers in a partnership suit, & were ordered, after payment of costs, to pay the residue of the money received by them to the partners according to their respective rights. L., one of the partners, afterwards assigned his share of the money to W., in consideration of advances made by him. After that L. signed an order to W., requesting him "to pay the balance of money due to me" to G. W. accepted the order in writing, undertaking thereby to pay "the balance due to you" to G. :—*Held :* upon the construction of such acceptance, & upon the evidence, "the balance" intended was the balance remaining after satisfying W.'s own claim.—*Re* LEWER, *Ex p.* GARRARD (1877), 5 Ch. D. 61 ; 46 L. J. Bcy. 70 ; 36 L. T. 42 ; 25 W. R. 364, C. A. ; *affg.* S. C. *sub nom. Re* LEWER, *Ex p.* WILKES (1876), 4 Ch. D. 101.

Annotation :—**Mentd.** *Re* Sendall, *Ex p.* Cochrane (1878), 9 Ch. D. 698.

340. Notice to some of several trustees—Death of such trustees—Bankruptcy of assignor—Failure of trustee in bankruptcy to make inquiries before such death.]—The assignee in insolvency of a person entitled to a reversionary fund vested in trustees, one of whom at the time of the insolvency had notice of a prior assignment, is affected with notice of the assignment, so that if he delays making inquiry until, through changes in the body of trustees, none remain who have notice of the assignment, want of actual notice & circumstances of subsequent diligence on his part will not entitle him to the fund as against the prior assignee.

A. being entitled to a reversionary fund under a will in 1844 assigned it for value to C., who gave notice in writing of the assignment to the then sole trustee of the will. In 1848 C. assigned the reversion to L., who gave notice of his assignment to H. & R., two of the then trustees, but not to

the remaining trustee, B. In 1852 A. became insolvent. The official assignee in whom his property vested made no inquiry of either H. or R. respecting the charges on the fund, & was not aware of the assignment. The survivor of H. & R. died in 1870. The fund being administered by the ct., & having become payable in 1874, an order was made upon an affidavit by B. that he had no notice of any charge except the insolvency, & in the absence of L., who had no notice of the proceedings, directing payment to the official assignee:—*Held:* the original priorities had not been varied, & the fund belonged to L.—BIRD *v.* BLYTH, BIRD *v.* BIRD (1876), 24 W. R. 356.

See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 633, 634.

341. Notice to surviving trustees.]—Funds belonging to L. M. were, on her marriage in 1834, vested in three trustees, one of whom died in 1840, in trust for her life for her separate use, without power of anticipation, & after her death for the children of the marriage, & in case there should be none, for such persons, if she should die in her husband's lifetime, as she should appoint. In 1843 the husband & wife executed a deed to secure payment of money due from him, & the wife appointed that in case there should be no child of the marriage, & if she should die in the husband's lifetime, the trustees of the settlement of 1834 should, out of the trust funds, raise sufficient to pay the husband's debt. Notice was given of the deed of 1843 to the two surviving trustees of the settlement. In 1848 the wife & the sole surviving trustee of the settlement, who desired to retire, appointed three new trustees, & assigned to them the trust funds. One of those trustees died, & the two surviving trustees & the survivor of them, at the request of the husband & wife, dealt with some of the trust funds, which ultimately were much diminished. A portion of the funds was invested in the purchase of leasehold premises, which were held upon the trusts of the settlement. The wife died in Mar. 1870, without having had any child. The husband survived. The survivor of the trustees of 1848 in May, 1870, received a notice from R. L. of a charge on the leaseholds in his favour, dated Oct. 5, 1864, & in Oct. 1870, he received a notice of the deed of 1843:—*Held:* (1) R. L. was not entitled to priority over the trustees of the deed of 1843, & the persons claiming under the deed of 1843 were entitled to the funds which remained in part satisfaction of the money due to them.

(2) Assignees of an equitable interest should, if they desire to be perfectly secured, obtain a distringas on the funds, or have their deed indorsed on the original deed, or obtain a transfer of the funds in ct.

(3) *Semble:* new trustees of trust funds in settlement are not bound to inquire of the old trustees whether they have received notice of any incumbrance, & it has never been the practice of the ct. on appointing new trustees of funds to make such an inquiry.—PHIPPS *v.* LOVEGROVE, PROSSER *v.* PHIPPS (1873), L. R. 16 Eq. 80; 42 L. J. Ch. 892; 28 L. T. 584; 21 W. R. 590, L. JJ.

Annotations:—*As to* (1) **Consd.** Newman *v.* Newman (1885), 28 Ch. D. 674; Low *v.* Bouverie, [1891] 3 Ch. 82.

342. Notice to all trustees existing at time of assignment—Notice to new trustees unnecessary.]—An assignee of a reversionary interest in a trust fund, who has given notice to all the trustees in existence at the time of his assignment, is under no obligation to give any further notice, & is entitled to priority over a subsequent assignee, who has taken his assignment after the death or retirement of all those trustees, & who gives notice of such assignment to the new trustees.—*Re* WASDALE, BRITTIN *v.* PARTRIDGE, [1899] 1 Ch. 163; 68 L. J. Ch. 117; 79 L. T. 520; 47 W. R. 169; 15 T. L. R. 97; 43 Sol. Jo. 126.

Annotations:—**Consd.** *Re* Phillips' Trusts, [1903] 1 Ch. 183. **Refd.** Freeman *v.* Laing, [1899] 2 Ch. 355; *Re* Dallas, [1904] 2 Ch. 385.

SUB-SECT. 3.—SOLICITORS.

343. Of trustees—Written notice addressed to trustee—Left with trustee's solicitor.]—A sum of money was invested in the funds in the names of four trustees, & A., one of the trustees, acted as solr. for his co-trustees, one of whom, B., was also a client of A. C., being entitled to the reversion of the above sum, sold his interest in 1820 to D., & in 1824 to E., who immediately served each of the four trustees with notice. D. alleged that he had previously given notice in 1820 by leaving with A. written notices to the four trustees:—*Held:* the case rested entirely upon the question of fact whether B. had, or had not, notice of the assignment of 1820, & as all the facts favoured the presumption that there would be notice to B., inasmuch as A. with whom the original notices were left, was the solr. of B., the assignment of 1820 was entitled to priority.—*Re* DURAND'S TRUST (1859), 1 L. T. 84; 8 W. R. 33, L. C. & L. JJ.

Annotation:—**Consd.** Saffron Walden Bldg. Soc. *v.* Rayner (1879), 48 L. J. Ch. 402.

344. —— Must be solicitor at time & in relation to property in question.]—Where notice is given to the trustees of a settlement, through their solr., of an assignment of a reversionary interest thereunder, the solr. must be the solr. to the trustees at the time & in relation to the property in question.—RICKARDS *v.* GLEDSTANES (1862), 31 L. J. Ch. 142; 5 L. T. 568, L. C.

345. —— Must be expressly authorised to receive notice—Mere employment as solicitor for trustees of property in question not sufficient.]—Pltfs. took a mtge. of a reversionary share in testator's estate, & gave notice of the incumbrance to a firm of solrs. who were acting for the trustees & exors. in a Ch. suit to which testator had been a party, & were employed by them in all matters relating to testator's estate in which professional assistance was required. The solrs. wrote accepting the notice on behalf of the trustees. A member of the firm deposed that at the close of a meeting held at his office two months afterwards, with reference to the winding-up of the Ch. suit, & lasting above three hours, the notice was read to the trustees. Two of the trustees positively denied this, & the third denied all recollection of it. There was no further proof of their having received notice of it until after notices of other incumbrances had been duly given to them:—*Held:* (1) notice to the solrs. was not good notice to the trustees; (2) evidence of parol notice having been given to the trustees in the course of conversation at the end of a meeting called upon other business, could not be relied upon as fixing the trustees with notice in opposition to their denial of having received it; (3) pltfs. must be postponed to the subsequent incumbrancers; (4) the solrs. in accepting service of the notice on behalf of the trustees were not guilty of a misrepresentation of fact for which they could be made liable, but were acting under an opinion common to both parties, but which was erroneous in point of law, that their employment as solrs. enabled them effectually to accept service of

Sect. 3.—To whom notice given: Sub-sects. 3, 4 & 5. *Sect.* 4.]

the notice.—SAFFRON WALDEN SECOND BENEFIT BUILDING SOCIETY *v.* RAYNER (1880), 14 Ch. D. 406; 49 L. J. Ch. 465; 43 L. T. 3; 28 W. R. 681, C. A.

Annotations:—As to (1) **Consd.** Hester *v.* Hester (1887), 34 Ch. D. 607. **Distd.** Rowland *v.* Chapman, Rowland *v.* Corrie, Rowland *v.* Corrie, Rowland *v.* Brandreth (1901), 17 T. L. R. 669. **Refd.** Whittingstall *v.* King (1882), 46 L. T. 520; *Re* Kellock (1887), 56 L. T. 887; Lloyd's Bank *v.* Pearson, [1901] 1 Ch. 865.

346. —— Solicitor to trustees acting as solicitor for all parties—In series of assignments.]—In 1871 C. mortgaged his share of a trust fund to B. In 1873 C. mortgaged the same share to R., repaying B. out of the sum advanced. In 1874 R. transferred the mtge. to D. In 1875 C. mortgaged the same share to P., who had no notice of the prior mtge. In all the transactions B., who was solr. to the trustees of the fund, acted as solr. for all parties. The first notice to the trustees of any assignment by C. was of the assignment by C. to P.:—*Held:* P. was entitled to priority over D.—*Re* COUSINS (1886), 31 Ch. D. 671; 55 L. J. Ch. 662; 54 L. T. 376; 34 W. R. 393.

——.]—*See, generally,* EQUITY; MORTGAGE; SOLICITORS; TRUSTS & TRUSTEES.

Of companies.]—*See* COMPANIES; INSURANCE.

SUB-SECT. 4.—COMPANIES.

347. To official liquidator—Assignment of debt due from company.]—Notice to an official liquidator of the assignment of a debt due from the co. is sufficient to perfect the assignment.—*Re* BREECH-LOADING ARMOURY CO., WRAGGE'S CASE (1868), L. R. 5 Eq. 284.

348. Manager at debtor company's works—Not communicated to head office.]—BRANDT'S (WILLIAM) SONS & CO. *v.* DUNLOP RUBBER CO., No. 205, *ante.*

See, generally, COMPANIES.

Assignment of shares in company.]—*See* COMPANIES.

Assignment of insurance policy.]—*See* INSURANCE.

SUB-SECT. 5.—DUTY OF PERSON TO WHOM NOTICE GIVEN.

349. General rule.]—(1) The assignee of a chose in action, or security of any kind, where there has been no fraud, stands in exactly the same situation as the assignor as to the equities arising upon it. He must be taken to be cognisant of them. It is his duty to make inquiries, &, as a general rule, the creator of the security thus assigned is not bound, on receiving a simple notice of the assignment, to volunteer information. If a loss arises, it falls upon him whose duty it is to make the inquiries & who has not made them. But if the notice given by the assignee discloses, on the face of it, that which induces the belief that he has been deceived in accepting the assignment, the creator of the security is bound to inform the assignee of the real circumstances, & if he should not do so, he will be bound to perform the stipulations of the security, & cannot be allowed to take advantage of the equities existing as between the assignor & himself.

(2) This is the assignment of a chose in action, that is, of a charterparty, which is not assignable at law, but may be assigned in equity (LORD ST. LEONARDS, C.).—MANGLES *v.* DIXON (1852), 3 H. L. Cas. 702; 19 L. T. O. S. 260; 10 E. R. 278, H. L.

Annotations:—As to (1) **Consd.** Rodger *v.* Comptoir D'Escompte de Paris (1869), L. R. 2 P. C. 393. **Expld. & Distd.** Leask *v.* Scott (1877), 2 Q. B. D. 376. **Refd.** Roit *v.* White (1862), 3 De G. J. & Sm. 360; Higgs *v.* Northern Assam Tea Co. (1869), L. R. 4 Exch. 387; Watts *v.* Driscoll, [1901] 1 Ch. 294; Stoddart *v.* Union Trust (1911), 81 L. J. K. B. 140. *Generally,* **Mentd.** Watson *v.* Mid Wales Ry. (1867), L. R. 2 C. P. 593.

350. Trustee—To inform new trustee—Of all notices received.]—*Re* BOOTH'S SETTLEMENT, No. 326, *ante.*

351. —— To inquire of old trustee—Whether any notices received.]—PHIPPS *v.* LOVEGROVE, PROSSER *v.* PHIPPS, No. 341, *ante.*

352. —— —— ——.]—New trustees are not fixed with notice through retiring trustees of incumbrances affecting the trust estate, of which no notice appears amongst the trust documents, & the existence of which, though known to the retiring trustees, is not disclosed to them.—HALLOWS *v.* LLOYD (1888), 39 Ch. D. 686; 58 L. J. Ch. 105; 59 L. T. 603; 37 W. R. 12.

353. —— To inform second assignee—Of prior assignment to himself.]—A trustee who receives notice of an assignment of the trust fund made by the *cestui que trust* is not, in the absence of inquiry, bound to inform the person giving him the notice that he himself has a prior assignment. By omitting to give that information the trustee will not lose his priority.—*Re* LEWER, *Ex p.* WILKES (1876), 4 Ch. D. 101; 35 L. T. 557; 25 W. R. 64; *affd. sub nom. Re* LEWER, *Ex p.* GARRARD (1877), 5 Ch. D. 61, C. A.

Annotation:—**Mentd.** *Re* Sendall, *Ex p.* Cochrane (1878), 9 Ch. D. 698.

354. —— To inform cestui que trust—What incumbrances have been created—To answer inquiries of stranger about to deal with cestui que trust.]—Although it is the duty of a trustee to give his *cestui que trust,* on demand, information with respect to the dealings with & position of the trust fund, it is no part of his duty to assist his *cestui que trust* in selling or incumbering his beneficial interest by telling him what incumbrances he, the *cestui que trust,* has created, nor which of his incumbrancers have given notice of their respective charges; & it follows that the trustee is under no obligation to answer the inquiries of a stranger about to deal with the *cestui que trust.*

If the trustee takes upon himself to answer the inquiries of a stranger about to deal with the *cestui que trust,* he is not under any legal obligation to do more than to give honest answers to the best of his actual knowledge & belief: he is not bound to make inquiries himself. Provided he answers honestly, he incurs no liability to the inquirer, unless he binds himself by a statement amounting to a warranty, or so expresses himself as to be estopped from afterwards denying the truth of what he has said.

B., being entitled under a settlement to a life interest in a trust fund, applied to pltf. for a loan on the security of such life interest, at the same time referring pltf. to deft., one of the trustees of the settlement, for information as to his, B.'s, means & position. Pltf. thereupon wrote to deft. inquiring what the trust fund consisted of, & whether B.'s life interest was subject to any incumbrances, but not stating that B. had applied for an advance. Deft. replied that the life interest was subject to certain incumbrances, mentioning them, but did not say there were no others. Pltf. then made an advance to B., on the security of a mtge. by B. of his life interest. Subsequently pltf. discovered that the life interest was subject to several incumbrances prior to his own, besides those deft. had

mentioned, but the existence of which, as was admitted by pltf., deft. had forgotten when replying to pltf.'s inquiries, though he had had notice of them. Pltf.'s security being insufficient, he brought an action against deft. to have him declared liable for the amount due on the security, alleging that the advance to B. was made upon the faith of deft.'s written representations :—*Held :* deft. was not liable either on the ground of fraud, breach of duty, warranty, or estoppel.—LOW *v.* BOUVERIE, [1891] 3 Ch. 82 ; 60 L. J. Ch. 594 ; 65 L. T. 533 ; 40 W. R. 50 ; 7 T. L. R. 582, C. A.

Annotations :—**Consd.** Ward *v.* Duncombe (1893), 69 L. T. 121. **Expld.** Oliver *v.* Bank of England, [1902] 1 Ch 610 ; Banbury *v.* Bank of Montreal, [1917] 1 K. B. 409. **Refd.** Elkington *v.* Hürter, [1892] 2 Ch. 452 ; *Re* Tillott, Lee *v.* Wilson, [1892] 1 Ch. 86. **Mentd.** Balkis Consolidated Co. *v.* Tomkinson (1893), 42 W. R. 204 ; Le Lievre & Dennes *v.* Gould, [1893] 1 Q. B. 491 ; Williams *v.* Pinckney (1897), 67 L. J. Ch. 34 ; Whittington *v.* Seale-Hayne (1900), 82 L. T. 49 ; Whitechurch *v.* Cavanagh, [1902] A. C. 117 ; Porter *v.* Moore, [1904] 2 Ch. 367 ; Exploring Land & Minerals Co. *v.* Kolckmann (1905), 94 L. T. 234 ; Fry *v.* Smellie, [1912] 3 K. B. 282 ; Nocton *v.* Ashburton, [1914] A. C. 932 ; Pierson *v.* Altrincham U. C. (1917), 86 L. J. K. B. 969 ; Everett *v.* Griffiths, [1920] 3 K. B. 163.

——.]—*See, further*, TRUSTS & TRUSTEES.

355. Solicitor to trustee—Accepting service of notice without authority — Mistake of law.]—SAFFRON WALDEN SECOND BENEFIT BUILDING SOCIETY *v.* RAYNER, No. 345, *ante*.

SECT. 4.—**TIME FOR NOTICE.**

356. At any time.]—BROWNE *v.* SAVAGE, No. 334, *ante*.

357. Before trustee becomes such — Priority of notices given.]—An officer in the army covenanted to assign to the trustees of a settlement any money he might receive from the sale of his commission, & subsequently executed a second covenant to assign the same proceeds to another person who had no notice of the settlement. The second assignee gave the first notice to the army agent of the regiment, but the trustees also gave notice before the fund reached the army agent's hands :—*Held :* the trustees had priority.—BULLER *v.* PLUNKETT (1860), 1 John. & H. 441 ; 30 L. J. Ch. 641 ; 4 L. T. 737 ; 7 Jur. N. S. 873 ; 9 W. R. 190 ; 70 E. R. 819.

Annotations :—**Folld.** Webster *v.* Webster (1862), 31 Beav. 393 ; Somerset *v.* Cox (1864), 33 Beav. 634. **Distd.** Addison *v.* Cox (1872), 42 L. J. Ch. 291. **Apld.** *Re* Dallas, [1904] 2 Ch. 385. **Refd.** Marchant *v.* Morton, [1901] 2 K. B. 829.

358. —— ——.]—(1) As between two equitable assignees, the time when notice is given to a person who afterwards becomes trustee is of no importance, if both notices are given previous to the period when the relation of trustee or *cestui que trust* is created.

(2) Where before an attachment in the Lord Mayor's Ct., London, debtor had assigned all his interest in the property sought to be attached, & notice thereof was given to the garnishees :—*Held :* the attachment had no operation as against the assignee.—WEBSTER *v.* WEBSTER (1862), 31 Beav. 393 ; 31 L. J. Ch. 655 ; 6 L. T. 11 ; 8 Jur. N. S. 1047 ; 10 W. R. 503 ; 54 E. R. 1191.

Annotations :—*As to* (1) **Folld.** Somerset *v.* Cox (1864), 33 Beav. 634. **Distd.** Addison *v.* Cox (1872), 42 L. J. Ch. 291.

359. —— ——.]—As between two assignees of a possible future fund, notice, before the fund has come into existence, to a person who is merely a potential future trustee or stakeholder is ineffectual to disturb the usual order of priorities.

An officer in the army upon his marriage covenanted with trustees that any money which should be received from the sale of his then or any future commission, etc., should be paid to the trustees upon the trusts of his marriage settlement. He subsequently became indebted to the regimental agents ; he then gave them authority to apply for the sale of his commission, & he charged the proceeds with payment of the debt. The trustees shortly afterwards gave the agents notice of the settlement, & of their claim to the proceeds. The commission was subsequently sold & the money was paid to the agents. Upon a bill by the trustees of the settlement :—*Held :* the charge of the agents upon the proceeds arising from the sale of the commission was entitled to priority over the settlement, since, if notices given before receipt of the sale money were to be regarded as effectual, the army agents had notice of their own security before receiving any notice of the settlement ; & if as ineffectual, then the first notice after the receipt of the sale money, & the first effectual notice, was also that of their own claim.—SOMERSET *v.* COX (1864), 33 Beav. 634 ; 3 New Rep. 682 ; 33 L. J. Ch. 490 ; 10 L. T. 181 ; 10 Jur. N. S. 351 ; 12 W. R. 590 ; 55 E. R. 514.

Annotations :—**Distd.** Addison *v.* Cox (1872), 42 L. J. Ch. 291. **Apld.** Roxburghe *v.* Cox (1881), 17 Ch. D. 520 ; Blake *v.* Halse (1892), 8 T. L. R. 789 ; *Re* Dallas, [1904] 2 Ch. 385. **Refd.** *Re* Cousins (1886), 31 Ch. D. 671.

Priority determined by notice generally, *see* Sect. 9, *post*.

360. —— **Validity of notice given.**] — A lieutenant in the army applied for permission to sell his commission. The purchase-money was paid by the intending purchasers to the regimental agent :—*Held :* notice to the agent of an assignment of the purchase-money before such money was received was of no avail. *Semble :* such notice would be of no avail unless given after the retirement of the lieutenant had been published in the *Gazette*.—SUFFOLK & BERKSHIRE (EARL) *v.* Cox (1867), 36 L. J. Ch. 591 ; 16 L. T. 374 ; 15 W. R. 732.

361. —— ——.]—Notice of assignment of the proceeds of sale of a commission before the money is actually carried to the officer's credit in the army agents' books is useless.—YATES *v.* Cox (1868), 17 W. R. 20.

Annotations :—**Folld.** Boss *v.* Hopkinson (1870), 18 W. R. 725. **Distd.** Addison *v.* Cox (1872), 42 L. J. Ch. 291. **Apld.** *Re* Dallas, [1904] 2 Ch. 385.

362. —— —— **Subsequent notice after fund in trustee's hands.**]—An officer in a regiment assigned the money to arise from the sale of his commission to two assignees separately. He obtained leave to sell out, & the two assignees gave to the agents of the regiment simultaneous notices of their incumbrances. £450, forming part of the money which the officer would receive, came from a particular fund in the hands of the agents, held by them subject to the directions of the Horse Guards. Six days after the notices had been given, a letter was sent from the Horse Guards, the purport of which was communicated by the agents to the officer, requesting the agents to transfer £450 from the fund to the officer. The first assignee then gave a second notice. The agents sent a form of receipt to the officer, which was returned by him signed, before which the £450 was not issuable by the agents. The second assignee then gave a second notice :—*Held :* the first assignee had priority over the second assignee.—ADDISON *v.* Cox (1872), 8 Ch. App. 76 ; 42 L. J. Ch. 291 ; 28 L. T. 45 ; 21 W. R. 180, L. C.

Annotations :—**Folld.** Addison *v.* Cox (1874), 30 L. T. 253. **Distd.** Johnstone *v.* Cox (1880), 16 Ch. D. 571. **Apld.** *Re* Dallas, [1904] 2 Ch. 385. **Mentd.** Stephens *v.* Green, Green *v.* Knight, [1895] 2 Ch. 148.

363. *S. P.* ADDISON *v.* Cox (1874), 30 L. T. 253.

Sect. 4.—Time for notice. Sects. 5 & 6.]

364. —— ——.]—JOHNSTONE *v.* COX, No. 404, *post.*

Sale of commissions, *see, now,* Army Act, 1881 (c. 58), s. 155.

See, further, Sect. 9, sub-sect. 1. A (a) i., *post.*

365. —— —— **Assignment of compensation annuity—Notice to treasury nugatory.]**—BLAKE *v.* HALSE (1892), 8 T. L. R. 789; 36 Sol. Jo. 733.

366. —— ——.]—*Re* DALLAS, No. 324, *ante.*

367. After death—Of assignor.]—A policy effected by A. on his life was mortgaged in 1860 without notice to the office. A. became bkpt. in 1862, & in 1868 joined in a transfer of the mtge. to B., who had no notice of the bkpcy. After the death of A., B.'s solr. gave notice to the office that this & other policies were mortgaged, & that he acted for the mtgees., not naming them. Subsequently notice of the bkpcy. was given to the office:—*Held:* this was sufficient to give priority to B. over the creditors in the bkpcy. of the assured. —*Re* RUSSELL'S POLICY TRUSTS (1872), L. R. 15 Eq. 26; 27 L. T. 706; 21 W. R. 97.

Annotations:—**Consd.** Semphill *v.* Queensland Sheep Investment Co. (1873), 29 L. T. 737. **Refd.** *Re* Mills' Trusts (1895), 73 L. T. 229. **Mentd.** *Re* Pooley, *Ex p.* Rabbinge (1878), 38 L. T. 663.

See, generally, INSURANCE.

368. —— ——.]—WALKER *v.* BRADFORD OLD BANK, No. 73, *ante.*

369. —— Of assignee.]—A solr. was instructed by defts. to procure a loan of a specified amount on the security of property belonging to them. A mtge. deed was prepared & executed by defts., purporting to be in consideration of the specified amount, the receipt whereof was acknowledged in the body of the deed. The solr. himself advanced a sum of money the amount of which was disputed, but the deed was made out in the name of a clerk in the solr.'s office as mtgee. The mtge. debt was subsequently assigned to the solr. & by him, by way of sub-mtge., to pltfs.' testator, for whom he was also acting as solr. for the investment of money on mtge. The solr. & testator of pltfs. died without giving to defts. any notice of the assignments, but notice was subsequently given by pltfs. of both assignments, & an action was brought in their names upon the covenants in the principal deed to recover the amount specified therein:—*Held:* (1) as pltfs. were entitled in equity to all the rights of the mtgee. under the principal deed, the notice of the assignments given by them was effectual to give them a legal title to sue upon the covenants contained in that deed; (2) testator of pltfs. not having had actual or constructive notice that the amount specified in the mtge. deed had not been paid, pltfs. were entitled to rely on the acknowledgment contained in that deed, & to recover the amount therein stated to have been received.—BATEMAN *v.* HUNT, [1904] 2 K. B. 530; 73 L. J. K. B. 782; 91 L. T. 331; 52 W. R. 609; 20 T. L. R. 628, C. A.

Annotations:—*As to* (2) **Distd.** Powell *v.* Browne (1907), 97 L. T. 167. **Refd.** Burchell *v.* Thompson, [1920] 2 K. B. 80.

370. Of charge of future property.]—*Re* DALLAS, No. 324, *ante.*

Of assignment of insurance policy.]—*See* INSURANCE.

To take chose in action out of order & disposition of bankrupt assignor.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 779–782, Nos. 6691–6695, 6698–6700, 6702, 6703, 6706, 6708.

SECT. 5.—CONSTRUCTIVE NOTICE.

See, generally, EQUITY; MORTGAGE.

Notice to one of several trustees—Whether notice to all.]—*See* Sect. 3, sub-sect. 2, B., *ante.*

Notice to agent—Imputed to principal.]—*See* AGENCY, Vol. I., pp. 610–613.

Mortgagee affected with.]—*See* MORTGAGE.

Under Conveyancing Act, 1882 (c. 39).]—*See* EQUITY.

371. Two charges in one deed—Notice referring only to one charge.]—*Re* BRIGHT'S TRUSTS, No. 386, *post.*

372. Knowledge—Actual knowledge—Whether acquired in one character or obtained in another immaterial.]—MEUX *v.* BELL, No. 329, *ante.*

373. —— Debtor present as director when resolution passed by assignor company—For assignment of debt.]—PICKERING *v.* ILFRACOMBE RY. CO., No. 186, *ante.*

374. —— Advertisement in newspaper.]—LLOYD *v.* BANKS, No. 380, *post.*

375. —— Of document putting assignee on inquiry.]—*Re* CAWTHORNE, *Re* HARWOOD, No. 429, *post.*

376. —— Of document which may or may not affect property.]—ENGLISH & SCOTTISH MERCANTILE INVESTMENT CO. *v.* BRUNTON, No. 430, *post.*

377. —— Acquired by trustee before appointment as such—Sufficiency of knowledge.]—Where a person, prior to his appointment as trustee of property, acquires knowledge of a mtge. of a reversionary share in the property, & the knowledge is of such a kind that an ordinary business man would act on the information & regulate his conduct by it in the execution of the trust, that is sufficient notice of the mtge. to prevent its priority being displaced by notice to him, when appointed trustee, of a subsequent mtge. before any notice is received by him of the mtge. prior in date.—IPSWICH PERMANENT MONEY CLUB, LTD. *v.* ARTHY, [1920] 2 Ch. 257; 89 L. J. Ch. 483; 123 L. T. 417; 64 Sol. Jo. 586.

SECT. 6.—FORM AND SUFFICIENCY OF NOTICE.

378. General rule—Formal notice not necessary.]—*Semble:* to complete a title by assignation, it is not necessary that the intimation should be notarial or formal. Ordinary notice or circumstances of conduct from which a claim under the assignation is to be inferred, considered as equivalent to solemn intimation.—SELKRIG *v.* DAVIES (1814), 2 Dow. 230; 2 Rose, 291; 3 E. R. 848, H. L.

Annotations:—**Mentd.** *Re* Cridland, *Ex p.* Cridland (1814), 2 Rose, 164; *Re* Mowat, *Ex p.* Geddes (1824), 1 Gl. & J. 414; Randall *v.* Randall (1835), 7 Sim. 271; Cockerell *v.* Dickens (1840), 3 Moo. P. C. C. 98; Fergusson *v.* Spencer (1840), 2 Scott, N. R. 229; Scott *v.* Bentley (1855), 1 K. & J. 281; Darby *v.* Darby (1856), 3 Drew. 495; *Re* Douglas, *Ex p.* Wilson (1872), 7 Ch. App. 490; *Re* Oriental Steam Co. (1874), 22 W. R. 622; Banco de Portugal *v.* Waddell (1880), 5 App. Cas. 161; *Re* Artola Hermanos, *Ex p.* Châle (1890), 59 L. J. Q. B. 254.

379. —— ——.]—TIBBITS *v.* GEORGE, No. 284, *ante.*

PART V. SECT. 5.

372 i. *Knowledge—Actual knowledge—Whether acquired in one character or obtained in another immaterial—Notice to solicitor imputed to client.]*—CLARK *v.* KENDALL (1896), 4 B. C. R. 503.—CAN.

b. —— *All parties present when transactions carried out.]*—LAVELL *v.* MCDONALD (1910), 15 W. L. R. 243.—CAN.

PART V. SECT. 6.

378 i. *General rule—Formal notice not necessary.]*—It is not necessary that intimation of an assignment be made in strict form by a notarial instrument.

380. —— ——.]—In order to give priority to an equitable assignment of a trust fund, it must be shown that the trustee has such knowledge, however acquired, of the transaction, as an ordinary man of business would act upon, but it is not necessary that formal notice should be given.

A trustee, who saw in a newspaper an advertisement relating to a petition by his *cestui que trust* as an insolvent debtor, believed, correctly, that the *cestui que trust* was insolvent, & treated such insolvency as a fact in a transaction independent of the trust. The *cestui que trust* two years afterwards made an equitable assignment of his interest in the trust fund by way of mtge., of which the mtgee. gave formal notice to the trustee. Subsequently to such notice the assignees in insolvency for the first time gave formal notice of the insolvency to the trustee. On a question of priority between the mtgee. & the assignees in insolvency: —*Held:* the assignees in insolvency were entitled to priority.—LLOYD *v.* BANKS (1868), 3 Ch. App. 488; 37 L. J. Ch. 881; 16 W. R. 988, L. C.; *revsg.* (1867), L. R. 4 Eq. 222.

Annotations:—**Consd.** Saffron Walden Bldg. Soc. *v.* Rayner (1879), 10 Ch. D. 696. **Apld.** *Re* Wyatt, White *v.* Ellis, [1892] 1 Ch. 188. **Consd.** Bence *v.* Shearman, [1898] 2 Ch. 582; *Re* Dallas, [1904] 2 Ch. 385. **Apld.** Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257. **Refd.** *Re* Brown's Trusts (1867), L. R. 5 Eq. 88; Arden *v.* Arden (1885), 29 Ch. D. 702; Mercer *v.* Vans Colina (1897), [1900] 1 Q. B. 130, n.; Whitwam *v.* Watkin (1898), 78 L. T. 188; Bateman *v.* Hunt, [1904] 2 K. B. 530. **Mentd.** Mack *v.* Postle, [1894] 2 Ch. 449; *Re* Behrend's Trust, Surman *v.* Biddell, [1911] 1 Ch. 687.

381. —— —— So long as notice brought clearly to mind of trustee.]—SAFFRON WALDEN SECOND BENEFIT BUILDING SOCIETY *v.* RAYNER, No. 345, *ante*.

382. Oral notice — Casual observation.] — BROWNE *v.* SAVAGE, No. 331, *ante*.

383. —— Casual conversation.]—Oral notice given to a trustee of an incumbrance on the trust fund is sufficient; but a statement to a trustee, in a casual conversation, is insufficient notice to him. —*Re* TICHENER (1865), 35 Beav. 317; 55 E. R. 918.

Annotation:—**Mentd.** Semphill *v.* Queensland Sheep Investment Co. (1873), 29 L. T. 737.

384. Notice in writing—Letter from solicitor of trustee of deed of arrangement—Asking for account of dealings between assignor & debtor.]—On Dec. 5, 1907, deft. owed £808 to A. On that day A. by a deed of arrangement absolutely assigned to B. & C., the trustees of the deed, all his personal property. On Apr. 8, 1908, the trustees' solrs. wrote to deft. saying that "the trustees of the deed of arrangement dated Dec. 5, 1907, & executed by A., have instructed us to apply to you for an account showing all dealings between yourself & A. The reason of this application is that there appears from A.'s books to be a considerable debt due from you to him for money advanced." On June 24, 1910, D. was by deed appointed a new trustee of the deed of Dec. 5, 1907, in substitution for C., but no notice of this deed was given to deft. In an action brought by B., C., & D. to recover the debt of £808 from deft.:—*Held:* the letter of Apr. 8, 1908, constituted an express notice in writing of the assignment of the debt of £808 within 1873 Act, s. 25 (6), inasmuch as, although not worded with the precision of a formal notice, it indicated with sufficient certainty to deft. that A. had executed a deed which assigned to the then trustees the debt formerly due to him, & that the debt, when the amount was ascertained, must be paid to the trustees & not to A., & the names of the assignees were sufficiently disclosed, as there was an express & accurate reference to the deed to which the trustees were parties.—DENNEY, GASQUET & METCALFE *v.* CONKLIN, [1913] 3 K. B. 177; 82 L. J. K. B. 953; 109 L. T. 444; 29 T. L. R. 598.

Annotation:—**Refd.** *Re* Barker's Settlmt., Knocker *v.* Vernon Jones, [1920] 1 Ch. 527.

385. —— Debtor unable to read.]—(1) On the assignment of a debt the assignee cannot recover the debt in an action, if no notice in writing has been given to debtor as provided by 1873 Act, s. 25 (6), although such notice has not been given owing to the inability of debtor to read, a fact known to the assignee, & other means have been employed to bring the assignment to his knowledge & attention, & to explain the nature & effect of it to him.

(2) If debtor pays anything on account, this does not raise an estoppel against him so as to prevent him, on being sued for the debt, from relying on the words of the sect. requiring notice of the assignment to be in writing.—HOCKLEY & PAPWORTH *v.* GOLDSTEIN (1920), 90 L. J. K. B. 111; 124 L. T. 277; 36 T. L. R. 539; 25 Com. Cas. 284.

386. Two charges in one deed—Notice referring only to one charge.]—Where two charges on a chose in action are contained in one deed, & a notice is given to the trustees which specifies one only, the trustees have not constructive notice of the contents of the deed, so that notice of both the charges is to be imputed to them.

A., having a contingent reversionary interest in a fund vested in trustees, sold & assigned a portion of it to B. The assignment contained a covenant on the part of A. to insure his life against the contingency, & to pay the premiums, &, in default, to charge the fund therewith. B. gave the trustees notice of the deed so far as related to the purchase only, but not as regarded the charge for the insurance:—*Held:* as to subsequent incumbrancers on the fund who had given due notice, B. had priority to the extent only of his purchase, & not in respect of the charge for insurance.—*Re* BRIGHT'S TRUSTS (1856), 21 Beav. 430; 25 L. J. Ch. 449; 27 L. T. O. S. 32; 2 Jur. N. S. 300; 4 W. R. 381; 52 E. R. 925.

Knowledge—Amounting to constructive notice.] —*See* Sect. 5, *ante*.

—— Of one of several trustees.]—*See* Sect. 3, sub-sect. 2, *ante*.

—WALLACE *v.* DAVIES (1853), 25 Sc. Jur. 415.—**SCOT.**

381 i. —— —— *So long as notice brought clearly to mind of debtor.]*—DONALDSON *v.* ORD (1855), 17 Dunl. (Ct. of Sess.) 1053.—**SCOT.**

c. —— *Must state interest of assignee.]*—The notice must specify the exact interest of the assignee under the assignment.—WARD *v.* MCDONALD (1858), 2 Thom. 422.—**CAN.**

d. —— *Must not be equivocal.]*—MCMILLAN *v.* ORILLIA EXPORT LUMBER CO. (1903), 6 O. L. R. 126; 2 O. W. R. 529.—**CAN.**

e. —— *Must name assignee.]*—MARITIME MOTOR CAR CO., LTD. *v.* MCPHALEN (1920), 2 W. W. R. 213.—**CAN.**

382 i. *Oral notice.]*—A verbal notice of an equitable assignment of a chose in action is sufficient to entitle the assignee to the fruits of it.—*Re* FITZSIMON (1853), 22 L. T. O. S. 66.—**IR.**

f. *Notice in writing—Letter from assignee's solicitor—To administrator—R. S. N. S. c. 94.]*—The assignee of a debt served the following note on the administrator of an estate: "You are hereby notified in accordance with sect. 357 of the above Act, "that the debt due by the above estate to T. has been assigned by him to C., who hereby claims payment of twelve hundred dollars, the amount of the said debt so assigned to him":—*Held:* the notice was a sufficient compliance with the statute.—GRANT *v.* CAMERON (1891), 18 S. C. R. 716.—**CAN.**

g. —— *Essential — C. S. B. C. 1888, c. 19.]*—MERIDEN BRITANNIA CO. *v.* BOWELL (1896), 4 B. C. R. 520.—**CAN.**

h. —— *Delivery of assignment equivalent to.]*—Delivery of an assignment by the assignee to the person

Sect. 6.—Form and sufficiency of notice. Sects. 7, 8 & 9: Sub-sect. 1, A. (a) i.]

—— Of solicitor.]—*See* COMPANIES; INSURANCE; SOLICITORS; TRUSTS & TRUSTEES.

—— Of officers of companies.]—*See* COMPANIES; INSURANCE.

387. Wrong date—Of assignment.]—A mtgee. of a reversionary estate gave a formal notice to the trustees of the estate, whereby he referred to his mtge. deed by an erroneous date, but otherwise correctly described it:—*Held:* the notice was sufficient & entitled the mtge. to priority over a prior incumbrance of which subsequent notice had been given.—WHITTINGSTALL *v.* KING (1882), 46 L. T. 520.

388. —— ——.]—If a notice of assignment of a debt given under 1873 Act, s. 25 (6), states that the assignment was made upon a specified date, upon which in fact no such assignment took place, the notice does not comply with the requirements of the sect. & is invalid.—STANLEY *v.* ENGLISH FIBRES INDUSTRIES, LTD. (1899), 68 L. J. Q. B. 839.

389. Distringas—Effect of.]—WILKINS *v.* SIBLEY, No. 577, *post.*

390. —— Deed indorsed on original deed—Transfer of fund into court.]—PHIPPS *v.* LOVEGROVE, PROSSER *v.* PHIPPS, No. 341, *ante.*

391. Lis pendens—Registration.]—The doctrine of *lis pendens* does not apply to personal property other than chattel interests in land.

A firm of traders assigned their book debts to pltfs., who gave notice of the assignment to debtors. Pltfs. brought an action against the firm to enforce their security, which they registered as a *lis pendens*, & obtained an injunction & a receiver, but no notice of the action was given to debtors. The firm then assigned the same book debts to a banking co., who gave notice of their security to debtors. The banking co. had no notice of the action or of the order for an injunction & a receiver, unless the registration of the *lis pendens* amounted to constructive notice:—*Held:* (1) the banking co. were not affected with notice by the registration of the *lis pendens*, & their security had priority over that of pltfs. *Semble:* (2) even if the registration had given the banking co. notice of the *lis pendens*, pltfs. would have lost their priority by their laches.—WIGRAM *v.* BUCKLEY, [1894] 3 Ch. 483; 63 L. J. Ch. 689; 71 L. T. 287; 43 W. R. 147; 10 T. L. R. 654; 38 Sol. Jo. 680; 7 R. 469, C. A.

Annotation:—Generally, **Mentd.** Rutter *v.* Everett (1895), 2 Mans. 371.

Stop order.]—*See* Sect. 9, sub-sect. 2, *post.*

Of assignment of insurance policy.]—*See* INSURANCE.

Of assignment of shares in company.]—*See* COMPANIES.

To take chose in action out of order & disposition of bankrupt assignor.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 776, 779, 785, Nos. 6667–6687, 6689, 6690, 6732.

SECT. 7.—PROOF OF NOTICE.

392. Copy of notice served on debtor—Retained by assignee—Whether admissible in evidence.]—Where an assignment has been executed of property due by a third party, & the party to whom the assignment is made, for the purpose of giving notice to such third party, prepares two notices at the same time, which he signs, & serves one of them on such third party, if an action is afterwards brought by the assignee, he can give in evidence that notice which he retained, without giving a notice to produce that served on the third party.—SURTEES *v.* HUBBARD (1802), 4 Esp. 203, N.P.

Annotation:—**Consd.** Robinson *v.* Brown (1846), 8 L. T. O. S. 118.

SECT. 8.—PAYMENT TO ASSIGNOR BEFORE NOTICE.

See Part VI., Sect. 5, sub-sect. 1, *post.*

SECT. 9.—PRIORITY.

SUB-SECT. 1.—BY NOTICE.

A. As between Assignees.

(a) The Rule in Dearle v. *Hall.*

i. In General.

393. Statement of rule.]—A person having a beneficial interest in a sum of money, invested in the names of trustees, assigned it for valuable consideration to A., but no notice of the assignment was given to the trustees. Afterwards, the same person proposed to sell his interest to B., & B., having made inquiry of the trustees as to the nature of the vendor's title, & the amount of his interest, & having received no intimation of the existence of any prior incumbrance, completed the purchase, & gave the trustees notice:—*Held:* (1) B. had a better equity than A., to the possession of the fund, & the assignment to B., though posterior in date, was to be preferred to the assignment to A.; (2) it was of no importance in the question as to the priority of title acquired under the assignments, whether the interest of the vendor were vested or contingent, present or reversionary.—DEARLE *v.* HALL, LOVERIDGE *v.* COOPER (1828), 3 Russ. 1; 38 E. R. 475, L. C.

Annotations:—As to (1) **Distd.** Peacock *v.* Burt (1834), 4 L. J. Ch. 33. **Consd.** Foster *v.* Cockerell (1835), 9 Bli. N. S. 332. **Distd.** Foster *v.* Hargreaves (1836), 1 Keen, 281; Timson *v.* Ramsbottom (1837), 2 Keen, 35. **Consd.** Jones *v.* Jones (1838), 8 Sim. 633; Meux *v.* Bell (1841), 1 Hare, 73. **Distd.** Meek *v.* Kettlewell (1842), 11 L. J. Ch. 293. **Consd.** *Re* Daintry & Ryle, *Re* Ravenscroft, *Ex p.* Arkwright (1843), 3 Mont. D. & De G. 129. **Apld.** Etty *v.* Bridges (1843), 2 Y. & C. Ch. Cas. 486. **Consd.** Wilmot *v.* Pike (1845), 5 Hare, 14. **Distd.** Watson *v.* Parker (1846), 15 L. J. Ch. 400. **Consd.** Watts *v.* Porter (1854), 3 E. & B. 743. **Distd.** Rooper *v.* Harrison (1855), 2 K. & J. 86. **Folld.** Lee *v.* Howlett (1856), 2 K. & J. 531. **Apld.** *Re* Barr's Trust (1858), 4 K. & J. 219. **Distd.** Scott *v.* Hastings (1858), 4 K. & J. 633; Haly *v.* Barry (1868), 18 L. T. 491; *Re*

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sought to be charged amounts to express notice in writing within Property Law Consolidation Act, 1883, s. 39.—CHOTE *v.* JOHNSON (1900), 18 N. Z. L. R. 843.—**N.Z.**

k. —— *Production of document.*]—An order to pay, directed to the trustee of the estate of T., was taken to W., who acted for the trustees & was ultimately left, with W.'s consent, with the solicitor for the trustees:—*Held:* the lodgment of the order itself was express notice in writing within Judicature Act, No. 761.—CAMP *v.* KING (1887), 14 V. L. R. 22.—**AUS.**

l. ——— ——.]—GRAHAM *v.* MCVEITY (1905), 5 O. W. R. 395, 521.—**CAN.**

m. —— *Letter from agents of assignee—& acknowledgment by debtor.*]—Where there was an intimation by letter from the agents of the assignee to debtor followed by an answer acknowledging the debt & containing an engagement to pay, though not expressly to the assignee & only after certain things should be done:—*Held:* an intimation of the assignation.—WALLACE *v.* DAVIES (1853), 15 Dunl. (Ct. of Sess.) 688; 25 Sc. Jur. 415; 2 Stuart, 411.—**SCOT.**

PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

n. *Application of rule—Notice of subsequent assignment—Before money advanced by first assignee.*]—FRASER *v.* IMPERIAL BANK OF CANADA (1912), 23 W. L. R. 445; 3 W. W. R. 649.—**CAN.**

o. —— *Notice of previous assignment—Before fund received by first assignee.*]—FRASER *v.* CANADIAN PACIFIC RY. CO. (1912), 20 W. L. R. 530; 1 W. W. R. 924.—**CAN.**

p. ——.]—The receiver in an administration suit was ordered to

Middleton, *Ex p.* Allen, *Ex p.* Page (1870), L. R. 11 Eq. 209. The case of *Dearle* v. *Hall* relates only to *choses in action* BACON, C.J.); *Re* Pooley, *Ex p.* Rabbidge (1878), 8 Ch. D. 367. **Consd. & Apld.** *Re* Freshfield's Trust (1879), 11 Ch. D. 198. **Consd.** West of England Bank *v.* Batchelor (1882), 51 L. J. Ch. 199. **Distd.** Soc. Générale de Paris *v.* Walker (1885), 11 App. Cas. 20; Gorringe *v.* Irwell India Rubber & Gutta Percha Works (1886), 34 Ch. D. 128; Mutual Life Assce. Soc. *v.* Langley (1886), 32 Ch. D. 460. **Consd.** *Re* Richards, Humber *v.* Richards (1890), 45 Ch. D. 589; Ward *v.* Duncombe, [1893] A. C. 369. I do not think that those principles are so clear or so convincing that the rule ought to be extended to a new case (LORD MACNAGHTEN). **Apld.** Stephens *v.* Green, Green *v.* Stephens, [1895] 2 Ch. 148. **Consd.** *Re* Wasdale, Brittin *v.* Partridge, [1899] 1 Ch. 163. **Apld.** Lloyd's Bank *v.* Pearson, [1901] 1 Ch. 865; *Re* Lake, *Ex p.* Cavendish, [1903] 1 K. B. 151; Montefiore *v.* Guedalla, [1903] 2 Ch. 26. The rule laid down in *Dearle* v. *Hall* is now part of the law of the land (COZENS-HARDY, L.J.). **Consd. & Apld.** *Re* Dallas, [1904] 2 Ch. 385. **Distd.** Perham *v.* Kempster, [1907] 1 Ch. 373. **Consd.** *Re* Pawson's Settlmt., Higgins *v.* Pawson, [1917] 1 Ch. 541. **Distd.** Hill *v.* Peters, [1918] 2 Ch. 273. **Apld.** Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257. **Refd.** Wilkinson *v.* Charlesworth (1836), 5 L. J. Ch. 172; Bugden *v.* Bignold (1843), 2 Y. & C. Ch. Cas. 377; Murray *v.* Pinkett (1846), 12 Cl. & Fin. 764; Warburton *v.* Hill, Stent *v.* Wickens (1854), 2 Eq. Rep. 441; Lord *v.* Colvin (1862), 2 Drew. & Sm. 32; Thompson *v.* Tomkins (1862), 2 Drew. & Sm. 8; Withington *v.* Tate (1869), 17 W. R. 559; M'Creight *v.* Foster (1870), 5 Ch. App. 604; Blackwood *v.* London Chartered Bank of Australia (1873), L. R. 5 P. C. 92; Palmer *v.* Locke (1881), 18 Ch. D. 381; Arden *v.* Arden (1885), 29 Ch. D. 702; Bean *v.* Wade (1885), 2 T. L. R. 157; *Re* Patrick, Bills *v.* Tatham (1890), 63 L. T. 752; English & Scottish Mercantile Investment Trust *v.* Brunton, [1892] 2 Q. B. 1; Mack *v.* Postle, [1894] 2 Ch. 449; Wigram *v.* Buckley, [1894] 3 Ch. 483.

394. Application of rule — In general.] — A second incumbrancer of an equitable interest, by giving notice of his incumbrance to the trustees in whom is vested the legal estate, obtains priority over a previous incumbrancer who has not given such notice.—FOSTER *v.* COCKERELL (1835), 9 Bli. N. S. 332; 3 Cl. & Fin. 456; 5 E. R. 1315, H. L.; *affg.* S. C. FOSTER *v.* BLACKSTONE (1833), 1 My. & K. 297.

Annotations:—**Distd.** Peacock *v.* Burt (1834), 4 L. J. Ch. 33; Jones *v.* Jones (1837), 8 Sim. 633; Timson *v.* Ramsbottom (1837), 2 Keen, 35. **Consd.** Meux *v.* Bell (1841), 1 Hare, 73. **Distd.** Meek *v.* Kettlewell (1842), 11 L. J. Ch. 293. **Consd.** Etty *v.* Bridges (1843), 2 Y. & C. Ch. Cas. 486; Wiltshire *v.* Rabbits (1844), 14 Sim. 76; Wilmot *v.* Pike (1845), 5 Hare, 14. **Distd.** Rooper *v.* Harrison (1855), 2 K. & J. 86. **Folld.** Lee *v.* Howlett (1856), 2 K. & J. 531. **Consd.** Consolidated Investment & Insce. *v.* Riley (1859), 1 Giff. 371. **Apld.** *Re* Hughes Trusts (1864), 2 Hem. & M. 89. **Consd.** Ward *v.* Duncombe, [1893] A. C. 369; Montefiore *v.* Guedalla, [1903] 2 Ch. 26. **Folld.** *Re* Lake, *Ex p.* Cavendish, [1903] 1 K. B. 151. **Consd.** *Re* Dallas, [1904] 2 Ch. 385. **Refd.** Bugden *v.* Bignold (1843), 2 Y. & C. Ch. Cas. 377; Rice *v.* Rice (1853), 2 Drew. 73; Warburton *v.* Hill (1854), Kay, 470; Macleod *v.* Buchanan (1864), 4 De G. J. & Sm. 265; Ford *v.* Tynte (1865), 34 L. J. Ch. 452; Arden *v.* Arden (1885), 29 Ch. D. 702; *Re* Richards, Humber *v.* Richards (1890), 45 Ch. D. 589; English & Scottish Mercantile Investment Trust *v.* Brunton, [1892] 2 Q. B. 1; *Re* Wasdale, Brittin *v.* Partridge, [1899] 1 Ch. 163. **Mentd.** Sheehy *v.* Muskerry (1839), 7 Cl. & Fin. 1.

395. —— ——.]—MEUX *v.* BELL, No. 329, *ante*

396. —— ——.]—In order to perfect the title of an assignee of an equitable interest in trust funds notice of the assignment must be given to the trustees of those funds; &, therefore, if new trustees have been appointed in a settlement of a reversionary interest of funds bequeathed in trust under a will, & the person who has acted as solr. to the new trustees from the date of their appointment fails to give notice of the appointment to the trustees of the will, & loss is thereby caused to the settlement fund, the solr. is liable to an action of negligence at the suit of the new trustees.—BEAN *v.* WADE (1885), 2 T. L. R. 157, C. A.

Annotation:—**Refd.** Blyth *v.* Fladgate, Morgan *v.* Blyth, Smith *v.* Blyth, [1891] 1 Ch. 337.

See, further, SOLICITORS.

397. —— **Death of trustee to whom notice given—Notice by subsequent assignee to surviving trustees.]**—TIMSON *v.* RAMSBOTTOM, No. 331, *ante*.

398. —— —— ——.]—*Re* PHILLIPS' TRUSTS, No. 332, *ante*.

399. —— —— **Before fall of assigned interest into possession.]**—WARD *v.* DUNCOMBE, No. 333, *ante*.

400. —— **Death of all existing trustees to whom notice given—Notice by subsequent assignee to new trustees.]**—*Re* WASDALE, BRITTIN *v.* PARTRIDGE, No. 342, *ante*.

401. —— **No person in existence to whom notice can be given.]**—A. for valuable consideration took a security upon a reversionary sum of stock, at a time when, by reason of the death of the person in whose name the stock stood without legal representatives, no notice of the incumbrance could be given to the trustee of the fund. A., however, did not attempt, by *distringas* or otherwise, to perfect the security. Afterwards B., for valuable consideration & without notice of A.'s incumbrance, took a security upon the same fund, & at the same time served a writ of *distringas* on the Bank of England:—*Held:* B.'s security had priority over that of A.—ETTY *v.* BRIDGES (1843), 2 Y. & C. Ch. Cas. 486; 12 L. J. Ch. 474; 7 Jur. 936; 63 E. R. 218.

Annotations:—**Consd. & Distd.** Brearcliff *v.* Dorrington (1850), 4 De G. & Sm. 122. **Refd.** Case *v.* James (1861), 3 De G. F. & J. 256; Ward *v.* Duncombe, [1893] A. C. 369. **Mentd.** *Re* Sketchley, *Ex p.* Boulton (1857), 1 De G. & J. 163.

402. —— **No trust fund & no trustee in existence at date of assignments.]**—(1) As only the proceeds, when realised, of a commission in the army can be charged, incumbrancers take priority according to the order of their notices to the army agents given after the proceeds are in the agents' hands.

(2) Several incumbrancers, giving notice to the agents on the morning when the proceeds were first payable, at the opening of their office:—*Held:* to take according to the order of the dates of their incumbrances being effected.—BOSS *v.* HOPKINSON (1870), 18 W. R. 725.

Annotation:—*Generally,* **Consd.** *Re* Dallas, [1904] 2 Ch. 385.

403. —— ——.]—ADDISON *v.* COX, No. 362, *ante*.

404. —— ——.]—After receipt by the army agents of the money payable to an officer on his retirement continual notices of charges on the money were given to the army agents by each of three assignees. One of the assignees brought an action against the two others, claiming priority over them:—*Held:* the notices given before the retirement was gazetted were of no avail, & of the two assignees who gave notice on the day after the retirement was gazetted deft. whose security was prior in date had priority over pltf. & over the other deft.—JOHNSTONE *v.* COX (1881), 19 Ch. D. 17; 45 L. T. 657; 30 W. R. 114, C. A.

Annotations:—**Distd.** Marchant *v.* Morton, [1901] 2 K. B. 829. **Consd.** *Re* Dallas, [1904] 2 Ch. 385, where COZENS-HARDY, L.J., said that the army agents' cases were only intelligible on the principle of *Dearle* v. *Hall.* **Mentd.** Butcher *v.* Pooler (1883), 24 Ch. D. 273.

Sale of commissions, *see, now,* Army Act, 1881 (c. 58), s. 155.

See, also, cases in Sect. 4, *ante*.

405. —— ——.]—The rule in *Dearle* v. *Hall,* No. 393, *ante,* applies, although there was no trust fund & no trustee in existence at the time of the several assignments, notices given after the fund

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pay out of the rents to H., devisee of the real estates, the annual sum of £400, for her separate use. By deed subsequently executed, H. & her husband conveyed the estates subject to charges, to such uses as H. should by deed appoint:—*Held:* a puisne assignee could not, by giving an earlier notice of the assignment to the trustees in whom the estates were vested, obtain priority over a prior assignee who had omitted to give such notice.—ROCHARD *v.* FULTON (1844), 1 Jo. & Lat. 413; 7 I. Eq. R. 131.—IR.

Sect. 9.—Priority: Sub-sect. 1, A. (a) i. & ii.]

has come into existence & there is a person who has legal control over it being effective to establish priorities.—*Re* DALLAS, No. 324, *ante*.

406. —— Second assignment taken from legal personal representative of assignor to first assignee.]—Upon the principle in *Dearle* v. *Hall*, No. 393, *ante*, the right to priority which a second assignee of an equitable interest in a fund, who has given notice of his assignment to the trustees, possesses over a first assignee who has failed to give notice, subsists equally where the second assignee has taken his assignment from the legal personal representative of the *cestui que trust*, & not from the *cestui que trust* himself.

A. assigned to B. his equitable interest in a fund under the will of X., but omitted to give notice to the trustees. A. died, having by will bequeathed all his property to his extrix., who then assigned to C., a purchaser for value without notice of the prior assignment, all the property under the will of X. to which she was entitled as A.'s legal personal representative, & C. thereupon gave notice of his assignment to the trustees of X.'s will. Afterwards the representatives of B., who had died, gave similar notice of his assignment:—*Held:* the fund belonged to C., he having been the first to give notice.—*Re* FRESHFIELD'S TRUSTS (1879), 11 Ch. D. 198; 40 L. T. 57; 27 W. R. 375.

Annotations:—**Apprvd.** Montefiore *v.* Guedalla, [1903] 2 Ch. 26. **Refd.** English & Scottish Mercantile Investment Trust *v.* Brunton, [1892] 2 Q. B. 1.

407. —— Assignment of interest in trust fund—Partly in court & partly in hands of trustees.]—(1) When an assignment is made of an interest in a trust fund part of which is in ct. & part in the hands of the trustees, the assignee, in order to complete his title, must, as regards the fund in ct., obtain a stop order, & as regards the fund in the hands of trustees give notice to the trustees.

(2) An incumbrancer who obtains a stop order on a fund in ct. does not lose his priority over a previous incumbrancer who has obtained no stop order, by the fact that he had notice of the previous incumbrance at the time of obtaining the stop order, if he had no notice of it when he took his security.—MUTUAL LIFE ASSURANCE SOCIETY *v.* LANGLEY (1886), 32 Ch. D. 460; 54 L. T. 326, C. A.

Annotations:—*As to* (1) **Consd.** Stephens *v.* Green, Green *v.* Knight, [1895] 2 Ch. 148. **Distd.** *Re* Dallas, [1904] 2 Ch. 385. *As to* (2) **Refd.** Lloyd's Bank *v.* Pearson, [1901] 1 Ch. 865. *Generally*, **Consd.** Mack *v.* Postle, [1894] 2 Ch. 449. **Mentd.** Flint *v.* Howard, [1893] 2 Ch. 54.

408. —— Beneficiary with no right to possession himself—Only entitled to assert claim to assigned fund through trustee.]—The principle on which the rule in *Dearle* v. *Hall*, No. 393, *ante*, is founded has no application to a beneficiary who has no right to possession himself, but can only assert his claim to receive the fund to which the assignment relates through his trustee.—HILL *v.* PETERS, [1918] 2 Ch. 273; 87 L. J. Ch. 584; 119 L. T. 613; 62 Sol. Jo. 717.

—— To trustee in bankruptcy of assignor.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 634, 635, Nos. 5710–5712.

Law before Dearle v. Hall.]—*See* Sub-sect. 1, A. (b), *post*.

ii. *To what Property Rule Applicable.*

409. Sum charged on land—In Yorkshire.]—The transfer of a sum charged by testator on lands in Yorkshire is not within the Registry Acts, & need not be registered.

Testator devised estates in Yorkshire to C., subject to the payment of £12,000 to E. E. made two assignments of that sum, the second of which was registered before the first:—*Held:* such assignment did not require registration, & the second had not thereby obtained a priority over the first.—MALCOLM *v.* CHARLESWORTH (1836), 1 Keen, 63; Donnelly, 20; 48 E. R. 230; *sub nom.* WILKINSON *v.* CHARLESWORTH, 5 L. J. Ch. 172.

Annotations:—**Consd. & Foll.** Arden *v.* Arden (1885), 29 Ch. D. 702. **Apprvd.** Gresham Life Assce. Soc. *v.* Crowther, [1915] 1 Ch. 214.

See, also, Nos. 421, 423, *post*.

410. Not equitable interest in land not subject to trust for conversion.]—At law, different conveyances of the same tenement take effect according to their priority in time; & where the legal estate is outstanding, the same rule prevails in equity, & different incumbrances rank according to their priorities in point of time.

A second mtgee. of a settled real estate gave no notice of his incumbrance to the first mtgee., & a third person, without notice of the second mtge., having advanced to the mtgor. a further sum of money on the security of the same property, gave notice of his security to the first mtgee., & also caused notice to be indorsed on the settlement:—*Held:* the third mtgee. did not thereby obtain priority over the second.—JONES *v.* JONES (1838), 8 Sim. 633; 7 L. J. Ch. 164; 2 Jur. 589; 59 E. R. 251.

Annotations:—**Distd.** Etty *v.* Bridges (1843), 2 Y. & C. Ch. Cas. 486. **Consd.** Wilmot *v.* Pike (1845), 5 Hare, 14; Ward *v.* Duncombe, [1893] A. C. 369. **Refd.** Bugden *v.* Bignold (1843), 2 Y. & C. Ch. Cas. 377; Rooper *v.* Harrison (1855), 2 K. & J. 86; *Re* Wight's Mortgage Trust (1873), 28 L. T. 491; West London Commercial Bank *v.* Reliance Permanent Bldg. Soc. (1884), 53 L. J. Ch. 860.

See, further, EQUITY; MORTGAGE.

411. —— Annuity charged on leaseholds.]—WILTSHIRE *v.* RABBITS, No. 5, *ante*.

412. ——.]—The doctrine of notice, applicable in determining the priority of charges on choses in action, does not prevail as to equitable estates in land.—WILMOT *v.* PIKE (1845), 5 Hare, 14; 14 L. J. Ch. 469; 9 Jur. 839; 67 E. R. 808.

Annotations:—**Consd.** Rooper *v.* Harrison (1855), 2 K. & J. 86. **Refd.** Arden *v.* Arden (1885), 29 Ch. D. 702; Ward *v.* Duncombe, [1893] A. C. 369; Taylor *v.* London & County Banking Co. London & County Banking Co. *v.* Nixon, [1901] 2 Ch. 231.

413. ——.]—(1) A subsequent mtgee. of an equitable interest in a share of residuary real estate without notice of the prior mtge., does not obtain priority over the former mtgee., by first giving notice of his security to the trustee in whom the legal estate is vested, notwithstanding that, by a deed of arrangement, made previously to the mtges., between the mtgor. & the other persons interested in the real estate, their interests were treated as personal estate.

(2) But it is otherwise, if the estate is vested in the trustee by a devise to him in trust to sell & to divide the proceeds among several persons of whom the mtgor. is one, & the mtges. are of the mtgor.'s share in such proceeds, because then, although the mtges. may have been made before any sale took place, the subject of them could only, as regarded the mtgor.'s interest therein, be considered a chose in action.—LEE *v.* HOWLETT (1856), 2 K. & J. 531; 4 W. R. 406; 69 E. R. 893.

Annotations:—*As to* (2) **Consd.** *Re* Hughes' Trusts (1864), 2 Hem. & M. 89. **Refd.** Ford *v.* Tyrte (1865), 34 L. J. Ch. 452; Arden *v.* Arden (1885), 29 Ch. D. 702; *Re* Wyatt, White *v.* Ellis, [1892] 1 Ch. 188. *Generally*, **Refd.** *Re* Richards, Humber *v.* Richards (1890), 45 Ch. D. 589.

414. ——.]—Where an equitable charge is given on personal estate in the hands of a trustee, notice to the trustee is necessary as against subsequent incumbrancers, but not so in the case of land (COTTON, L. J.).—UNION BANK OF LONDON

v. KENT (1888), 39 Ch. D. 238 ; 57 L. J. Ch. 1022 ; 59 L. T. 714 ; 37 W. R. 364, C. A.

Annotations :—**Refd.** Taylor *v.* London & County Banking Co., London & County Banking Co. *v.* Nixon, [1901] 2 Ch. 231. **Mentd.** Taylor *v.* Russell, [1891] 1 Ch. 8.

415. —— Equitable mortgage by deposit.]—A solr. having in 1883 received from a client a sum of money for investment represented to the client that he had invested it on a specified mtge., whereas in fact the mtge. specified was one previously taken by the solr. in his own name. The solr. paid interest on the amount of the specified mtge. debt to the client, down to the client's death in 1885, & to the client's exors. down to his own death in 1888. Shortly before his death the solr. deposited the title deeds of the mortgaged property with his own bankers to secure the overdraft of his account ; & he died leaving his account overdrawn to an extent exceeding the value of the mortgaged property. Immediately after the solr.'s death the bank gave notice to the mtgors. of the deposit of the deeds with them. At the date of the deposit the bank had no notice of any claim on behalf of the client, & their notice was prior in point of date to any notice given the exors. of the client :—*Held :* the principle of *Dearle v. Hall*, No. 393, *ante*, did not apply, & the bank were not entitled to any priority by reason of their notice to the mtgors. being prior in point of time to that of the exors.—*Re* RICHARDS, HUMBER *v.* RICHARDS (1890), 45 Ch. D. 589 ; 59 L. J. Ch. 728 ; 63 L. T. 451 ; 39 W. R. 186.

Annotations :—**Consd.** Hopkins *v.* Hemsworth, [1898] 2 Ch. 347. **Refd.** Hill *v.* Peters, [1918] 2 Ch. 273.

416. —— ——.]—An equitable sub-mtgee. by deposit made by a legal mtgee. of land has an equitable estate in land, & as between two such equitable sub-mtgees., the doctrine of obtaining priority by notice does not prevail. Thus the equitable sub-mtgee. who is later in time does not obtain priority over the earlier by being the first to give notice to the original mtgor.—HOPKINS *v.* HEMSWORTH, [1898] 2 Ch. 347 ; 67 L. J. Ch. 526 ; 78 L. T. 832 ; 42 Sol. Jo. 611.

417. ——.]—Although a mtge. debt is a chose in action, yet, where the subject of the security is land, the mtgee. is treated as having "an interest in land," & priorities are governed by the rules applicable to interests in land, & not by the rules which apply to interests in personalty.—TAYLOR *v.* LONDON & COUNTY BANKING CO., LONDON & COUNTY BANKING CO. *v.* NIXON, [1901] 2 Ch. 231 ; 70 L. J. Ch. 477 ; 84 L. T. 397 ; 49 W. R. 451 ; 17 T. L. R. 413 ; 45 Sol. Jo. 394, C. A.

Annotations :—**Refd.** Walker *v.* Linom, [1907] 2 Ch. 104. **Mentd.** *Re* Pidcock, Penny *v.* Pidcock (1907), 51 Sol. Jo. 514 ; *Re* Cozens, Green *v.* Brisley, [1913] 2 Ch. 478 ; Radcliffe *v.* Abbey Road & St. John's Wood Permanent Bldg. Soc. (1918), 87 L. J. Ch. 557.

418. Equitable interest in land subject to trust for conversion.]—LEE *v.* HOWLETT, No. 413, *ante*.

419. —— Reversionary interest in proceeds of real & personal estate.]—A. being entitled to a reversionary interest in the proceeds of real & personal estate, directed by the will of testator to be sold on the death of his widow, mortgaged same, first to B. & afterwards to C. C. gave notice of his mtge. to testator's widow, who was one of the trustees for sale, & she communicated such notice to the other trustee for sale, but B. gave no notice of his mtge. to the trustees for sale or either of them :—*Held :* the notice which had been given by C. was, in the circumstances, sufficient, & C. was entitled to priority over B.—CONSOLIDATED INVESTMENT & INSURANCE CO. *v.* RILEY (1859), 1 Giff. 371 ; 29 L. J. Ch. 123 ; 1 L. T. 209 ; 5 Jur. N. S. 1283 ; 8 W. R. 102 ; 65 E. R. 961.

420. —— Portion raised out of real estate.]—Trustees were directed to raise out of real estate by sale, mtge., or otherwise, £2,000 for portions to be paid to younger children. Before the portions were raised or payable, one of the younger children created an incumbrance on his share, of which notice was not given to the trustees until after his bkpcy. :—*Held :* the interest of bkpt. was not of the nature of realty so as to exempt it from the doctrine of notice.—*Re* HUGHES' TRUSTS (1864), 2 Hem. & M. 89 ; 4 New Rep. 455 ; 33 L. J. Ch. 725 ; 10 L. T. 813 ; 12 W. R. 1025 ; 71 E. R. 394.

Annotations :—**Consd.** *Re* Richards, Humber *v.* Richards (1890), 45 Ch. D. 589. **Refd.** Ford *v.* Tynte (1865), 34 L. J. Ch. 452 ; Cooke *v.* Hemming (1868), L. R. 3 C. P. 334 ; *Re* Pooley, *Ex p.* Rabbidge (1878), 26 W. R. 646.

421. —— Land in Middlesex.]—(1) The Local Registry Acts are intended to apply only to dealings at law or in equity with the land itself. Accordingly, an incumbrancer upon a share in the proceeds of real estate in Middlesex devised in trust for sale obtains no priority over other incumbrancers on such share by registering his mtge. deed, & the priorities of such incumbrancers rank according to the dates of their respective notices to the trustees.

(2) Although formal notice to the trustee of the proceeds of real estate devised in trust for sale or of a chose in action, of an incumbrance thereupon does not give priority over an earlier incumbrance of which the trustee may have obtained accidental notice, the converse proposition that incumbrances are to rank not in the order of notices given by the incumbrancers but of accidental knowledge obtained by the trustees, does not hold good.

(3) A judgment creditor cannot, by giving notice to the trustee, put himself in a better position than the judgment debtor ; & a judgment creditor who has obtained equitable execution by the appointment of a receiver subject to existing incumbrances :—*Held :* to have obtained no priority by giving notice of the appointment to the trustee of the judgment debtor.—ARDEN *v.* ARDEN (1885), 29 Ch. D. 702 ; 54 L. J. Ch. 655 ; 52 L. T. 610 ; 33 W. R. 593.

Annotations :—*As to* (1) **Apprvd.** Gresham Life Assce. Soc. *v.* Crowther, [1915] 1 Ch. 214. *As to* (2) **Consd.** *Re* Dallas, [1904] 2 Ch. 385 ; Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257. *As to* (3) **Refd.** *Re* Anglesey, De Galve *v.* Gardner, [1903] 2 Ch. 727.

See, also, No. 409, *ante*. No. 423, *post*.

422. —— Land not yet sold.]—LLOYD'S BANK *v.* PEARSON, No. 122, *ante*.

423. —— Land in Yorkshire.]—An assignment of a share or interest of the proceeds of sale of real estate in Yorkshire which is subject to an imperative trust for sale, is an assignment of personalty only, & does not affect the real estate within Yorkshire Registries Act, 1884 (c. 54) ; & the registration of such an assignment does not postpone a prior unregistered assignment of the same property of which notice has been given to the trustees.—GRESHAM LIFE ASSURANCE SOCIETY *v.* CROWTHER, [1915] 1 Ch. 214 ; 84 L. J. Ch. 312 ; 111 L. T. 887 ; 59 Sol. Jo. 103, C. A.

See, also, Nos. 409, 421, *ante*.

424. Not stock or money—Deemed to be real estate—By private Act.]—The doctrine that incumbrancers of real estate take rank by the date of their incumbrances, & not by date of notice to the trustee, applies to the case of a sum of stock or money, which is in equity real estate.—*Re* CAREW'S ESTATE (1868), 16 W. R. 1077.

425. Not shares in company.]—The articles of association of a co. formed under Cos. Acts provided that the co. should not be bound by or recognise any equitable interest in its shares :—

Sect. 9.—Priority : Sub-sect. 1, A. (a) ii., (b) & B.]

Held : the principle of *Dearle* v. *Hall*, No. 393, *ante*, was inapplicable to shares in such a co.—SOCIÉTÉ GÉNÉRALE DE PARIS *v.* WALKER (1885), 11 App. Cas. 20 ; 55 L. J. Q. B. 169 ; 54 L. T. 389 ; 34 W. R. 662, H. L.

Annotations :—**Mentd.** Bradford Banking Co. *v.* Briggs (1886), 12 App. Cas. 29 ; Colonial Bank *v.* Whinney (1886), 11 App. Cas. 426 ; Colonial Bank *v.* Hepworth (1887), 36 Ch. D. 36 ; Magnus *v.* Queensland National Bank (1887), 36 Ch. D. 25 ; Nanney *v.* Morgan (1887), 36 Ch. D. 598 ; Roots *v.* Williamson (1888), 38 Ch. D. 485 ; Williams *v.* Colonial Bank, Williams *v.* London Chartered Bank of Australia (1888), 38 Ch. D. 388 ; *Re* Cawley (1889), 42 Ch. D. 209 ; Moore *v.* North Western Bank, [1891] 2 Ch. 599 ; Balkis Consolidated Co. *v.* Tomkinson, [1893] A. C. 396 ; Powell *v.* London & Provincial Bank, [1893] 1 Ch. 610 ; *Re* Ottos Kopje Diamond Mines, [1893] 1 Ch. 618 ; Ireland *v.* Hart, [1902] 1 Ch. 522 ; Rainford *v.* Keith & Blackman Co., [1905] 1 Ch. 296 ; Burgis *v.* Constantine, [1908] 2 K. B. 484 ; Mackereth *v.* Wigan Coal & Iron Co., [1916] 2 Ch. 293.

See, further, COMPANIES.

(b) Other Cases.

426. Law before Dearle v. Hall.]—Where the thing assigned is only a chose in action, though the assignment be without notice, yet as no legal estate passes, *qui prior est in tempore, potior est in jure.*

If there be two exors., who are also residuary legatees, & one of them for a valuable consideration assigns part of his residuum to A., & afterwards for a valuable consideration assigns his whole residuum to the other exor., if both are but choses in action, the first assignment must take place.—TOURVILLE *v.* NAISH (1734), 3 P. Wms. 307 ; 24 E. R. 1077.

Annotation :—**Reld.** Dearle *v.* Hall (1828), 3 Russ. 1.

427. —— Mere neglect to give notice — Not amounting to fraud—Not sufficient to postpone prior incumbrancer.]—COOPER *v.* FYNMORE (1814), 3 Russ. 60 ; 38 E. R. 498.

Annotations :—**Consd.** Ward *v.* Duncombe, [1893] A. C. 369. **Reld.** Foster *v.* Cockerell (1835), 3 Cl. & Fin. 456 ; Meux *v.* Bell (1841), 1 Hare, 73. **Mentd.** Wilmot *v.* Pike (1845), 5 Hare, 14.

Rule in Dearle v. Hall.]—*See* Sub-sect. 1, A. (a), *ante.*

428. Equitable assignment of proceeds of sale of commission—Assignees without notice of prior contract—Between assignor & depositary of commission—For repayment of loan out of proceeds.]—If an officer pledges his commission as a security for a loan, & contracts with the lender to sell the commission & repay the debt out of the proceeds of the sale, that lender will nevertheless be postponed to *bonâ fide* creditors claiming under an equitable assignment of the money after the sale has been effected, & not having any notice of their debtor's prior contract.—COLLYER *v.* FALLON (1823), Turn. & R. 459 ; 3 L. J. O. S. Ch. 23 ; 37 E. R. 1177.

Annotation :—**Reld.** Marsh *v.* Peacocke (1863), 8 L. T. 414.

Sale of commissions, *see, now,* Army Act, 1881 (c. 58), s. 155.

429. Assignee giving notice with constructive notice of prior assignment.]—A. being entitled to a life interest in a bequest of a sum of money, granted an annuity, & assigned the life interest to secure it, & by a deed of even date with the assignment C. covenanted to pay the annuity if in arrear, & A. consented & appointed C. to stand in the place of the annuitant in respect of the sums so paid. The annuity was paid, but some of the payments were made by C. out of his own money. Subsequently E. obtained an assignment of the life interest for a debt due to him, & upon obtaining it, inquired & found that the annuity was duly paid. Afterwards the exor. paid the legacy into ct., together with an accumulation of interest accrued due thereon, & stated that he received notice of the annuity, then of E.'s assignment, & lastly of C.'s advances :—*Held :* C. had priority over E., because as E. had notice of the annuity-deed & assignment to secure it, it was sufficient to put him upon inquiry, in which case he would have found that there was a contemporaneous deed giving C. a charge for any payments he should make.—*Re* CAWTHORNE, *Re* HARWOOD (1849), 18 L. J. Ch. 116 ; *sub nom. Re* HAREWOOD, 12 L. T. O. S. 529.

430. —— Notice of document which may or may not affect property.]—A joint stock co. issued debentures, charging its undertaking & all its property, both present & future, one of the conditions of the debentures being that the charge thereby created was to be a floating security, but so that the co. was not to be at liberty to create any mtge. or charge in priority to the debentures. Subsequently the co. entered into negotiations with pltfs. for a loan upon the security of an assignment of certain insurance money coming due to the co. in respect of a fire that had occurred upon their premises. In the course of the negotiations pltfs.' solr., who acted for them in the matter, became aware that the co. had issued debentures, but he was informed by the managing director of the co. that the debentures did not affect the proposed assignment, & pltfs.' solr. accordingly did not ask to see the form of the debentures, & received no further notice of their contents. The assignment was thereupon executed, & notice of it was given to the insurance office. The debenture-holders subsequently gave notice to the insurance office that they claimed the insurance money in priority to pltfs. Upon the trial of an interpleader issue it was proved that debentures might be in one of three forms, (1) a simple acknowledgment of a debt, (2) an instrument acknowledging the debt, & charging the property of the co. with repayment, & (3) an instrument in the same form as the second, but, in addition, restricting the co. from giving any prior charge :—*Held :* as pltfs.' solr. only had notice of the existence of debentures which might or might not affect the property to be assigned, & was told that they did not affect it, pltfs. could not be fixed with constructive notice of the contents of the debentures, & the assignment to them had priority.—ENGLISH & SCOTTISH MERCANTILE INVESTMENT CO. *v.* BRUNTON, [1892] 2 Q. B. 700 ; 62 L. J. Q. B. 136 ; 67 L. T. 406 ; 41 W. R. 133 ; 8 T. L. R. 772 ; 4 R. 58, C. A.

Annotations :—**Consd.** Black *v.* Williams (1894), 64 L. J. Ch. 137 ; Molyneux *v.* Hawtrey, [1903] 2 K. B. 487. **Apld.** *Re* Valletort Sanitary Steam Laundry Co., Ward *v.* Valletort Sanitary Steam Laundry Co., [1903] 2 Ch. 654. **Reld.** Manchester Trust *v.* Furness, [1895] 2 Q. B. 539. **Mentd.** Blackburn *v.* Mason (1893), 68 L. T. 510 ; Brown Shipley *v.* I. R. Comrs., [1895] 2 Q. B. 240.

See, further, COMPANIES.

431. Subsequent assignee without notice being trustee having legal estate.]—A trustee who has the legal estate & takes from his *cestui que trust* an assignment of the equitable interest by way of security for money advanced to the *cestui que trust*, can avail himself of the legal estate as a protection against a prior incumbrance of which he had no notice.—NEWMAN *v.* NEWMAN (1885), 28 Ch. D. 674 ; 54 L. J. Ch. 598 ; 52 L. T. 422 ; 33 W. R. 505 ; 1 T. L. R. 211.

432. Failure of prior incumbrancer to have claim noticed—In agreement for distribution of assigned fund among incumbrancers—By prior incumbrancer.]—A sum was due from pltfs. to a contractor, which he had mortgaged successively to A. & C. & others. By arrangement between the mtgees., the fund was assigned to C., upon trust to distribute it amongst them. At the date of the

assignment C. had a charge on A.'s mtge., but which was not noticed in the assignment. A. afterwards assigned his mortgage to E., who had no notice of C.'s charge on it :—*Held :* C. was to be postponed to E. in consequence of C.'s neglect to have his claim noticed in the trust deed.—PUBLIC WORKS COMRS. *v.* HARBY (1857), 23 Beav. 508 ; 26 L. J. Ch. 472 ; 29 L. T. O. S. 36 ; 3 Jur. N. S. 478 ; 53 E. R. 199.

433. Notices given simultaneously.]—BOSS *v.* HOPKINSON, No. 402, *ante*.

434. —— Notice left at bank after business hours—Other notices left directly bank open next morning.]—A notice left at a bank after business hours only operates as notice to the bank from the time when in the ordinary course of business it is opened & read.

An officer in the army retired from the service by the sale of his commission. The proceeds of the sale were in the hands of the army agents on Dec. 7, but the balance payable to him, after deduction of his regimental debts, was not transferable to his account until the 8th, on which day it was so transferred. He had previously to the sale charged the proceeds of his commission with various sums of money advanced to him. One of the incumbrancers left a notice of his charge at the office of the army agents at 5.30 p.m. on the 7th instant after business hours, & when the office was closed. The other incumbrancers left similar notices as soon as the office doors were open next morning :—*Held :* all the notices must be taken to have been left at the same time & the priorities of the several incumbrancers depended on the dates of their securities.—CALISHER *v.* FORBES (1871), 7 Ch. App. 109 ; 41 L. J. Ch. 56 ; 25 L. T. 772 ; 20 W. R. 160, L. JJ.

Annotations :—**Apld.** *Re* Dallas, [1904] 2 Ch. 385. **Refd.** Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257. **Mentd.** *Re* Weniger's Policy, [1910] 2 Ch. 291.

Sale of commissions, *see, now*, Army Act, 1881 (c. 58), s. 155.

435. Priority not determined by order of accidental knowledge acquired.]—ARDEN *v.* ARDEN, No. 421, *ante*.

436. Effect of laches—On part of first assignee.]—WIGRAM *v.* BUCKLEY, No. 391, *ante*.

437. Debt due to firm—Different assignments by partners constituting firm.] — MARCHANT *v.* MORTON, DOWN & Co., No. 46, *ante*.

Assignment of shares.]—*See* COMPANIES.

Assignment of insurance policy.]—*See* INSURANCE.

Assignment executed abroad.]—*See* Sub-sect. 3, *post*.

B. As between Assignee and Other Parties.

438. Crown—Seizing assigned stock under writ of extent.]—Two partners in a trading firm executed a trust conveyance of part of their shares in the partnership stock to certain co-obligants in bonds of credit at the bank, under the conditions (1) that before any sale or transfer of the stock should take place, the trustees should be bound to give three months' intimation of their intention to the assignors, & (2) that the trustees should be bound to apply the proceeds of the stock in paying whatever should be due on the bonds of credit at the time of sale of the stock. The assignors intimated such assignation, by having the stock transferred in the books of their firm to the names of the assignees. A writ of extent was afterwards issued against the assignors as crown debtors, at which time the value of the stock so assigned was £960 4*s.* 8*d.*, & the debt due on the bonds of credit was £1,200. Upon *sci. fa.* by the Crown against the trust assignees :—*Held :* the assignees had, by virtue of the intimated assignation, a special property in the stock, available against the Crown seizing the stock under an extent against the assignors for a debt due to the Crown.—SPEARS *v.* LORD ADVOCATE (1839), 6 Cl. & Fin. 180 ; Macl. & Rob. 585 ; 7 E. R. 665, H. L.

See, also, No. 319, *ante*.

Judgment creditor.]—*See* Sect. 10, *post*.

439. Assignee giving notice after having fraudulently obtained discharge of sequestration order.]—A person who has obtained improperly the discharge of an order of sequestration affecting a chose in action, cannot avail himself of that discharge to establish a claim to the chose in action against the sequestrators as a subsequent purchaser thereof for value without notice.

C. was decreed to pay certain sums to W. & on her absconding without payment, a sequestration was issued against her estate. Some years later, M., her brother-in-law, obtained improperly & without the knowledge of W. the discharge of the order for sequestration, & subsequently C. became entitled to a fund, part of an intestate's estate, which fund she assigned to M. as security for an advance of about equal value made by him to her. On bill filed by W. against the administratrix & M. & C. :—*Held :* (1) W.'s claim had priority over that of M. ; (2) the bill was a proper proceeding for enforcing the sequestration against the chose in action ; (3) the absence of C. was no bar to dealing with the chose in action, the real debtor, the administratrix, being a party to the cause & appearing ; (4) the administratrix must pay the fund into ct. after deducting thereout the amount of her costs.—WARD *v.* BOOTH (1872), L. R. 14 Eq. 195 ; 41 L. J. Ch. 729 ; 27 L. T. 364 ; 20 W. R. 880.

Annotations :—As to (1) & (2) **Refd.** *Re* Hoare, *Ex p.* Nelson (1880), 14 Ch. D. 41. **Mentd.** *Re* Slade, Slade *v.* Hulme (1881), 18 Ch. D. 653.

440. Solicitor—Assignment by plaintiff of judgment debt to third party—No notice of solicitor's lien given to assignee.]—Pltf. in an action assigned the judgment debt for value to a person who had been a witness in the action, & notice of such assignment was given to the solr. who had acted for pltf. in the action. The solr., who had not given notice to the assignee of his lien for costs, thereupon obtained a charging order under Solrs. Act, 1860 (c. 127), s. 28, on the amount recovered in the action :—*Held :* inasmuch as notice that the subject-matter of the assignment was the subject-matter of the action amounted to notice to the assignee of the existence of the solr.'s right to a lien on the "property recovered" in the action, the assignee was not a "*bonâ fide* purchaser for value without notice" within s. 28, & such lien took priority of the assignment by pltf.—COLE *v.* ELEY, [1894] 2 Q. B. 350 ; 63 L. J. Q. B. 682 ; 70 L. T. 892 ; 42 W. R. 561 ; 10 T. L. R. 515 ; 38 Sol. Jo. 533, C. A.

Annotations :—**Folld.** The Paris, [1896] P. 77 ; Ridd *v.* Thorne, [1902] 2 Ch. 344 ; Levene *v.* Maton (1907), 51 Sol. Jo. 532. **Refd.** Watts *v.* Hetley (1899), 44 Sol. Jo. 134 ; Edmunds *v.* Edmunds, [1904] P. 362 ; Glegg *v.* Bromley (1911), 81 L. J. K. B. 334.

441. Liability subsequently incurred by assignor —Assignee standing by.]—*Re* PAIN, GUSTAVSON *v.* HAVILAND, No. 31, *ante*.

Assignment executed abroad.]—*See* Sub-sect. 3, *post*.

PART V. SECT. 9, SUB-SECT. 1.—B.

441 i. *Liability subsequently incurred by assignor*]—A. Co. sold to H. a threshing outfit, taking promissory notes in payment. H. did some work with machine for M. & assigned the debt due by M. to W. by order in writing to M. to pay to W., W. at once notified M. Some of the A. Co.'s notes were unpaid ; and M. subsequently received notice from the A. Co to pay sums due for threshing to A. Co. or order :—*Held :* the assignment to A. Co. took the preference over that

Sect. 9.—Priority: Sub-sect. 1, B.; sub-sect. 2.]

Priority obtained by trustee in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 737, 738, 750, Nos. 6375, 6376, 6469.

Priority obtained over trustee in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 634, 635, Nos. 5710–5712.

SUB-SECT. 2.—BY STOP ORDER.

See, further, EXECUTION.

442. Priority obtained by stop order.]—A. being entitled to a reversionary interest in a fund in ct., assigned it to B. &, afterwards, to C. C. obtained an order that the fund should not be transferred without notice to him, & had the order entered at the Accountant-General's Office:—*Held:* he thereby gained priority over B., who had not taken similar precautions.—GREENING *v.* BECKFORD (1832), 5 Sim. 195; 58 E. R. 310.

Annotations:—**Consd.** Warburton *v.* Hill (1854), Kay, 470. **Apld.** Mack *v.* Postle, [1894] 2 Ch. 449. **Refd.** Etty *v.* Bridges (1843), 2 Y. & C. Ch. Cas. 486.

443. ——.]—Priority obtained on a fund in ct. by a puisne incumbrancer who had procured the first stop order thereon.

A., who was entitled to a residuary fund in the hands of his father's army agents, charged it to the agents, & afterwards to M. without notice. The agents voluntarily paid the whole fund into ct. in an administration suit. M. obtained the first stop order thereon:—*Held:* M. had priority over the agents.—SWAYNE *v.* SWAYNE (1848), 11 Beav. 463; 12 L. T. O. S. 62; 50 E. R. 896.

444. —— Over prior charging order.]—A. was assignee of a fund standing in the Accountant-General's name to the credit of B. C., another creditor of B., obtained a charging order at common law, which was made absolute. A. then obtained a stop order, & entered it at the Accountant-General's Office. Subsequently C. obtained a similar order:—*Held:* A. was entitled to the fund in priority over C.—WARBURTON *v.* HILL, STENT *v.* WICKENS (1854), Kay, 470; 2 Eq. Rep. 441; 23 L. J. Ch. 633; 2 W. R. 365; 69 E. R. 199.

Annotations:—**Consd.** Thompson *v.* Tomkins (1862), 2 Drew. & Sm. 8. **Expld.** Haly *v.* Barry (1868), 3 Ch. App. 452. **Consd.** Mack *v.* Postle, [1894] 2 Ch. 449. **Refd.** Brereton *v.* Edwards (1888), 21 Q. B. D. 488. **Mentd.** *Re* Hamilton's Windsor Ironworks, *Ex p.* Pitman & Edwards (1879), 12 Ch. D. 707; Mutual Life Assce. Soc. *v.* Langley (1884), 26 Ch. D. 686.

445. —— Over first assignee himself trustee of fund.]—A trustee, who has himself made advances on a fund which is being administered by the ct., should obtain a stop order on the fund, & not having done so was postponed to another incumbrancer, who had obtained a stop order.

A. & B made advances to C. upon his share in a fund which was being administered by the ct. A.'s advance was made long prior to B.'s, but A. did not obtain a stop order, & B. did. Between the date of B.'s advance, & the date of his stop order an order was made directing payment to A. of part of the fund in ct. in part satisfaction of A.'s debt. B., who was pltf. in the cause, had the carriage of the order. On the question whether the debt of A. or B. had priority:—*Held:* as B. had notice of A.'s debt by the order directing payment to him, A. was entitled to priority over B.—ELDER *v.* MACLEAN (1857), 29 L. T. O. S. 72; 3 Jur. N. S. 283; 5 W. R. 447.

Annotations:—**Refd.** Deering & McQuestion *v.*. Hibernian Joint-Stock Banking Co. (1868), 16 W. R. 578; Mutual Life Assce. Soc. *v.* Langley (1886), 32 Ch. D. 460.

446. —— Over trustee in bankruptcy.]—The assignee of a fund in ct., whether in bkpcy. or otherwise, must obtain a stop order to perfect his title, & an assignee for value who obtained a stop order, although not until after the bkpcy. of the assignor:—*Held:* to have priority over the assignee in bkpcy., who had omitted to obtain a stop order.—STUART *v.* COCKERELL (1869), L. R. 8 Eq. 607; 39 L. J. Ch. 127.

Annotations:—**Folld.** Birmingham Banking Co. Official Liquidators *v.* Carter (1872), 20 W. R. 354. **Refd.** *Re* Russell's Policy Trusts (1872), L. R. 15 Eq. 26; Semphill *v.* Queensland Sheep Investment Co. (1873), 29 L. T. 737. **Mentd.** *Re* Pooley, *Ex p.* Rabbinge (1878), 38 L. T. 663; *Re* Mills' Trusts (1895), 73 L. T. 229.

See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 776–782.

447. —— Over assignment of which prior notice given to trustees.]—As against a stop order by an incumbrancer upon a fund in ct. in an administration suit, & in respect of which orders have been made directing payment of interest to the parties entitled, notice to the trustees, though given by another incumbrancer before the stop order was obtained, does not give priority.—PINNOCK *v.* BAILEY (1883), 23 Ch. D. 497; 52 L. J. Ch. 880, 48 L. T. 811; 31 W. R. 912.

Annotation:—**Refd.** Stephens *v.* Green, Green *v.* Knight, [1895] 2 Ch. 148.

448. —— —— Unless notice given before fund paid into court.]—A first incumbrancer on a reversionary legacy gave due notice to the trustees. A fund was afterwards brought into ct. to provide for the legacy, & a second incumbrancer obtained the first stop order on it:—*Held:* he did not thereby obtain priority over the first incumbrancer.—LIVESEY *v.* HARDING (1856), 23 Beav. 141; 53 E. R. 55.

Annotation:—**Refd.** *Re* Anglesey, De Galve *v.* Gardner, [1903] 2 Ch. 727.

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to W., being first in point of time, notwithstanding that W. had been first in giving notice.—*Re* MILLER & AMERICAN-ABELL ENGINE & THRESHER CO. & WEBSTER (1908), 7 W. L. R. 839.—**CAN.**

441 ii. ——.]—By assignment Dec. 21, 1910, a contractor assigned to a third party, with notice to his employer on same day, moneys due or to become due to him for building. The assignment was security for material supplied & sub-contracts taken by the assignee under the contract. A sub-contractor in Jan. 1911, commenced work on the house under sub-contract with the contractor, & finished work on July 12, 1911. Notice of intention to claim a charge by the sub-contractor on the unpaid contract-moneys was served on the employer on Aug. 10, 1911:—*Held:* the charge of the sub-contractor was subject to & must be postponed to the claim of the assignee.—COLLINS *v.* COOPER (1911), 31 N. Z. L. R. 277.—N.Z.

441 iii. —— *Banker's equitable charge —Anticipatory orders for payment.]*—On completion of a contract with the Crown the balance due to the contracting co. was determined by arbitration. To enable the award to be taken up, the co.'s creditors advanced a sum of money, & a deed of assignment in their favour over all moneys payable under the award was executed. The assignees had notice that the co.'s bank claimed to have an equitable charge over the moneys with priority over the deed. The limit of the bank overdraft was fixed at £4,000, & the same limit was imposed upon future anticipatory orders. The co. subsequently gave an order authorising the bank "to obtain the countersignature of a cheque of the Paymaster-General for the sum of £1,000 or any other sum payable to me, & to sign on my behalf a receipt for that amount." Notice of the order was given to the Treasury by the bank:—*Held:* the assignees under the deed had notice of the bank's claim to an equitable charge; & this charge took priority over the deed.—BANK OF NEW SOUTH WALES *v.* R., [1913] N. Z. L. R. 945.—N.Z.

q. Prior latent obligation.]—No latent trust or right in equity can defeat an intimated assignation.—REDFEARN *v.* SOMMERVAILS (1813), 5 Pat. App. 707; 1 Dow. 50, H. L.—SCOT.

r. ——.]—An intimated assignation in security of a debt admitted to be due, but not liquidated, held preferable to the right of a party founding on a prior latent obligation.—BURNS *v.* LAWRIES' TRUSTEES (1840), 2 Dunl. (Ct. of Sess.) 1348; 36 Fac. Coll. 1450.—SCOT.

449. —— Not over stop order on fund in court—By stop order on assignor's share subsequently carried to separate account.]—A person being entitled to an undivided share of a fund in ct., mortgaged it to A., who obtained a stop order on the fund. An order was subsequently made for the distribution of the fund, & the share of the mtgor. was carried over to the account of him & his incumbrancers. B., a mtgee. subsequent in time to A., then obtained a stop order on the fund so carried over to a separate account:—*Held:* B. did not thereby gain priority over A.—LISTER *v.* TIDD (1867), L. R. 4 Eq. 462; *sub nom.* TIDD *v.* LISTER, 15 W. R. 975.

450. —— Unless party obtaining order had notice of prior incumbrance.]—A second incumbrancer of a fund in ct., who at the time of taking his security had notice of the existence of the first incumbrance, cannot by obtaining a stop order gain priority over the first incumbrancer, even although the latter never obtains a stop order.—*Re* HOLMES (1885), 29 Ch. D. 786; 55 L. J. Ch. 33, C. A.

Annotations:—**Consd.** Mutual Life Assce. Soc. *v.* Langley (1886), 32 Ch. D. 460. **Refd.** Mack *v.* Postle, [1894] 2 Ch. 449.

451. —— —— When security taken—Not when stop order obtained.]—MUTUAL LIFE ASSURANCE SOCIETY *v.* LANGLEY, No. 407, *ante*.

452. —— Not where order has same effect as notice to wrong persons.]—STEPHENS *v.* GREEN, GREEN *v.* KNIGHT, No. 328, *ante*.

453. Form of stop order—Order in general terms—Limited to assignment in respect of which obtained.]—A stop order upon a fund in ct., however general it may be in its terms, must, so far as respects any operation equivalent to that of notice to the trustee of the fund, be limited to the assignment or incumbrance in respect of which it was obtained.

Where A. purchased & took an assignment of the shares of three parties in a fund in ct., & obtained a general stop order upon the whole fund, & afterwards purchased another share & took an assignment thereof without obtaining a stop order in respect of that assignment:—*Held:* a subsequent assignee of the last-mentioned share, who had obtained a stop order in respect of that share was to be preferred to A.

A stop order ought to show on the face of it the person by whom the assignment in respect of which it was obtained was made.—MACLEOD *v.* BUCHANAN (1864), 4 De G. J. & Sm. 265; 3 New Rep. 623; 33 L. J. Ch. 306; 10 L. T. 9; 10 Jur. N. S. 223; 12 W. R. 514; 46 E. R. 921, L. JJ.

Annotation:—**Consd.** Mack *v.* Postle, [1894] 2 Ch. 449.

454. —— —— On "share" of mortgagor—Whether capital or income affected.]—In ascertaining the effect of a stop order upon a fund in ct., the ct. is not bound to confine its attention merely to the language of the order itself, but may have recourse to what appears from any part of the order.

Having regard to the practice which prevails in the Paymaster-General's Office of treating stop orders on funds in ct. as not affecting income except where income is mentioned on the face of such orders, care should be taken in drawing up stop orders to express on the face of them plainly whether capital or income or both are to be restrained.

The mtgees. of the interest of a tenant for life of a fund in ct. obtained a stop order, general in terms, upon "the share" of the mtgor.:—*Held:* the stop order affected the income, & gave the mtgees. priority over the trustees of a prior settlement not disclosed by the mtgor., who had obtained no stop order upon the fund.—MACK *v.* POSTLE, [1894] 2 Ch. 449; 63 L. J. Ch. 593; 71 L. T. 153; 10 T. L. R. 475; 8 R. 339.

455. Stop order not necessary—Notice given to trustee—Assignment of interest in proceeds of sale—Part of real estate unsold.]—A trustee for sale of testator's estates sold part of them & paid the proceeds into ct. A party entitled to a share of testator's property assigned his interest to S. by way of mtge., & S. gave notice of the assignment to the trustee, but did not obtain a stop order. The remainder of the estates was afterwards sold & the proceeds paid into ct. under the decree in the suit. Subsequently the assignor became insolvent:—*Held:* the notice given to the trustee was sufficient to take the assigned share out of the order & disposition of the assignor.—MATTHEWS *v.* GABB (1845), 15 Sim. 51; 6 L. T. O. S. 42; 9 Jur. 649; 60 E. R. 535.

Annotations:—**Refd.** Thompson *v.* Tomkins (1862), 2 Drew. & Sm. 8; Mutual Life Assce. Soc. *v.* Langley (1884), 26 Ch. D. 686.

See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 634, 779, Nos. 5711, 6687.

456. —— —— —— Before real estate sold.]—Pending a suit for the administration of testator's estate, in which a decree had been made directing preliminary inquiries, a *cestui que trust* of a share of the proceeds of the residuary realty & personalty assigned his share by way of security, & the assignee immediately gave notice to the trustees of the will. Afterwards, the real estates were sold, & the proceeds paid into ct., to the credit of the cause generally. A creditor, who had entered up a judgment against the *cestui que trust* subsequently to the assignment, obtained an order charging the fund in ct., with respect to which the assignee had not obtained a stop order, or taken any other proceeding:—*Held:* the judgment creditor did not thereby acquire a priority over him.—BREARCLIFF *v.* DORRINGTON (1850), 4 De G. & Sm. 122; 19 L. J. Ch. 331; 14 Jur. 1101; 64 E. R. 762; *sub nom.* BEARCLIFFE *v.* DORRINGTON, 16 L. T. O. S. 62.

Annotations:—**Consd.** Watts *v.* Porter (1854), 3 E. & B. 743. **Folld.** Livesey *v.* Harding (1856), 23 Beav. 141. **Refd.** Kinderley *v.* Jervis (1856), 22 Beav. 1.

457. —— —— Assignment of interest of residuary legatee—Estate consisting partly of several funds paid into court.]—Where all the interest of a residuary legatee, under a certain will, was mortgaged, & part of testator's estate consisted of a fund paid into ct., in a suit for the administration of testator's estate, & another part had been paid into ct., not in that suit but under Trustee Relief Acts, & the mtgee. gave notice to the exor. under the will, but did not obtain a stop order on the funds in ct., & the mtgor. became bkpt.:—*Held:* the notice to the exor. was sufficient, & affected every portion of testator's estate, although part of such estate might have been paid into ct. in a suit, or under Trustee Relief Acts, & it was not necessary for the mtgee. to obtain a stop order on the funds in ct., in order to take those funds out of the order & disposition of bkpt.—THOMPSON *v.* TOMKINS (1862), 2 Drew. & Sm. 8;

PART V. SECT. 9, SUB-SECT. 2.

455 i. *Stop order not necessary—Notice given to trustee.*]—Notice of an incumbrance upon a trust fund was given to trustee after fund had been transferred by him into Court:—*Held:* operative even without a stop order to confer priority over a preceding assignment of which no notice had been given to trustee & as part of which no stop order had been obtained.—*Re* HALL (1880), 7 L. R. Ir. 180.—IR.

Sect. 9.—*Priority: Sub-sects.* 2 & 3. *Sect.* 10.]

31 L. J. Ch. 633; 6 L. T. 305; 10 W. R. 310; 8 Jur. N. S. 185; 62 E. R. 524.

Annotations:—**Distd.** Mutual Life Assce. Soc. *v.* Langley (1886), 32 Ch. D. 460. **Mentd.** *Re* Nettlefold's Trusts (1888), 59 L. T. 315.

See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 770 *et seq.*

458. —— In respect of assigned costs not yet ordered to be paid.]—No stop order can be obtained on a fund in ct. in respect of costs mortgaged but not yet ordered to be paid.—LORD *v.* COLVIN (1862), 2 Drew. & Sm. 82; 6 L. T. 211; 10 W. R. 420; 62 E. R. 553.

When stop order refused—On estate of lunatic—In favour of assignee of next of kin.]—*See* LUNATICS & PERSONS OF UNSOUND MIND.

Assignment executed abroad.]—*See* Sub-sect. 3, *post.*

SUB-SECT. 3.—ASSIGNMENTS EXECUTED ABROAD.

459. Priority obtained by notice—Assignment of reversionary interest by widow of Scotchman domiciled in Scotland.]—Testator, resident & domiciled in England, by his will, made in the English form, directed that all his property should be converted into money, that a sum should be set apart to answer an annuity, & that after certain legacies the residue should be divided amongst his brothers & sisters, & appointed English exors., who proved the will in England. A., one of the sisters, was married to a Scotchman, & was, with her husband, domiciled in Scotland at the time of the death of testator. The husband died soon after testator. The exors. paid A., after she was a widow, her share of the residue. By Scots law the representatives of the husband were entitled to be paid such residue. A., when a widow, assuming to be entitled to a reversionary interest in the sum set apart to answer the annuity, assigned such interest to B., a domiciled Englishman, for value:—*Held:* the rights of the representatives of the husband & B. would depend on the priority of notice, given to the exors., of Scots law in this respect, or of the assignment.—LESLIE *v.* BAILLIE (1843), 2 Y. & C. Ch. Cas. 91; 12 L. J. Ch. 153; 7 Jur. 77; 63 E. R. 40.

460. —— Arrestment of calls on shares held in Scotland.]—A bank held debentures issued by the Q. Co., which was domiciled in Queensland, charging the unpaid capital in respect of shares in the Q. Co. After such capital had been called up, but before it had been paid, the A. Co. commenced an action against the Q. Co. in Scotland for damages, & arrested the calls on the Q. Co.'s shares held in Scotland; the holders of such shares had no notice of the debentures. The Q. Co. was ordered to be wound up in Queensland & also in England. An order was made in the English winding-up restraining the A. Co. from prosecuting the action in Scotland, but without prejudice to the security, if any, which they had acquired upon the amounts payable on the Scotch shares by the proceedings in Scotland; & an order was also made by the Ct. of Session in Scotland recalling the arrestments & restraining the proceedings in Scotland, but subject to the further order of the ct. It was in evidence that under Scots law the arrestment was equivalent to an assignment with notice to debtor, & took priority over an earlier assignment without notice; &, further, that according to Scots law & the *jus gentium* as administered in Scotland, the Scotch arrestments would, in the circumstances, have priority over the assignment by the debentures, notwithstanding the fact that the creditor was domiciled in Queensland & the place of payment was in England, whatever the law of those countries might be:—*Held:* the question of priority on the proceeds of the Scotch shares must be regulated by the law of Scotland, & the ct. was bound to have regard not only to the municipal law of Scotland, but to the administration of the *jus gentium* by the Scotch cts., & the A. Co had the first charge on such proceeds.—*Re* QUEENSLAND MERCANTILE & AGENCY CO., *Ex p.* AUSTRALASIAN INVESTMENT CO., *Ex p.* UNION BANK OF AUSTRALIA, [1892] 1 Ch. 219; 61 L. J. Ch. 145; 66 L. T. 433; 8 T. L. R. 177. C. A.

Annotation:—**Consd.** Kelly *v.* Selwyn, [1905] 2 Ch. 117.

461. —— Assignment in New York of reversionary interest—English trust fund settled by will of English testator—No notice necessary by law of New York.]—By a deed of June, 1891, A., being then domiciled in New York, assigned to his wife absolutely his reversionary interest in his late father's estate, which was invested in English trust securities. According to the law in New York, notice to the trustees of the will was not necessary to complete an assignment of a chose in action or reversionary interest in personalty, & notice of the assignment was not sent to the English trustees. By a deed of Aug. 1894, A., being then in England, assigned his reversionary interest in his father's estate to pltf. by way of mtge. to secure £400. Notice of the assignment was forthwith given by pltf. to the trustees of the will. In Sept. 1903, notice of the first assignment was given to the trustees by the wife. In an action to settle the priorities of the two assignments:—*Held:* as the ct. was administering an English trust fund settled by the will of an English testator, the rights of claimants to that fund must be regulated by English law, & pltf. was entitled to priority by virtue of the notice he had given to the trustees.—KELLY *v.* SELWYN, [1905] 2 Ch. 117; 74 L. J. Ch. 567; 93 L. T. 633; 53 W. R. 649.

462. Priority obtained by stop order—Over ketubah—Assignment thereby of wife's reversionary interest.]—Upon the marriage in Morocco in 1865 of a Jewish husband & wife, the husband being domiciled in that country, a document called a ketubah was executed, under which it was alleged that the children of the marriage took an interest in the property of the wife. By the will of an English testator, who died in 1858, a sum of £10,000 consols was bequeathed to trustees, upon trust for the wife's mother for her life, with remainders to her children in equal shares. At the time of the marriage the wife was, subject to her mother's life estate, entitled to one-fourth of the fund The fund was in ct. in a suit to administer testator's estate, & stood to the separate account of the mother & her family. In 1878 the wife died intestate, & the husband took out administration in England to her estate. He, in 1885, as her administrator, assigned her share of the fund for value to a reversionary society, & they obtained a stop order upon that share of the fund. The society had no notice of the ketubah, & no notice had been given to the trustees of the will, & no stop order had been obtained on behalf of the persons entitled under it. In 1898 the tenant for life died. Upon a petition in the suit by the society for payment of one-fourth of the fund to them:—*Held:* the husband having the legal title to dispose of his wife's interest in the fund, the society had by means of the stop order obtained priority, & the wife's share of the fund must be

paid out to them.—MONTEFIORE *v.* GUEDALLA, [1903] 2 Ch. 26; 72 L. J. Ch. 442; 88 L. T. 496; 19 T. L. R. 390, C. A.

SECT. 10.—AS REGARDS JUDGMENT CREDITORS.

See, generally, EXECUTION.

463. Arrestment—Notice given against creditor—Of assignment—As security.]—A party held an intimated assignation, as a security for certain specified debts & relief of specific obligations; another party, creditor of the grantor of the assignation, used arrestments in the hands of the assignee, & of debtor in the assigned debt:—*Held:* the assignee, in accounting with the arrester, was entitled to take credit (1) for the amount of the debts & obligations specified in the assignation, & all expenses relating thereto; (2) for all sums paid to or for behoof of & for all furnishings made by him to the common debtor prior to the arrestment, & (3) for all sums which, though paid for behoof of the common debtor after the date of the arrestment, were paid in virtue of obligations contracted prior thereto.—CLYNE'S TRUSTEES *v.* DUNNET (1839), Macl. & Rob. 28; 9 E. R. 11, H. L.

464. Charging order—No notice given against creditor—Of equitable assignment—Of interest in consols.]—A., an attorney, employed by B. to invest money, lent it to C. on an agreement, by which C., as a security, charged his interest in £5,000 consols, standing in the names of trustees in trust for C. A. neglected to give notice to the trustees. A judgment creditor of C., subsequently to that loan, obtained a charging order under Judgments Act, 1838 (c. 110), s. 14, notice of which was given to the trustees. C. became insolvent. B. brought an action against A. for negligence; on the trial, the judge directed the jury, in estimating the damages, to consider that, as no notice had been given to C.'s trustees of the charge in favour of B., the subsequent charge created by the judge's order had priority over it:—*Held:* (ERLE, J., diss.) the direction was correct, & the judgment creditor had the same rights as a subsequent incumbrancer without notice, & was to be preferred in equity to A.—WATTS *v.* PORTER (1854), 3 E. & B. 743; 23 L. J. Q. B. 345; 23 L. T. O. S. 228; 1 Jur. N. S. 133; 2 C. L. R. 1553; 118 E. R. 1319.

Annotations:—**Consd.** Beavan *v.* Oxford (1856), 6 De G. M. & G. 507; Kinderley *v.* Jervis (1856), 22 Beav. 1; Nicholls *v.* Rosewarne (1859), 6 C. B. N. S. 480; Scott *v.* Hastings (1858), 4 K. & J. 633; Baker *v.* Tynte (1860), 2 E. & E. 897. **Dbtd.** Pickering *v.* Ilfracombe Ry. (1868), L. R. 3 C. P. 235; Robinson *v.* Nesbitt (1868), L. R. 3 C. P. 264. **Consd.** Punchard *v.* Tomkins (1882), 31 W. R. 286; *Re* General Horticultural Co., *Ex p.* Whitehouse (1886), 32 Ch. D. 512; *Re* Leavesley, [1891] 2 Ch. 1; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Refd.** Hirsch *v.* Coates (1856), 18 C. B. 757; Croft *v.* Lumley (1858), 6 H. L. Cas. 672; Benham *v.* Keane (1861), 1 John. & H. 685; Whistler *v.* Forster (1863), 14 C. B. N. S. 248; Gill *v.* Continental Union Gas Co. (1872), L. R. 7 Exch. 332.

465. —— —— Of mortgage—Of equitable interest in stock.]—A judgment creditor will be postponed to a subsequent mtgee. of an equitable interest in stock, notwithstanding such creditor has, since the mtge., but before notice thereof to the trustee of the fund, obtained, under Judgments Act, 1838, s. 14, an order charging the fund. In such a case the rule in *Dearle* v. *Hall*, No. 393, *ante*, does not apply in favour of the judgment creditor.—SCOTT *v.* HASTINGS (LORD) (1858), 4 K. & J. 633; 5 Jur. N. S. 240; 6 W. R. 862; 70 E. R. 263.

Annotations:—**Refd.** Gill *v.* Continental Gas Union (1872), 41 L. J. Ex. 176; Punchard *v.* Tomkins (1882), 31 W. R. 286; Arden *v.* Arden (1885), 29 Ch. D. 702; *Re* Leavesley, [1891] 2 Ch. 1; *Re* Anglesey, De Galve *v.* Gardner, [1903] 2 Ch. 727. **Mentd.** Haly *v.* Barry (1868), 3 Ch. App. 452; *Re* Bell, Carter *v.* Stadden (1886), 54 L. T. 370; Gray *v.* Stone & Funnell (1893), 69 L. T. 282.

466. Foreign attachment—Notice given against creditor—Of assignment—Of interest in property to be attached.]—WEBSTER *v.* WEBSTER, No. 358, *ante*.

467. Garnishee order—No notice necessary—Of equitable assignment—Of call—As security.]—PICKERING *v.* ILFRACOMBE RY. CO., No. 186, *ante*.

468. —— No notice given against creditor—Of equitable assignment—Of railway shares.]—A prior equitable assignment of railway shares in the hands of the garnishee is a bar to an attachment from the Mayor's Ct., London, notwithstanding no notice of such assignment has been given to the garnishee.—ROBINSON *v.* NESBITT (1868), L. R. 3 C. P. 264; 37 L. J. C. P. 124; 17 L. T. 653; 16 W. R. 543.

Annotation:—**Mentd.** Vacuum Oil Co. *v.* Ellis (1913), 83 L. J. K. B. 479.

469. —— —— —— Of debt.]—A garnishee order under R. S. C., Ord. 45, binds only so much of the debt owing to debtor from a third party as debtor can honestly deal with at the time the garnishee order *nisi* was obtained & served; & it is postponed to a prior equitable assignment of the debt, even in the absence of notice.—*Re* GENERAL HORTICULTURAL CO., *Ex p.* WHITEHOUSE (1886), 32 Ch. D. 512; 55 L. J. Ch. 608; 54 L. T. 898; 34 W. R. 681.

Annotations:—**Apld.** Badeley *v.* Consolidated Bank (1886), 34 Ch. D. 536. **Apprvd.** Davis *v.* Freethy (1890), 24 Q. B. D. 519. **Refd.** *Re* Anglesey, De Galve *v.* Gardner, [1903] 2 Ch. 727; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693.

470. —— —— Of equitable charge.]—An equitable charge, obtained before a garnishee order, takes priority of the order, even where no notice of the charge was given.—BADELEY *v.* CONSOLIDATED BANK (1888), 38 Ch. D. 238; 57 L. J. Ch. 468; 59 L. T. 419; 36 W. R. 745, C. A.

Annotations:—**Consd.** Cole *v.* Eley (1894), 70 L. T. 892. **Refd.** Davis *v.* Freethy (1890), 24 Q. B. D. 519; *Re* Anglesey, De Galve *v.* Gardner, [1903] 2 Ch. 727; Norton *v.* Yates, [1906] 1 K. B 112; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Mentd.** *Re* Whiteley, *Ex p.* Smith (1892), 66 L. T. 291; Gray *v.* Stone & Funnell (1893), 69 L. T. 282; Davis *v.* Davis, [1894] 1 Ch. 393; King *v.* Whichelow (1895), 64 L. J. Q. B. 801; *Re* Beard, *Ex p.* Trustee, [1915] H. B. R. 191.

471. —— Notice given against creditor—Of assignment—Of verdict.]—Pltf., a solr., was the assignee of the amount of a verdict recovered in the Mayor's Ct., London, & the deed of assignment contained a covenant for further assurance of the amount of the verdict or other the sum

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PART V. SECT. 10.

468 i. *Garnishee order—No notice given against creditor.]*—Orders upon a garnishee to attach & pay over were set aside, on its being shown that the debt in question had been assigned by the judgment debtor before the judgment creditor had obtained his judgment; but no costs were given, as the assignees had neglected to give notice of the assignment to the garnishee.—GRANT *v.* MCDONELL (1876), 39 U. C. R. 412.—**CAN.**

468 ii. —— *No notice of prior assignment.]*—A suit by A. against B. was dismissed with costs. A. subsequently brought a suit against C., & obtained an *ex parte* decree & assigned his interest under the decree to D. D. neglected to have his name substituted for A. on the record. C. obtained an order setting aside the *ex parte* decree, allowing him to come in and defend the suit on deposit in ct. of the sum sued for. At the re-hearing the suit was again determined in favour of A. B. thereupon, in execution of his decree for costs, attached the moneys in ct. in the suit of A. against C. D. obtained an *interim* injunction restraining B. from meddling with the money, & put in his claim under the assignment:—*Held:* the incomplete equitable title of D. could not prevail against the right of B., the attaching creditor.—GREESH CHUNDER SEIN *v.* GUDADHUR GHOSE (1880), I. L. R. 5 Calc. 869; 6 C. L. R. 498.—**IND.**

Sect. 10.—*As regards judgment creditors. Part VI. Sects.* 1 *&* 2: *Sub-sects.* 1 *&* 2. *Sect.* 3: *Sub-sect.* 1, *A.*]

or sums of money which might become payable in the action to the assignor. A new trial was obtained, & pltf. became the solr. in that action, which terminated in a verdict for pltf. in that action for the same amount as before. Deft., who was a judgment creditor of pltf. in the action in the Mayor's Ct., obtained a garnishee order attaching the amount recovered in that action. In an interpleader to determine whether pltf. as assignee or deft. as garnishee was entitled to the fruits of the judgment:—*Held:* whether the assignment of the first verdict covered the amount of the second verdict or not, the intention of the assignment & covenant was to secure to pltf. the fruits of the litigation, & as pltf. in that action could not deal with the amount recovered without violating the rights of his assignee, the assignment took priority over the garnishee order.—DAVIS *v.* FREETHY (1890), 24 Q. B. D. 519; 59 L. J. Q. B. 318, C. A.

Annotations:—**Consd.** Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Reld.** *Re* Anglesey, De Galve *v.* Gardner, [1903] 2 Ch. 727. **Mentd.** Glegg *v.* Bromley, [1912] 3 K. B. 474.

472. Equitable execution—By appointment of receiver—Notice of appointment given by creditor—To trustee of judgment debtor.] — ARDEN *v.* ARDEN, No. 421, *ante.*

See, also, Nos. 277, 278, *ante.*

Part VI.—Effect of Assignment.

SECT. 1.—IN GENERAL.

Assignment of bond.]—*See* BONDS, Vol. VII., pp. 224, 227, Nos. 665–670, 688–694.

Assignment of share in partnership—Rights of assignee on dissolution of partnership.]—*See* PARTNERSHIP.

Whether assignment act of bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 48–69.

Whether assignment fraudulent & voidable.]—*See* FRAUDULENT & VOIDABLE CONVEYANCES.

Validity of assignment as against trustee in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 640, 694–697, 731–733, Nos. 5756, 5757, 6118, 6122–6129, 6332, 6348.

Voluntary assignments.]—*See* Part VIII., *post.*

SECT. 2.—RIGHTS AND DUTIES OF ASSIGNOR.

SUB-SECT. 1.—RIGHTS.

473. Assignment as security—Forbearance of debtor by assignee—Right of assignor to recover loss so incurred -Assignment of bond.]—Where a bond is assigned by the obligee towards satisfaction of a debt owing from him to another person, the assignee is chargeable for wilful default in forbearing the obligor, to the amount of any loss incurred by such forbearance.—*Ex p.* MURE (1788), 2 Cox, Eq. Cas. 63; 30 E. R. 30, L. C.

Annotations:—**Foll.** Williams *v.* Price (1824), 1 Sim. & St. 581. **Reld.** Glyn *v.* Hood (1860), 1 De G. F. & J. 334. **Mentd.** Owen *v.* Homan (1851), 3 Mac & G. 378.

474. —— —— —— Assignment of judgment.]—A. assigned to B., as security for a debt due to him from A., a judgment recovered by A. against C. B. sued out execution upon the judgment, but, instead of levying the whole amount, entered into negotiations with C. & received part of the sum due upon the judgment, but C. died insolvent before the residue of it was obtained:—*Held:* B. must be restrained from suing A.'s representatives, upon his covenant for the residue, & B. must account to A.'s representatives, not merely for what he received upon the judgment, but for what, without his wilful default, he might have received.—WILLIAMS *v.* PRICE (1824), 1 Sim. & St. 581; 2 L. J. O. S. Ch. 105; 57 E. R. 229.

Annotation:—**Apld.** Mayer *v.* Murray (1878), 8 Ch. D. 424.

475. Vendor's lien—Sale of reversionary interest in trust fund.]—(1) The doctrine of vendor's lien for unpaid purchase-money is as applicable to a sale of personal estate, such as a reversionary interest in a trust fund, as to a sale of real estate; & accordingly an unpaid vendor of personal estate is entitled to all such remedies for enforcing payment of his purchase-money & interest as he would have been entitled to under an express mtge. or charge.

(2) No Stat. Limitations is applicable to a charge on personal estate, whether by way of vendor's lien or otherwise; consequently the right to the recovery of the debt is not barred by lapse of time, & interest is recoverable for the whole period from the date on which the debt was incurred.

In 1874 a son, being entitled in reversion upon the death of his father to a trust legacy of £5,000 under a will of which the father was sole surviving trustee & exor., sold & assigned his reversionary interest to his father by deed absolutely for £1,500. The deed expressed that the £1,500 was paid as the consideration money by the father to the son, & a receipt for the money was indorsed on the deed, but in fact the money was never paid. In 1900 the father died, whereupon the son claimed a lien for the £1,500 upon the £5,000 legacy, which was then in the hands of the father's exors., together with interest from the date of the assignment:—*Held:* the son was entitled to enforce his claim on the grounds (*a*) the doctrine of vendor's lien on real estate was equally applicable to personal estate, (*b*) a vendor's lien on personal estate was not subject to any statutory or other bar, & (*c*), the father having been in the position of trustee of the legacy as well as purchaser, his exors. were bound, in due course of administration, to satisfy the son's claim out of the legacy.—*Re* STUCLEY, STUCLEY *v.* KEKEWICH, [1906] 1

472i. *Equitable execution—By appointment of receiver—Before notice to debtor.*]—An assignee for value has priority over a person who subsequently obtains an order appointing him receiver by way of equitable execution, although the order was obtained before notice of the assignment was given by the assignee to debtor.—*Re* BRISTOW, [1906] 2 I. R. 215; 40 I. L. T. 30.—**IR.**

PART VI. SECT. 1.

8. *Assignment of subject of action pendente lite—Whether action becomes defective.*]—SCOTT *v.* BENEDICT, 9 C. L. T. Occ. N. 181.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

473 i. *Assignment of debt—Forbearance by assignee—Right of assignor to credit on account.*]—Where debtor assigned to his creditor a debt due by a third person & the creditor made no attempt to recover upon accounts taken between them:—*Held:* the creditor was rightly debited with the amount of the debt.—SYAMA KUMARI *v.* RAMESWAR SINGH (1904), 8 C. W. N. 786.—**IND.**

Ch. 67 ; 75 L. J. Ch. 58 ; 93 L. T. 718 ; 54 W. R. 256 ; 22 T. L. R. 33, C. A.
See, generally, SALE OF LAND.

SUB-SECT. 2.—DUTIES.

476. Not to do any act in derogation of assignment—Assignment of debt—Assignor preventing assignee from receiving debt.]—If A. sells, assigns, & transfers to B., by deed, money due to A. from a third person, covenant lies by B. against A. for not permitting him to receive it.—DERING *v.* FARINGTON (1674), 1 Freem. K. B. 368 ; 86 E. R. 772 ; *sub nom.* **Deering** *v.* Farrington, 3 Keb. 304 ; 1 Mod. Rep. 113.

Annotations :—**Consd.** Ward *v.* Audland (1847), 16 M. & W. 862. **Refd.** Seignorett *v.* Noguire (1705), 2 Ld. Raym. 1241 ; Barnett *v.* Wheeler (1841), 7 M. & W. 364 ; Morley *v.* Attenborough (1849), 3 Exch. 500 ; Aulton *v.* Atkins (1856), 18 C. B. 249. **Mentd.** Acton *v.* Eels (1696), 2 Salk. 662 ; Caister Parish *v.* Eccles Parish (1701), 1 Ld. Raym. 683 ; Mouldsdale *v.* Birchall (1772), 2 Wm. Bl. 820 ; Steward *v.* Wolveridge (1832), 9 Bing. 60.

477. —— —— Action by assignee against debtor—Debtor discharged from bail by assignor.]—A. & B. by deed assigned to C. all & singular the debts due & owing by the parties named in the schedule thereunder written to A. & B. with power to C. to sue in the names of A. & B. C. having brought an action in the names of A. & B. against a debtor whose debt was stated in the schedule to be £250, & having obtained a *capias* to hold him to bail, A. caused the sheriff to discharge debtor. In an action against A. upon the implied covenant in the deed that he would do no act in derogation of his grant, A. pleaded that debtor was, without his knowledge, or consent, wrongfully & unlawfully held to bail for a much larger amount than was then owing by him to A. & B., & for a much larger amount than the £250 mentioned in the schedule as due from him, &, therefore, deft. ordered him to be discharged :—*Held :* no answer to the action.—GERARD *v.* LEWIS (1867), L. R. 2 C. P. 305 ; 36 L. J. C. P. 173 ; 15 L. T. 663 ; 15 W. R. 581.

Annotation :—**Refd.** *Re* Patrick, Bills *v.* Tatham, [1891] 1 Ch. 82.

478. —— Assignment of partnership assets—Failure to transfer bill of exchange.]—The first count alleged that deft. & L. carried on business in co-partnership, & that, by indenture between deft. & L. of the first part, pltfs. of the second part, etc., it was witnessed that deft. & L., & each of them, granted, assigned, & transferred to pltfs. all the co-partnership stock, debts, sums of money & all other the personal estate & effects & property of them, deft. & L., as such co-partners. It then averred that, at the time of the making of the indenture, deft. was indebted to the co-partnership in £240, being part of the debts, sums of money & personal estate & effects & property of deft. & L., as such co-partners ; & it assigned, for a first breach, non-payment of the £240. There was a second breach, alleging that, at the time of the making of the indenture, a bill of exchange for £120, payable to the order of deft., & then being in the possession of deft., was part of the personal estate & effects & property of deft. & L. as such co-partners, & that deft. made default in transferring the bill of exchange, & the right to the money therein specified, to pltfs., &, after the making of the indenture, incapacitated himself from so doing, & from conferring on pltfs. any right or title to receive the money specified in the bill, by then parting with the possession of the bill in such manner & on such terms as so to incapacitate himself, & thereby deft. prevented pltfs. from acquiring or having any right or title to the money, contrary to the indenture :—*Held :* there was no implied covenant on the part of deft. to pay to pltfs. the sum due from him to the co-partnership, & deft. was entitled to judgment on the first breach, but there was an implied covenant on his part not to do anything in derogation of his deed, & pltfs. were entitled to judgment as to the second breach.—AULTON *v.* ATKINS (1856), 18 C. B. 249 ; 25 L. J. C. P. 229 ; 27 L. T. O. S. 135 ; 4 W. R. 592 ; 139 E. R. 1364 ; *sub nom.* OULTON *v.* ATKINS, 2 Jur. N. S. 812.

Annotations :—**Refd.** Parnell *v.* Hingston (1856), 3 Sm. & G. 337 ; *Re* Patrick, Bills *v.* Tatham, [1891] 1 Ch. 82.
See, generally, PARTNERSHIP.

479. —— Assignment of pension as security—Revocation of power of attorney to assignee to receive pension—Interference by court.]—Deft., a retired officer in the army, having received a grant from the Crown of a pension for wounds, assigned it to pltf. to secure payment of an annuity to him. He also executed a power of attorney in the form employed by the War Office, empowering pltf. to receive the pension & pay himself the annuity. After two payments of the pension deft. revoked the power by himself personally going to the office & receiving it :—*Held :* deft. must execute a proper power of attorney for the purpose of enabling pltf. to receive the pension, & a perpetual injunction must be granted against his revoking the power, or doing any act whereby pltf.'s right might be interfered with.—KNIGHT *v.* BULKELEY (1859), 33 L. T. O. S. 7 ; 5 Jur. N. S. 817.

Annotations :—**Refd.** Willcock *v.* Terrell (1878), 3 Ex. D. 323 ; Crowe *v.* Price (1889), 58 L. J. Q. B. 215. **Mentd.** Dent *v.* Dent (1867), L. R. 1 P. & D. 366.

480. To pay over subject-matter of assignment—Assignment of interest in award—Payments made to assignor under award—Refusal of assignor to pay over to assignee.]—All matters in difference between A. & B. having been referred to an arbitrator, A., pending the reference, sold his interest in the award to C. for £110. C. took up the award & paid the costs. The award directed £30 to be paid by B. to A., & that the costs of the reference should be equally divided between the parties. A., having received from B. the £30 & the moiety of the costs :—*Held :* C. might recover the amount so received by him in an action for money had & received.—SMITH *v.* JONES (1842), 1 Dowl. N. S. 526 ; 11 L. J. C. P. 99 ; 6 Jur. 283.

Annotations :—**Refd.** Baylis *v.* London, [1913] 1 Ch. 127. **Mentd.** Sinclair *v.* Brougham, [1914] A. C. 398.

To transfer fund—Voluntary assignment of reversionary interest.]—*See* No. 629, *post.*

SECT. 3.—**TRANSFER OF REMEDIES.**

SUB-SECT. 1.—RIGHT TO SUE.

A. Under Judicature Acts.

In assignee.]—*See* Nos. 190, 193, 194, 201, 203, 204, *ante.*

481. —— Joinder of assignor—When justified.]—In an action by the equitable assignee of a debt,

PART VI. SECT. 2, SUB-SECT. 2.

476 i. *Not to do any act in derogation of assignment—Assignment of debt—Must not exhaust property subject to judgment.*]—The assignor of a judgment who covenants not to do anything to vitiate or defeat the judgment, must not enforce prior securities vested in him, so as to exhaust the property subject to the judgment.—WILLIAMS *v.* W. (1861), 12 I. Ch. R. 507.—IR.

PART VI. SECT. 3, SUB-SECT. 1.—A·

t. *In assignee.*]—Where there has been an absolute assignment in writing of a debt followed by due notice in writing to debtor, the assignor

Sect. 3.—Transfer of remedies: Sub-sect. 1, A. & B. (a).]

or chose in action, an application under R. S. C., 1875, Ord. 16, r. 2, to add the name of the assignor as pltf., will only be granted upon proof of his consent, or that he has been communicated with & all terms necessary for his protection from liability offered to him.—TURQUAND *v.* FEARON (1879), 4 Q. B. D. 280; 48 L. J. Q. B. 341; 40 L. T. 191; 27 W. R. 396, D. C.

Annotations:—**Distd.** Tryon *v.* National Provident Institution (1886), 16 Q. B. D. 678. **Refd.** Val de Travers Asphalte Paving Co. *v.* London Tram. Co. (1879), 48 L. J. Q. B. 312.

482. —— —— ——.]—Pltfs. had advanced money to building contractors on the security of claims against deft. The action was in respect of disputed extras & had been referred for accounts to be taken. Deft. sought to add the contractors as parties in order that they might be bound by the accounts:—*Held:* the contractors could not be made defts. in an action in the Q. B. Div. because their claims did not conflict with those of pltfs., & they could not be made pltfs. against their will & in their absence.—SANDERS & CO. *v.* PEEK (1884), 50 L. T. 630; 32 W. R. 462, D. C.

483. —— —— —— **Amendment refused after Statute of Limitations available as defence.**]—Pltf., suing as assignee of a debt, issued a writ for money lent, without having given notice of the assignment to deft.; & he afterwards applied to amend his writ by adding the assignor as a party to entitle him to sue. Between the date of the issue of the writ & the application to amend, Stat. Limitations had barred the remedy:—*Held:* pltf. ought not to be allowed to make such amendment, as it would take away from deft. a defence which had already accrued to him by virtue of the statute, & would change the substantial rights of the parties.—HUDSON *v.* FERNEYHOUGH (1890), 34 Sol. Jo. 228, C. A.; *affg.* S. C. (1889), 61 L. T. 722, D. C.

484. —— **Of solicitor's bill of costs—Bill signed & delivered by assignee.**]—A solr. assigned his bill of costs & the right to recover on it, & the assignee gave notice of the assignment & delivered the bill to the party to be charged inclosed in a letter signed by himself. After the expiration of a month he brought an action in his own name on the bill of costs:—*Held:* pltf. was an assignee within Solrs. Act, 1843 (c. 73), s. 37, & was entitled to maintain the action.—INGLE *v.* M'CUTCHAN (1884), 12 Q. B. D. 518; 53 L. J. Q. B. 311, D. C.

Annotation:—**Refd.** Briscoe *v.* Briscoe, [1892] 3 Ch. 543.

See, generally, SOLICITORS.

485. —— **In Mayor's Court, London—Assignment of part of "cause of action."**]—An assignee, within 1873 Act, s. 25 (6), of a debt not exceeding £50, may, if the assignment has been made within the jurisdiction of the Mayor's Ct., London, bring an action in that ct. against debtor in respect of the debt, for the assignment is part of the assignee's "cause of action" within Mayor's Ct. of London Procedure Act, 1857, s. 12.—READ *v.* BROWN (1888), 22 Q. B. D. 128; 58 L. J. Q. B. 120; 60 L. T. 250; 37 W. R. 131; 5 T. L. R. 97, C. A.

Annotations:—**Refd.** Whitehead *v.* Butt (1891), 7 T. L. R. 609; Northey Stone Co. *v.* Gidney (1893), 42 W. R. 99; Coburn *v.* Colledge, [1897] 1 Q. B. 702; Bennett *v.* White, [1910] 2 K. B. 643; Goldrei Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38.

See, generally, MAYOR'S COURT, LONDON.

486. —— **Of contract to sell reversionary interest—For damages for breach of contract after assignment.**]—TORKINGTON *v.* MAGEE, No. 81, *ante.*

487. In executors of sub-assignee.]—BATEMAN *v.* HUNT, No. 369, *ante.*

488. —— **Whether assignment made for valuable consideration or not—Effect of 1873 Act, s. 25 (6).**]—*Re* WESTERTON, PUBLIC TRUSTEE *v.* GRAY, No. 193, *ante.*

B. Apart from Judicature Acts.

(a) At Law.

489. Assignor — Though bankrupt.] — The assignor of a chose in action, who has become bkpt., may sue debtor for the benefit of the assignee.—WINCH *v.* KEELEY (1787), 1 Term Rep. 619; 99 E. R. 1284.

Annotations:—**Consd.** Master *v.* Miller (1791), 4 Term Rep. 320. **Expld. & Distd.** Scholey *v.* Page (1806), 3 Smith, K. B. 145. **Refd.** Young *v.* Rishworth (1838), 8 Ad. & El. 470; Sherrington *v.* Yates (1844), 13 L. J. Ex. 249; Boddington *v.* Castelli (1853), 17 Jur. 781; Westoby *v.* Day (1853), 2 E. & B. 605; *Re* Milnes & Robertson (1854), 15 C. B. 451; De Pothonier *v.* De Mattos (1858), E. B. & E. 461. **Mentd.** Dean & Davies *v.* James (1832), 1 Ad. & El. 809, n.; Carvalho *v.* Burn (1833), 4 B. & Ad. 382; Buck *v.* Lee (1834), 1 Ad. & El. 804; Doe d. Shaw *v.* Steward (1834), 1 Ad. & El. 300; Parnham *v.* Hurst (1841), 8 M. & W. 743; Jeffs *v.* Day (1866), L. R. 1 Q. B. 372; De Mattos *v.* Saunders (1872), L. R. 7 C. P. 570; St. Thomas' Hospital *v.* Richardson (1909), 101 L. T. 771.

490. —— —— **Execution of composition deed.**]—Where there is an absolute assignment of a beneficial interest in a debt, the assignor may sue as trustee for the assignee, notwithstanding his subsequent execution of a composition deed.—THE WASP (1867), L. R. 1 A. & E. 367; 16 L. T. 854; 2 Mar. L. C. 552.

491. —— **Right of assignee to sue in name of.**]—An assignee of a debt has a right to use the assignor's name in suing for it, & it is a sufficient authority for the attorney, if he is instructed by the former to commence proceedings.—PICKFORD *v.* EWINGTON (1835), as reported in 4 Dowl. 453.

492. —— **Stay at instance of assignee refused.**]—A. assigned to B., by way of security for a loan of £10,000, two sums of £5,000 each, due from C. to A. under two several indentures, & after-

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cannot maintain an action in his own name to recover the debt so assigned.—BACON *v.* YATCHAW IRRIGATION & WATER SUPPLY TRUST (1898), 23 V. L. R. 485.—**AUS.**

u. —— *Of debt.*]—The assignee of a debt may, under 35 Vict. c. 12, sue thereon in his own name.—FOWLER *v.* VAIL (1877), 27 C. P. 417.—**CAN.**

v. —— —— *Where no beneficial interest—Assignments Act, R. S. M. c. 1.*]—MUSSEN *v.* GREAT NORTHWEST CENTRAL RY. CO. (1899), 19 C. L. T. Occ. N. 117, 285; 12 Man. L. R. 574.—**CAN.**

w. —— —— *Provided he has entire beneficial interest.*]—WOOD *v.* MCALPINE (1877), 1 A. R. 231.—**CAN.**

a. —— —— ——.]—WEST *v.* LEE SOON & LEE SHUN (1915), 32 W. L. R. 961; 9 W. W. R. 644; 8 Sask. L. R. 243.—**CAN.**

b. —— —— *Trust for assignor.*]—Where an assignment of a chose in action is absolute in form, the existence of a trust in favour of the assignor will not disentitle the assignee to recover.—DOCHENDORFF *v.* MESTER (1915), 32 W. L. R. 911; 9 W. W. R. 526.—**CAN.**

c. —— —— ——.]—COLVILLE *v.* SMALL (1910), 16 O. W. R. 908; 2 O. W. N. 12; 22 O. L. R. 1.—**CAN.**

d. —— *Of judgment debt—N. B. S. c. 94.*]—JOST *v.* MCNEILL (1887), 20 N. S. R. (R. & G.) 159.—**CAN.**

e. —— *Claim for negligence.*]—A claim by A. for negligence against solicitors was assigned to B., & by B. to pltf.:—*Held:* the claim under R. S. O. 1887, c. 122, s. 7, passed to pltf. so as to enable him to maintain an action in his own name.—LAIDLAW *v.* O'CONNOR (1893), 23 O. R. 696.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

491 i. *Assignor—Right of assignee to sue in name of.*]—A party may assign a chose in action so as to give the assignee the right to use his name to collect the debt.—HAM *v.* HAM (1856), 6 C. P. 37.—**CAN.**

491 ii. —— —— ——.]—WALSH *v.* HART (1858), 2 Thom. 400.—**CAN.**

wards brought debt against C. upon those indentures on an application at the instance of B. & C.: —*Held:* the proceedings could not be stayed, but the proper course was to apply after judgment to stay execution.—SEPPINGS *v.* NOKES (1845), 2 C. B. 292; 135 E. R. 957.

493. —— Injunction at instance of assignee.]—In an unsuccessful railway speculation a member, who was a provisional & managing committeeman of the intended co., together with the rest of the parties interested, became indebted to an advertising agent to a considerable amount. The agent being indebted in a larger amount to another person, assigned the debt due from the co. to his creditor, for better securing his demand against him. An action was brought by the agent against the provisional & managing committeeman for the debt due to him from the co., & a bill was filed to enjoin such agent from proceeding in the action, making the assignee & others parties. The assignee, by his answer, denied giving instructions for the action:—*Held:* the injunction must be allowed.—WEBSTER *v.* PARRATT (1849), 13 L. T. O. S. 399.

494. —— Injunction against assignee.]—The ct. will not grant a special injunction against the assignees of a bond, to restrain an action brought by them in the name of the assignor.—PORTARLINGTON (LORD) *v.* GRAHAM (1832), 5 Sim. 416; 58 E. R. 393; *subsequent proceedings* (1834), 3 L. J. Ch. 154, L. C.

Annotations:—**Consd.** Thorpe *v.* Hughes (1838), 3 My. & Cr. 742. **Distd.** Green *v.* Pledger (1844), 3 Hare, 165.

495. —— Plea of assignment—Replication of reassignment.]—Declaration for wages & on an account stated. Plea, that the debts in the declaration mentioned were contracted by defts. jointly with B. & others; that B. resided in the State of C. & within the jurisdiction of the district ct. of the fourth judicial district of that State; that the law of the State was, that a creditor might assign to another a debt due to such creditor, & that the person to whom such debt was assigned might in his own name sue debtor & recover the debt; that that ct. had jurisdiction to hear & determine any suit brought by such assignee; that after the accruing of the debt in the declaration mentioned, pltf. then being in the State did, according to the law, assign same to R. then also being in the State; & that afterwards R., in his own name, sued defts. & the other joint debtors in the district ct. for the debts & other debts, & recovered the debts in the declaration mentioned & the other debts; whereupon & whereby defts. & their joint debtors became & still were indebted to R. in the amount of the debts in the declaration mentioned, & liable to be sued in this country for same upon & by virtue of the judgment; & that the judgment was for one entire sum; & that afterwards the judgment was partly satisfied by the levy of a sum of money less than the amount of the judgment, & not applicable to any one of the debts recovered more than to any other. Replication that the law of the State was, that the assignee of a debt might reassign or give up & relinquish to & for the benefit of the creditor by whom the assignment had been made, such debt or so much thereof as, at the time of the reassignment or giving up & relinquishing, remained unsatisfied or unpaid & unlevied; & that such creditor might in his own name sue debtor & recover such debt, or so much thereof as should then remain unlevied & unsatisfied & unpaid, & retain same in like manner as if no such assignment had been made; & that, notwithstanding that, in the meantime such assignee might have sued debtor & have recovered same & caused execution to be issued, unless the whole amount thereof should have been levied. The replication then alleged a reassignment by R. to & for the benefit of pltf. before he had received the debts or any part thereof, & before same or any sum applicable thereto had been levied; & that R. had never received or levied same or any money applicable thereto; & that by reason thereof pltf. became entitled to sue in his own name & recover the debts:—*Held:* the plea was good, but the replication was a sufficient answer to the plea, & showed that the right to maintain the action was revested in pltf.—THOMPSON *v.* BELL (1854), 3 E. & B. 236; 23 L. J. Q. B. 159; 22 L. T. O. S. 238; 18 Jur. 603; 118 E. R. 1129.

496. —— Equitable plea of assignment.]—To an action for money due on an award deft. pleaded, on equitable grounds, that pltf. assigned the debt to D. & Co., who gave notice to deft., & that the assignment still remained in force, & that deft. still remained liable to pay D. & Co.; that the action was not brought for the benefit of D. & Co., nor with their consent: & if pltf. recovered in the action, deft. would nevertheless be obliged to pay D. & Co.:—*Held:* the plea was good, as a ct. of equity would grant an unconditional injunction to restrain pltf. from suing for his own benefit.—JEFFS *v.* DAY (1866), L. R. 1 Q. B. 372; 7 B. & S. 250; 35 L. J. Q. B. 99.

Annotations:—**Distd.** Hunt *v.* Duckworth (1875), 39 J. P. 168. **Consd.** Bankes *v.* Jarvis, [1903] 1 K. B. 549. **Mentd.** Slater *v.* Jones (1873), L. R. 8 Exch. 186.

497. Assignee—Assignee from Crown.]—The King's grantee of a chose in action may sue upon it in her own name.—BREVERTON'S CASE (1537), Dyer, 30 b.; 73 E. R. 67.

498. —— ——.]—R. *v.* WENDMAN, No. 642, *post.*

499. —— ——.]—A chose in action may be assigned to the King, & the King or his grantee or assignee may have an action in their own name.—MYLES *v.* WILLIAMS (1714), Gilb. 318; 93 E. R. 341; *sub nom.* MILES *v.* WILLIAMS, 10 Mod. Rep. 243; 1 P. Wms. 249.

Annotations:—**Consd.** Stafford *v.* Buckley (1750), 2 Ves. Sen. 170. **Refd.** Gayner *v.* Wilkinson (1773), Dick. 491. **Mentd.** Bosvil *v.* Brander (1718), 1 P. Wms. 458; Ineson *v.* Moulston (1742), 9 Mod. Rep. 373; *Ex p.* Covsegame (1753), 1 Atk. 192; Mitford *v.* Mitford (1803), 9 Ves. 87; Sparkes *v.* Bell (1828), 2 Man. & Ry. K. B. 124; Michell *v.* Hughes (1830), 6 Bing. 689; Sheen *v.* Garrett (1830), 6 Bing. 686; Lockwood *v.* Salter (1833), 5 B. & Ad. 303; Sherrington *v.* Yates (1844), 1 Dow. & L. 1032; Smith *v.* Marsack (1848), 12 L. T. O. S. 217; *Re* Butler (1863), 1 New Rep. 538; Chubb *v.* Stretch (1870), L. R. 9 Eq. 555.

500. —— ——.]—R. *v.* TWINE, No. 643, *post.*

501. —— Consent of all parties.]—When a party indebted to another consents to pay over that money to a third person, the latter can

f. —— *Necessity for assignee to sue in name of.*]—If a contract be assigned to a third party, apart from statutory provision, an action must be brought by the assignee in the name of the assignor.—ROBSON *v.* MCWILLIAM (1905), 24 N. Z. L. R. 694.—**N.Z.**

g. —— *With consent of assignee.*]—The assignor may sue with consent of assignee under 18 Vict. c. 25, s. 48.—WALSH *v.* HART (1858), 2 Thom. 400.—**CAN**

h. —— *Retaining beneficial interest.*]—Pltf. assigned to S. all his claim under a lease, with power to use his name for the collection of the same. It was proved that this assignment was intended as security only for money lent by S.:—*Held:* pltf. might sue in his own name.—DAWSON *v.* GRAHAM (1877), 41 U. C. R. 532.—**CAN.**

k. —— *For benefit of assignee.*]—COVERT *v.* JANZEN (1908), 9 W. L. R. 287.—**CAN.**

l. Assignee—Cannot sue in own name.]—Defts. agreed to sell R. lumber by a certain day. After that day R., with defts.' assent, assigned the contract to pltf.; deft. afterwards told pltf.'s agent they would carry out contract, & delivered some lumber to pltf.:—*Held:* pltf. could not sue defts.

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maintain *assumpsit* for it.—SURTEES *v.* HUBBARD (1802), 4 Esp. 203, N. P.

Annotation :—**Mentd.** Robinson *v.* Brown (1846), 8 L. T. O. S. 118.

502. —— ——.]—Where pltfs. were creditors & defts. debtors to T. & Co., & by consent of all parties, an arrangement was made that defts. should pay to pltfs. the debt due from them to T. & Co. :—*Held :* as the demand of T. & Co. on defts. was for money had & received, pltfs. were entitled to recover, on a count for money had & received, against defts.—WILSON *v.* COUPLAND (1821), 5 B. & Ald. 228 ; 106 E. R. 1176.

Annotations :—**Distd.** Parkins *v.* Moravia (1824), 1 C. & P. 376 ; Wharton *v.* Walker (1825), 4 B. & C. 163. **Consd.** Spratt *v.* Hobhouse (1827), 4 Bing. 173. **Refd.** Hennings *v.* Rothschild (1827), 4 Bing. 315 ; Price *v.* Easton (1833), 1 Nev. & M. K. B. 303 ; Liversidge *v.* Broadbelt (1859), 28 L. J. Ex. 332.

503. —— ——.]—The general rule of law is that a debt cannot be assigned. The exception to that rule is that where there is a defined & ascertained debt due from A. to B., & a debt to the same or a larger account due from C. to A., & the three agree that C. shall be B.'s debtor instead of A., & C. promises to pay B., the latter may maintain an action against C. But in such action, it is incumbent on pltf. to show, that at the time when C. promised to pay B. there was an ascertained debt due from A. to B.—FAIRLIE *v.* DENTON (1828), 8 B. & C. 395 ; 2 Man. & Ry. K. B. 353 ; 6 L. J. O. S. K. B. 351 ; 108 E. R. 1089.

Annotations :—**Refd.** Bird *v.* Gammon (1837), 3 Bing. N. C. 883 ; Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375. **Mentd.** Gaskill *v.* Skene (1850), 14 Q. B. 664; Barretts, Hoares *v.* South London Tram. Co. (1886), 2 T. L. R. 848.

Novation, *see, further*, CONTRACT.

504. —— **Irish judgment by cognovit.**]—The assignee of an Irish judgment by *cognovit* may sue in this country in his own name ; the Irish statutes 9 Geo. 2, c. 5, & 25 Geo. 2, c. 14, which permit consees of judgments to assign them, & the assignees to sue in their own names, are confined to judgments upon *cognovits*.—O'CALLAGHAN *v.* THOMOND (MARCHIONESS) (1810), 3 Taunt. 82 ; 128 E. R. 33.

505. —— **Assignment of debt incurred abroad—Assignee entitled to sue abroad.**]—A debt, incurred in Holland, had been assigned to pltf., who, in his affidavit, swore that to his belief, by the laws of Holland, he had a right to maintain an action in his own name. He had arrested defts. : —*Held :* the bail bond could not be set aside.—SUWERHOP *v.* SCHMANUEL (1824), 2 L. J. O. S. K. B. 150.

506. —— **Specially indorsed writ—Sufficiency of indorsement.**]—In an action upon an assignment of a promissory note, the indorsement on the writ was as follows :—"Pltf.'s claim is £130, due to him from deft. under & by virtue of an assignment under the hand of I., & dated July 14, 1888. Particulars whereof are as follows :—'I do hereby authorise & request you to pay to B. £130, being the amount due from you to me, as appears by an I.O.U. signed by you & dated Feb. 4, 1885, & his receipt for same shall be a sufficient discharge : ' "—*Held :* the writ was sufficiently indorsed under R. S. C., Ord. 3, r. 6.—BICKERS *v.* SPEIGHT (1888), 22 Q. B. D. 7 ; 58 L. J. Q. B. 42 ; 37 W. R. 139, D. C.

507. —— —— ——.]—**The indorsement upon a writ of summons stated that pltf.'s claim was for a certain sum for principal & interest due to him as the assignee of a mtge. debt due from deft., but did not state that express notice in writing of the assignment was given to deft.:—*Held :*** the writ was specially indorsed within R. S. C., Ord. 3, r. 6, & leave could be given to enter final judgment under Ord. 14, r. 1.—SATCHWELL *v.* CLARKE (1892), 66 L. T. 641 ; 8 T. L. R. 592 ; 36 Sol. Jo. 521, C. A.

Annotation :—**Consd.** Bradley *v.* Chamberlyn, [1893] 1 Q. B 439.

Special indorsement of writ.]—*See, generally*, PRACTICE & PROCEDURE.

508. Legatee—Chose in action bequeathed by testator—Wills Act, 1837 (c. 26), s. 26.]—The above Act does not enable a testator to bequeath a chose in action so as to pass the right of suing to the legatee.—BISHOP *v.* CURTIS (1852), 18 Q. B. 878 ; 21 L. J. Q. B. 391 ; 19 L. T. O. S. 217 ; 17 Jur. 23 ; 118 E. R. 332.

(b) In Equity.

509. Assignee—Joinder of assignor—Whether necessary—Assignee of judgment.]—To a bill by the assignee of a judgment the assignor is a necessary party.—CATHCART *v.* LEWIS (1792), 3 Bro. C. C. 516 ; 1 Ves. 463 ; 29 E. R. 676, L. C.

510. —— —— —— **Assignee of share in residue.**]—Testator left A. & B., joint exors. & residuary legatees. A. assigned all his share in the residue to pltf., giving him a letter of attorney to receive it, & died. Pltf. sued to have the half of the residue, which consisted of stock in the funds, transferred into his name :—*Held :* it was good enough without making the assignor or his representative a party, unless where the validity of the assignment was denied, or there appeared to the ct. any doubt upon that head.—BLAKE *v.* JONES (1795), 3 Anst. 651 ; 145 E. R. 996.

511. —— —— —— **Assignee of equitable interest in purchase-money to be awarded.**]—A party claiming to be entitled to an interest in common land taken by a co., assigned his share of the compensation money. An award was afterwards made by the comr. appointed by an inclosure Act :—*Held :* the assignor was not a necessary party to a bill filed by the assignee against the co. to recover his share of the compensation money.—CATOR *v.* CROYDON CANAL CO. (1841), 4 Y. & C. Ex. 593 ; 13 L. J. Ch. 89 ; 2 L. T. O. S. 225 ; 8 Jur. 277 ; 160 E. R. 1149, L. C.

512. —— —— —— **Assignee of mere equitable interest.**]—M. & C. during the life of their father, & with his assent, entered into a convent & became professed nuns, taking the usual vows. On the death of their father intestate, they respectively assigned their shares in his personal estate & effects to F. & L., the superioresses of the convent. The administrator having distributed the father's property among the children, excluding M. & C., a bill was filed by F., L. & M. as co-pltfs. against the administrator, C. & the other children, to obtain payment to F. & L. of the assigned shares :—*Held :* the suit could not be sustained, it not being consistent with the rules of pleading to join the assignor & assignee of a mere equitable interest, as co-pltfs. in a suit against the party

for not delivering the rest of the lumber.—EAKINS *v.* GAWLEY (1873), 33 U. C. R. 178.—**CAN.**

m. —— *May sue in his own name.*] Where A. has sold his decree to B., B. can sue on it. SUNNOOBURNESSA KHANUM *v.* MEHER CHUND (1861), 1 W. R. 313.—**IND.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

512 i. *Assignee—Joinder of assignor—Whether necessary—Assignee of mere equitable interest.*]—MILLER *v.* WILLIAMS (1906), 3 W. L. R. 264.—**CAN.**

512 ii. —— —— —— —— *Wages due.*]—LEE *v.* FRIEDMAN (1909), 14 O. W. R. 1139 ; 1 O. W. N. 235 ; 20 O. L. R. 19.—**CAN.**

whose duty it was to transfer the interest to the person entitled.—FULHAM *v.* M'CARTHY (1848), 1 H. L. Cas. 703; 11 L. T. O. S. 389; 12 Jur. 757; 9 E. R. 937, H. L.; *varying* S. C. *sub nom.* M'CARTHY *v.* M'CARTHY (1846), 9 L. T. O. S. 296, L. C. Ir.

Annotations:—**Distd.** Pearce *v.* Watkins (1852), 5 De G. & Sm. 315. **Consd.** Winterbottom *v.* Tayloe (1854). 2 W. R. 441; *Re* Metcalfe's Will (1864), 3 New Rep. 549. **Mentd.** Persse *v.* Persse (1856), 5 H. L. Cas. 682; Allcard *v.* Skinner (1887), 36 Ch. D. 145.

513. —— —— —— Equitable assignee.]—A., resident out of the jurisdiction, held money upon certain trusts in favour of B., & remitted them to C., his London agent, whom he informed of the trusts. B. was not informed that the money had been so remitted:—*Held:* B. might maintain a suit in equity against C. for recovery of the money & A. was not a necessary party to such suit.—STEELE *v.* STUART (1864), 3 New Rep. 686; 10 L. T. 262; *subsequent proceedings* (1866), L. R. 2 Eq. 84.

514. —— —— ——.]—BRUTY *v.* EDMUNDSON, No. 99, *ante*.

515. —— —— —— Assignor alien enemy.]—Pltf., a British subject, carried on a business in Germany in partnership with a German subject until Aug. 3, 1914, when the partnership was dissolved, & the assets & liabilities of the business were transferred to pltf., the intention being that the German partner should take over the German & Austrian assets & liabilities & that pltf. should take over all the rest & continue to carry on the business in London, which he did. Pltf., as assignee, sued defts., an English firm, on a bill of exchange given by them to the German firm, & for goods sold & delivered by the German firm to defts. before the war between Great Britain & Germany:—*Held:* he was entitled to recover.

As to the claim on balance of account for goods supplied, he sued either as legal or equitable assignee of the debt. If legal assignee, there was sufficient notice of the assignment; if equitable assignee, there is sufficient warrant in the decision of *Brandt's (William) Sons & Co.* v. *Dunlop Rubber Co.*, No. 205, *ante*, for allowing him, as he has the sole beneficial interest, to sue without joining the German ex-partner, who, as he is serving in the German Army, cannot effectively be served or joined (SCRUTTON, J.).—WILSON *v.* RAGOSINE & CO., LTD. (1915), 84 L. J. K. B. 2185; 113 L. T. 47; 31 T. L. R. 264.

516. —— —— When justified.]—Power in an assignment authorising the assignee to sue in the name of the assignor:—*Held:* sufficient to justify the joining the assignor as co-pltf. in a suit instituted upon the subject-matter of the deed.—REES *v.* REES (1854), 2 Eq. Rep. 234; 22 L. T. O. S. 281.

517. —— When assignor obstructs.]—The assignee of a debt cannot sue for it in a ct. of equity, unless the assignor refuses to allow the assignee to sue for it at law, in his name, or has done or intends to do some act which will prevent the assignee from recovering it at law in the assignor's name.—HAMMOND *v.* MESSENGER (1838), 9 Sim. 327; 7 L. J. Ch. 310; 59 E. R. 383; *sub nom.* MESSENGER *v.* HAMMOND, 3 Jur. 102.

Annotations:—**Distd.** Wilson *v.* Short (1848), 6 Hare, 366. **Consd.** Bolton *v.* Powell (1851), 14 Beav. 275.

518. —— Proof of assignment.]—On a bill by assignor & assignee of a debt, for recovery of same, stating the assignment, it is not necessary to prove the assignment, though defts. state they are ignorant of it.—RYAN *v.* ANDERSON (1818), 3 Madd. 174; 56 E. R. 474.

Annotations:—**Dbtd.** Sayer *v.* Wagstaff (1843), 2 Y. & C. Ch. Cas. 230. **Refd.** Hanrott *v.* Cadwallader (1831), 2 Russ. & M. 545; Blair *v.* Bromley (1846), 5 Hare, 542.

519. —— ——.]—A., having claims against B., by deed assigned his interest in them to C., & then A. & C. filed a bill against B. in respect of those claims:—*Held:* the deed of assignment must be proved at the hearing of the cause.—SAYER *v.* WAGSTAFF (1843), 2 Y. & C. Ch. Cas. 230; 12 L. J. Ch. 215; 63 E. R. 101.

520. —— Voluntary assignment—Right to use assignor's name.]—WARD *v.* AUDLAND, No. 620, *post*.

521. —— ——.]—A voluntary assignee of a debt due from a person deceased cannot maintain a suit for administration of deceased's estate.—SEWELL *v.* MOXSY (1852), 2 Sim. N. S. 189; 21 L. J. Ch. 824; 18 L. T. O. S. 270; 16 Jur. 608; 61 E. R. 313.

Compare No. 193, *ante*, & *see, generally*, Part VIII., *post*.

522. —— Can only sue in right of assignor—No damage—No relief.]—WESTERN WAGON & PROPERTY CO. *v.* WEST, No. 79, *ante*.

(*c*) *Particular Cases.*

Assignee—Of bond.]—*See* BONDS, Vol. VII., p. 227, Nos. 690–693.

—— Of insurance policy.]—*See* INSURANCE.

—— Of reversion of lease—For breach of covenant.]—*See* LANDLORD & TENANT.

—— Of patent.]—*See* PATENTS & INVENTIONS.

—— Of shares.]—*See* COMPANIES.

—— From Crown.]—*See* Nos. 497–499, *ante*, Nos. 642, 643, *post*.

—— From trustee in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 240, No. 2274.

Trustee in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 971–984.

Trustee of deed of arrangement.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1057, 1133, Nos. 8636, 9207.

SUB-SECT. 2.—RIGHT TO INITIATE AND INTERVENE IN BANKRUPTCY AND WINDING UP PROCEEDINGS.

523. To enforce trusts of creditors' deed—Plaintiff must show how he became assignee.]—An assignee of a debt seeking to have the trusts of a creditor's deed carried into execution must show by his bill how he became assignee.—JERDEIN *v.* BRIGHT (1861), 2 John. & H. 325; 30 L. J. Ch. 336; 4 L. T. 12; 9 W. R. 267; 70 E. R. 1081.

Annotations:—**Refd.** Townsend *v.* Parton (1882), 45 L. T. 755. **Mentd.** Borick *v.* Borick (1866), L. R. 2 Eq. 19.

513 i. —— —— —— *Equitable assignee.*]—An equitable assignee may sue in his own name, where the assignment is of the whole fund, leaving no beneficial interest in the assignor.—GRAHAM *v.* CROUCHMAN (1918), 41 O. L. R. 22; 39 D. L. R. 284; 13 O. W. N. 165.—CAN.

513 ii. —— —— —— ——.]—DEISLER *v.* UNITED STATES FIDELITY CO., [1917] 3 W. W. R. 214; 36 D. L. R. 22.—CAN.

n. —— *Proof of obstacle preventing action at law.*]—To enable the assignee of a chose in action to proceed in equity for its recovery, he must show the existence of some difficulty or obstacle to prevent him recovering at law.—ROSS *v.* MUNRO (1858), 6 Gr. 431.—CAN.

517 i. —— *When assignor obstructs.*] —The assignee of a debt brought a suit in equity for the recovery against the debtor & the assignor, alleging as the reason for not proceeding at law that he had requested the assignor to have an action at law brought in his (the assignor's) name for the recovery of the debt for the benefit of pltf., & that the assignor had refused to have such action brought:—*Held:* the allegation in the bill was sufficient, as it was capable of the meaning, that pltf. had requested the assignor of the debt to allow an action to be brought in his name for the recovery of it, & the assignor had refused to allow it.—KERR *v.* STEEVES (1882), 22 N. B. R. 124.—CAN.

Sect. 3.—*Transfer of remedies: Sub-sects.* 2 & 3, *A. & B.; sub-sect.* 4, *A. & B. Sects.* 4 & 5: *Sub-sect.* 1.]

To issue bankruptcy notice.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 88, Nos. 794, 796, 797.

To present petition—In bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 110–113.

—— **For winding up company.**]—*See* COMPANIES.

To prove debt—In bankruptcy proceedings.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 346, 361, 436, Nos. 3243–3245, 3367, 3943.

—— **In winding up proceedings.**]—*See* COMPANIES.

To make applications relating to bankrupt's property.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 240, No. 2274.

To apply for judgment summons.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 1033, No. 8445.

SUB-SECT. 3.—RIGHT TO ENFORCE PAYMENT BY EXECUTION, GARNISHEE PROCEEDINGS, ETC.

A. Under Judicature Acts.

524. To obtain garnishee order—Assignee of judgment debt.]—The assignee of a judgment debt is a person who has "obtained" a judgment within R. S. C., Ord. 45, r. 1, & is entitled to a garnishee order attaching debts due to judgment debtor.—GOODMAN *v.* ROBINSON (1886), 18 Q. B. D. 332; 56 L. J. Q. B. 392; 55 L. T. 811; 35 W. R. 274; 3 T. L. R. 212, D. C.

Annotations:—**Consd.** Forster *v.* Baker, [1910] 2 K. B. 636. **Apld.** *Re* Freshwater, Yarmouth & Newport Ry. (1913), 29 T. L. R. 568.

525. To claim proceeds of sale—Under execution levied by creditor against debtor—Assignment of debt with all securities for same.]—Where a creditor, who has assigned a debt together with all securities for same, subsequently recovers judgment against debtor in the county ct., & the goods of judgment debtor are taken in execution & sold, the assignee of the debt cannot claim the proceeds of sale under County Cts. Act, 1888 (c. 43), ss. 156, 157.—PLANT *v.* COLLINS, [1913] 1 K. B. 242; 82 L. J. K. B. 467; 108 L. T. 177; 29 T. L. R. 129, C. A.

Right of debtor or fundholder to interplead.]—*See* Sect. 4, *post.*

B. Apart from Judicature Acts.

526. To issue execution—Assignee of judgment debt against company—Against shareholder of company.]—The A. Co. having amalgamated with the B. Co., by the deed of amalgamation those shareholders of the A. Co. who joined the B. Co. were, & those who refused to join were not, entitled to indemnity from the B. Co. against the liabilities of the A. Co. W., one of the shareholders of the A. Co. who refused to join the B. Co., bought up a judgment debt against the A. Co., & there being no assets of the A. Co. applied, in the name of the creditor, under Companies Act, 1844 (c. 110), s. 68, for execution against C., one of the shareholders of the A. Co., who had joined the B. Co.:—*Held:* this was a fraudulent use by W. of the debt in order to relieve himself from liability at the expense of his co-shareholders who had joined the B. Co., & the application should be refused with costs.—WOODHAMS *v.* ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO. (1864), 2 De G. J. & Sm. 162; 3 New Rep. 697; 10 L. T. 178; 10 Jur. N. S. 482; 12 W. R. 674; 46 E. R. 337, L. JJ.

Annotation:—**Mentd.** *Re* Hercules Insce., Brunton's Claim (1874), L. R. 19 Eq. 302.

See, generally, COMPANIES.

527. To obtain charging order—Assignee of costs payable to solicitor.]—The assignee from a solr. of the costs of litigation, wherein property has been recovered or preserved through the instrumentality of the solr., is entitled to apply to the ct. under Solrs. Act, 1860 (c. 127), s. 28, for an order charging the property with the costs assigned to him.—BRISCOE *v.* BRISCOE, [1892] 3 Ch. 543; 61 L. J. Ch. 665; 67 L. T. 116; 40 W. R. 621; 36 Sol. Jo. 610.

See, generally, SOLICITORS.

SUB-SECT. 4.—OTHER REMEDIES.

A. Under Judicature Acts.

528. Grant of administration—Assignee of debt due by testator.]—Where exors. renounced probate the ct. granted administration *cum testamento annexo* to the assignee of a debt due by testator to a creditor.—*In the Goods of* COSH (1909), 25 T. L. R. 785; 53 Sol. Jo. 755.

See, generally, EXECUTORS & ADMINISTRATORS.

B. Apart from Judicature Acts.

529. To compel tenant to attorn—Assignee of extent over land.]—The assignee of an extent over land:—*Held:* entitled to compel the tenant to attorn tenant to him & pay him arrears of rent.—JACKSON *v.* BARROW (1626), Nels. 2; 21 E. R. 774.

530. To intervene in legal proceedings—Assignee of interest in fund—Attendance at inquiries in administration suit.]—Leave given, upon petition, to the purchaser of the interest of a party to attend the master in making inquiries directed by the decree.—TOOSEY *v.* BURCHELL (1821), Jac. 159; 37 E. R. 810.

531. —— Assignor made defendant in action.]—N. was made deft. to a cause as a creditor in respect of a debt which he had assigned to trustees, & to recover which he had given them power to use his name. The trustees were not themselves parties to the suit, but they obtained an order authorising them to appear for him, & to use his name in all proceedings in the cause, & directing that all warrants & proceedings served on his clerk in ct. should be forwarded to their solr.:—*Held:* such an order was irregular.—DREVER *v.* MAWDESLEY (1838), 4 My. & Cr. 94; 41 E. R. 37, L. C.

532. —— Assignee of interest after decree—On order of revivor.]—Where one of two pltfs. had assigned his interest after decree, & the chief clerk's certificate had been made after the assignment, the common order of revivor was made against the assignee without prejudice to any question whether he was to be bound by the certificate.—VIBART *v.* VIBART (1868), L. R. 6 Eq. 251; 16 W. R. 997.

533. To take out default summons—Under County Courts Act, 1888 (c. 43), s. 86.]—In an action in a county ct. to recover a sum of money

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PART VI. SECT. 3, SUB-SECT. 3.—A.

524 i. *To obtain garnishee order—Assignee of judgment.*]—An assignee of a judgment, though not a party to the action, may apply to enforce the judgment by attachment.—MCLEAN *v.* BRUCE (1891), 14 P. R. 190.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B.

o. *To attach debts—In assignor's name.*]—The assignee of a judgment creditor can proceed in the latter's name to attach a debt.—*Re* SMART *v.* MILLER (1866), 3 P. R. 385.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—B.

532 i. *To intervene in legal proceedings—Assignee of interest after decree—*

for goods sold & delivered, pltfs. took out a default summons under the above sect., & at the hearing it appeared that pltfs. claimed as assignees of the debt. An affidavit of deft.'s indebtedness was sworn by one of pltfs. according to C. C. R., Form 14 B. The judge struck out the case, holding that the sect. did not apply to a case where the debt had been assigned, & that the affidavit was insufficient. Leave was given to pltfs. to issue an ordinary summons. This they did not do, but they obtained a rule *nisi* for a *mandamus* to hear & determine, etc.:—*Held:* the county ct. judge had not declined jurisdiction.—R. *v.* PONTYPOOL COUNTY COURT JUDGE & TOMKINS (1894), 63 L. J. Q. B. 702; 71 L. T. 17; 10 R. 356, D. C.

SECT. 4.—REMEDIES OF DEBTOR OR FUNDHOLDER WHERE CONFLICTING CLAIMS.

534. Right to interplead.]—B., a judgment creditor, assigned, subject to a lien of D., all his interest & property in the debt to A. Notice of the lien of D. had been previously given to judgment debtor. A. also gave notice of the assignment to him. B. after the assignment, became insolvent, & the assignee in insolvency gave notice to judgment debtor that the estate & effects of B. were vested in him. Judgment debtor having died, her exor. filed a bill of interpleader:—*Held:* judgment debtor was entitled to the protection of the ct. by bill of interpleader.—JONES *v.* THOMAS (1854), 2 Sm. & G. 186; 22 L. T. O. S. 301; 18 Jur. 460; 2 W. R. 249; 65 E. R. 358.

535. —— Difference in sum claimed.]—B. undertook to pay A. £365 at a particular time, & afterwards paid him £40 on account. A. then assigned the sum of £365 alleged to be due to him from B. both to C. & D. & C. & D. claimed to be paid this sum from B. B. filed a bill of interpleader against C. & D., stating the payment of £40, & requiring them to interplead as to the £325:—*Held:* on account of the difference of the two sums of £365 & £325, interpleader did not lie.—DIPLOCK *v.* HAMMOND (1854), 2 Sm. & G. 141; 2 Eq. Rep. 409; 23 L. J. Ch. 550; 2 W. R. 287; 65 E. R. 339; *affd.* on other grounds, 5 De G. M. & G. 320, L. JJ.

Annotations:—**Mentd.** *Re* Adams, *Ex p.* Shellard (1873), L. R. 17 Eq. 109; *Re* Whitting, *Ex p.* Hall (1879), 10 Ch. D. 615; Brandts *v.* Dunlop Rubber Co. (1905), 74 L. J. K. B. 898.

536. —— No sufficient notice of absolute written assignment—Whether allowed before action brought.]—*Re* NEW HAMBURGH & BRAZILIAN RY. Co. (1875), Bitt. Prac. Cas. 57; 1 Char. Cham. Cas. 11; [1875] W. N. 239.

537. —— As to part of debt—& dispute remainder of debt.]—A debtor, against whom an action has been brought for a debt of which a notice of assignment has been given, may interplead in respect of part of the debt & dispute the remainder either under 1873 Act, s. 25, or under R. S. C., Ord. 57.—READING *v.* LONDON SCHOOL BOARD (1886), 16 Q. B. D. 686; 54 L. T. 678; 34 W. R. 609; 2 T. L. R. 476, D. C.

Annotation:—**Mentd.** Clench *v.* Dooley (1886), 56 L. T. 122.

538. —— R. S. C. Ord. 57, rr. 1, 2—"Chattels."]—Pltf. was registered proprietor of shares in a public co., & held a certificate that he was registered as owner of the shares. He executed a transfer to defts., brokers, to enable them to sell the shares, & handed to them the certificate & transfer for that purpose. Claimant gave defts. notice that he claimed the shares, & pltf. demanded back the certificate & transfer. Defts. applied for an interpleader order:—*Held:* as claimant was in effect claiming the documents, defts. were entitled to interplead. *Semble:* a chose in action may be the subject of interpleader.—ROBINSON *v.* JENKINS (1890), 24 Q. B. D. 275; 59 L. J. Q. B. 147; 62 L. T. 439; 38 W. R. 360; 6 T. L. R. 158, C. A.

Annotations:—**Reid.** Rogers *v.* Lambert, [1891] 1 Q. B. 318; *Ex p.* Mersey Docks & Harbour Board, [1899] 1 Q. B. 546.

—— **Trustee in bankruptcy.**]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 987, No. 8081.

539. Payment into court—Creditor claiming under writ of sequestration—Subsequent mortgagee.]—WARD *v.* BOOTH, No. 439, *ante*.

540. —— No absolute assignment in writing of debt.]—A banking co. having received notice in writing of conflicting claims to money placed with them on deposit, paid such money into ct. under Trustee Relief Acts, after first deducting therefrom their costs of payment in. Upon petition by one of the claimants for payment out:—*Held:* the proviso in 1873 Act, s. 25 (6), only applied to debts of which there had been an absolute assignment in writing, & the banking co., not being trustees within Trustee Relief Acts, were not entitled to pay the deposit money into ct. thereunder.—*Re* SUTTON'S TRUSTS (1879), 12 Ch. D. 175; 48 L. J. Ch. 350; 27 W. R. 429.

SECT. 5.—PAYMENT OR TRANSFER BY DEBTOR OR FUNDHOLDER.

SUB-SECT. 1.—BEFORE NOTICE OF ASSIGNMENT.

Notice generally, *see* Part V., *ante*.

541. Payment by debtor to assignor—Valid against assignee.]—The bill was exhibited by pltf., a feme covert, & her friends against her husband & two others, M. & S. Pltf., a Dutch woman, brought £4,000 portion to her husband, who agreed with her before marriage to leave a complete maintenance for herself & her children, not expressing what. The marriage took effect but, he declining in estate, her friends called on him, & he thereupon assigned certain bonds wherein M. was bound to him, & a letter of attorney was made to S. to receive the money upon the bonds, & S. received the money. A bill having been exhibited by pltf. to have the money from M. & S., M. by plea set forth the payment to S. & that he had no notice of the assignment of the bonds:—*Held:* a good plea.—ASHCOMBE'S CASE (1674), 1 Cas. in Ch. 232; 22 E. R. 776.

542. —— ——.]—N. mortgaged to C. to secure £1,000; C. assigned the mtge. to M. to secure £700, but no notice of the assignment was given to N.:—*Held:* delivery of goods to C. by N. was a valid discharge of the mtge. debt, & was a good payment against M.—NORRISH *v.* MARSHALL (1821), 5 Madd. 475. 56 E. R. 977.

Annotations:—**Apld.** De Lisle *v.* Union Bank of Scotland, [1914] 1 Ch. 22. **Reid.** Dixon *v.* Winch, [1900] 1 Ch. 736; Turner *v.* Smith, [1901] 1 Ch. 213. **Mentd.** Bickerton *v.* Walker (1885), 31 Ch. D. 151.

543. —— —— Payment after invalid notice.]—HOCKLEY & PAPWORTH *v.* GOLDSTEIN, No. 385, *ante*.

544. Transfer by fundholder—Before notice of voluntary assignment.]—B., by a voluntary deed, assigned to D. his interest in a sum of stock

Assignee must be made a party.]—When, after decree, the interest of the principal deft. was assigned, the assignee was not permitted to intervene without being made a party by supplemental bill.—CROFTS *v.* MITCHELL (1844), 6 I. Eq. R. 373.—IR.

Sect. 5.—Payment or transfer by debtor or fundholder: Sub-sects. 1 & 2. Sect. 6.]

standing in the names of trustees upon trust for him. No notice of the assignment was given to the trustees in B.'s lifetime:—*Held:* as between D. & the representatives of B., the assignment was complete, but if the trustees had transferred the stock before receiving notice of the deed D. would have had no remedy against them.—DONALDSON *v.* DONALDSON (1854), Kay, 711; 23 L. J. Ch. 788; 23 L. T. O. S. 306; 1 Jur. N. S. 10; 2 W. R. 691; 69 E. R. 303.

Annotations:—**Distd.** Lambe *v.* Orton (1860), 1 Drew. & Sm. 125. **Apld.** *Re* Way's Trusts (1864), 2 De G. J. & Sm. 365. **Refd.** *Re* Walhampton Estate (1884), 26 Ch. D. 391; *Re* Lucan, Hardinge *v.* Cobden (1890), 45 Ch. D. 470; *Re* Patrick, Bills *v.* Tatham, [1891] 1 Ch. 82; *Re* Griffin, Griffin *v.* Griffin, [1899] 1 Ch. 408.

Voluntary assignments generally, *see* Part VIII., *post.*

545. Release of debt by assignor—Valid against assignee.]—A judgment debt was equitably assigned by deed, & same was assigned over, together with the deed, but no notice of the latter transaction was given to judgment debtor. A release to debtor was afterwards given by the original assignee, & debtor accepted the release without requiring the delivery up or the production of the original deed of assignment:—*Held:* the release was good as against the assignee who had neglected to give notice to debtor of the assignment to him.—STOCKS *v.* DOBSON (1853), 4 De G. M. & G. 11; 22 L. J. Ch. 884; 21 L. T. O. S. 189; 17 Jur. 539; 43 E. R. 411, L. JJ.

Annotations:—**Apld.** Berwick *v.* Price, [1905] 1 Ch. 632. **Refd.** Atterbury *v.* Wallis (1856), 8 De G. M. & G. 454.

546. Negotiable instrument given to creditor—Creditor holder of negotiable instrument.]—Notice to debtor, who has given a negotiable instrument for his debt, that the debt has been assigned by the creditor, can be disregarded by debtor, even if the creditor who has assigned the debt is still the holder of the negotiable instrument.—BENCE *v.* SHEARMAN, [1898] 2 Ch. 582; 67 L. J. Ch. 513; 78 L. T. 804; 47 W. R. 350, C. A.

Priority determined by notice.]—*See* Part V., Sect. 9, *ante.*

SUB-SECT. 2.—AFTER NOTICE OF ASSIGNMENT.

Notice generally, *see* Part V., *ante.*

547. General rule.]—STEPHENS *v.* VENABLES (No. 1), No. 590, *post.*

548. Refusal to pay assignee.]—If a creditor desires his debtor to pay part of the debt to a third person to whom the creditor is indebted, & indorse it on a note from him to his creditor, & if the debtor makes the indorsement, but omits to pay the money, the third person may recover it from him by an action for money had & received.—WARD *v.* EVANS (1703), 1 Com. 138; Holt, K. B. 120; 2 Ld. Raym. 928; 6 Mod. Rep. 36; 2 Salk. 442; 3 Salk. 118; 92 E. R. 1002.

Annotations:—**Consd.** Hennings *v.* Rothschild (1827), 4 Bing. 315. **Refd.** Smith *v.* Wilson (1738), Andr. 187; Grant *v.* Vaughan (1764), 3 Burr. 1516. **Mentd.** Thorold *v.* Smith (1706), Holt, K. B. 462; Nickson *v.* Brohan (1713), 10 Mod. Rep. 109; Tatlock *v.* Harris (1789), 3 Term Rep. 174; Nicholl *v* Thomas (1850), 2 Rob. Eccl. 157.

549. —— Form of action.]—L., being indebted to pltf., gave him an order upon deft., L.'s tenant, to pay him out of the rent that should next become due. Pltf. sent the order to deft., but they had no personal communication on the subject. When the next rent became due, deft. showed the order to L., & undertook to pay pltf.'s demand, upon which L. accepted the balance, & gave deft. a receipt for the full rent:—*Held:* this arrangement gave pltf. no right of action against deft.—WHARTON *v.* WALKER (1825), 4 B. & C. 163; 6 Dow. & Ry. K. B. 288; 3 L. J. O. S. K. B. 183; 107 E. R. 1020.

Annotations:—**Apld.** Baron *v.* Husband (1833), 4 B. & Ad. 611; Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375. **Refd.** Gaskell *v.* Gaskell (1828), 2 Y. & J. 502; Peate *v.* Dicken (1834), 1 Cr. M. & R. 422; Andrews *v.* Smith (1835), Tyr. & Gr. 173.

550. Payment to assignor—Liability to pay assignee—Assignment disputed by assignor.]—A trustee for a married woman, having received notice of a charge executed by her:—*Held:* personally liable for payments afterwards made to her, notwithstanding the validity of the charge was disputed by her, & no application had been made for an injunction.—HODGSON *v.* HODGSON (1837), 2 Keen, 704; 7 L. J. Ch. 5; 48 E. R. 800.

Annotation:—**Mentd.** Bolton *v.* Salmon, [1891] 2 Ch. 48.

551. —— —— ——.]—P. owed C. a sum which, under a letter of licence, was payable by instalments, subject to a proviso enabling C. to sue for the whole sum at once on failure in punctual payment of any instalment. C. assigned the debt to A., who afterwards gave notice to P. & called upon him to pay the instalments to him. C. thereupon told P. that the assignment was invalid, & that if P. did not continue to pay to C. he would, under the proviso, determine the letter of licence:—*Held:* P. was justified in continuing to pay C. until A. had obtained an injunction.—APLIN *v.* CATES (1860), 30 L. J. Ch. 6; 3 L. T. 288; *sub nom.* APPLIN *v.* CATES, 9 W. R. 92.

552. —— ——.]—An obligor of a bond, after notice that it had been assigned on trusts, of the particulars of which there was no proof of his being cognisant, made payments to parties not entitled thereto, some by order of the trustee, & some to the extrix. of the obligee, without such order:—*Held:* the obligor was not responsible to the *cestui que trust* for the former, but was liable to repay the latter.—ROBERTS *v.* LLOYD (1840), 2 Beav. 376; 48 E. R. 1227.

Annotation:—**Mentd.** Church *v.* Marsh (1843), 2 Hare, 652.

553. —— —— Payment to assignor after refusal of assignee to indemnify debtor.]—F. & G. assigned a debt due to them from M. to J. & B. as a security for a debt due from F. & G. to J. & B. M. received notice of the assignment, & promised in writing to act upon it. Afterwards F. & G. sued M. at law for the debt. M. offered to pay J. & B. if they would indemnify him, which they declined to do, upon which M. paid F. & G. taking an indemnity:—*Held:* M., though he might have no defence at law against the action was not discharged, but must be decreed to pay the money to J. & B., & their having refused him an indemnity did not alter the case.—JONES *v.* FARRELL (1857),

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PART VI. SECT. 5, SUB-SECT. 2.

550 i. *Payment to assignor—Liability to pay assignee.*]—A. in order to execute a contract of printing for a customer, applied to B. for paper, which he refused to supply unless secured. A memorandum was signed with A.'s name, by one, with the cognizance of the other, of two persons having the general management of A.'s business, agreeing to give B. a draft upon C. the customer for the amount of the account. C. having been notified of the arrangement, paid the amount to A.:—*Held:* such payment was made in his own wrong; & he was ordered to pay the amount to B.—BUNTIN *v.* GEORGEN (1872), 19 Gr. 167.—CAN.

550 ii. —— —— ——.]—M. employed defts. to manage her land. Defts. sometimes paid in advance the rents & taxes, recouping themselves out of rents & price of crops sold, & paid the balance to M. M. had deposited the title-deeds of the farm with defts. by way of equitable mortgage. M. applied to pltf. for advances to pay off defts. & also some rent due, & this pltf. agreed to give upon security of an agreement dated Dec. 29, 1900, whereby M. assigned to him the authority to manage her farm, and out of proceeds of letting to pay above or

1 De G. & J. 208 ; 3 Jur. N. S. 751 ; 44 E. R. 703, L. C. & L. JJ.

Annotations :—**Mentd.** Bence *v.* Shearman, [1898] 2 Ch. 582 ; Pritchett *v.* English & Colonial Syndicate, [1899] 2 Q. B. 428; Brandts *v.* Dunlop Rubber Co., [1905] A. C. 454.

554. —— ——.]—BRICE *v.* BANNISTER, No. 63, *ante*.

555. —— ——.]—By the will of testator a share of his estate was given to trustees upon trust during the life of one of his sons to pay & apply the whole or any part of the income or accumulations of income of the share for the support, maintenance or education or otherwise for the benefit of that son, his wife or children, in such manner in all respects as the trustees should in their uncontrolled discretion think fit. The son assigned his interest by way of mtge. to pltf. Notice of the assignment was duly given to the trustees of the will, but, after receiving such notice, they made payments out of the income of the share to or on behalf of the son :—*Held :* the trustees were liable for all sums paid to or on behalf of the son after they had received notice of assignment.—*Re* NEIL, HEMMING *v.* NEIL (1890), 62 L. T. 649.

Annotation :—**Mentd.** *Re* Bullock, Good *v.* Lickorish (1891), 60 L. J. Ch. 341.

556. —— ——.]—BRANDT'S (WILLIAM) SONS & CO. *v.* DUNLOP RUBBER CO., No. 205, *ante*.

557. —— **Assignment by one of several persons entitled to charges on fund—Effect of payment on rights inter se of persons entitled to charges on such fund.**]—Where a person in possession of a fund has received notice of an assignment of his rights by one of several persons entitled to charges on the fund, & nevertheless wrongfully makes payment out of the fund to the assignor, the rights of the several persons entitled to the charges *inter se*, to what remains of the fund cannot in any way be affected by such payments. The mtgee. of a charge on a fund, or his assignee, when notice of the mtge. has been given to the holder of the fund, cannot be affected by transactions between the holder of the fund & the mtgor. unknown to the mtgee.—LIQUIDATION ESTATES PURCHASE CO. *v.* WILLOUGHBY, [1898] A. C. 321 ; 67 L. J. Ch. 251 ; 78 L. T. 329 ; 46 W. R. 589, H. L.

Annotations :—**Mentd.** *Re* Routledge, Hummel *v.* Routledge (1904), 53 W. R. 44 ; *Re* Tasker, Hoare *v.* Tasker, [1905] 2 Ch. 587 ; Crosbie-Hill *v.* Sayer, [1908] 1 Ch. 366 ; Manks *v.* Whiteley, [1912] 1 Ch. 735.

558. Payment to creditor under garnishee order—Liability to repay assignee.]—Money in the hands of deft. was attached under a garnishee order to satisfy a judgment debt. Judgment debtor assigned to pltf. the balance of the amount in the hands of deft. & notice was given of the assignment. Subsequently a garnishee order was served on deft. with respect to another judgment debt. Deft. thereupon paid the amount of the first judgment debt into ct. & the balance of the money in his hands he paid into ct. under the second garnishee order. In an action by pltf. to recover the amount of the balance :—*Held :* when the first garnishee order had been satisfied by payment into ct., the assignment took effect as to the balance in the hands of deft., & the money should have been paid to pltf., & he was entitled to recover the amount.—YATES *v.* TERRY, [1902] 1 K. B. 527 ; 71 L. J. K. B. 282 ; 86 L. T. 133 ; 50 W. R. 293 ; 18 T. L. R. 262, C. A.

Position of judgment creditors generally, *see* Part V., Sect. 10, *ante*.

559. Payment to mortgagor—Liability to repay mortgagee—Relief to fundholder under Judicial Trustees Act, 1896 (c. 35).]—The tenant for life of certain personal property vested in trustees of a settlement assigned all his interest under the settlement to pltf. by way of mtge. Shortly afterwards pltf. gave to the trustees the ordinary notice of the mtge., but did not require them to pay the income to him, & the trustees in fact continued to pay it to the tenant for life until pltf. brought an action, against the tenant for life & the trustees, for foreclosure & claimed against the trustees personally payment of the income from the date of the notice :—*Held :* (1) such a notice without more had no different effect from a notice of a mtge. on real estate, & was not equivalent to taking possession of the mortgaged property ; (2) if such view was wrong, relief would be granted by the ct. to the trustees under the above Act, s. 3, which need not be pleaded.—*Re* PAWSON'S SETTLEMENT, HIGGINS *v.* PAWSON, [1917] 1 Ch. 541 ; 86 L. J. Ch. 380 ; 116 L. T. 559 ; 33 T. L. R. 233.

See, generally, MORTGAGE.

Payment to landlord—Liability to repay assignee of reversion.]—*See* LANDLORD & TENANT.

560. Discharge obtained from assignor—Without concurrence of assignee—Validity of.]—In Feb. 1847, A. & B. entered into a joint contract with a co. for making & for completing the works of a railway. In May 1848, execution was sued out against A. by a creditor, & the sheriff sold the moiety of his goods, etc., on the railway to B. B. then assigned his interest in the contract to pltf. by way of security. B. was allowed, with the knowledge of the co., to proceed with the execution of the works alone till Aug. 25, 1848, after which date the works were completed by pltf., who gave notice of the assignment to him to the co. The co. paid various sums in respect of the works to B. & pltf. ; but on pltf. bringing an action, in Feb. 1850, against the co. in the names of A. & B., the co. obtained a release from A. :—*Held :* (1) the release obtained from A. was void as against B. & pltf. ; (2) the assignment by B. was effectual to pass to pltf. all money payable to B. under the contract ; (3) B. & pltf. were alone entitled to payment for the works executed by them under the contract after May 10, 1848.—ASPINALL *v.* LONDON & NORTH WESTERN RY. CO. (1853), 11 Hare, 325 ; 22 L. T. O. S. 75 ; 1 W. R. 518 ; 68 E. R. 1299.

—— —— —— **Assignment of bond.**]—*See* BONDS, Vol. VII., p. 227, No. 688.

SECT. 6.—DUTY OF TRUSTEES ON MORTGAGE OF TRUST FUNDS.

561. To pay over funds to mortgagee—Whether bound to pay over whole fund mortgaged.]—The assignee of a trust fund by way of mtge. with power to give receipts in the name of the mtgor. cannot compel the trustees of the fund to pay the

any other sums advanced to M. or paid by him on her account ; & appointed pltf. her salesman to dispose of same as he thought best, & to retain the sums advanced out of the proceeds, together with commission and expenses, & hand M the balance—the agreement to be irrevocable. Pltf. paid off defts. & paid rent due. Pltf. attempted to let or sell the meadows, & M. subsequently employed defts. to auction the meadows, & they were sold. Immediately thereafter notice was given on behalf of pltf. to defts. of the agreement of Dec. 29, & cautioning them not to pay proceeds of the sale to M. Defts. paid over the balance of the money to M. after deducting the expenses of the auction & commission : —*Held :* defts., having had notice of the agreement of Dec. 29, 1900, were liable to pltf. for the balance of the proceeds paid to M.—COONAN *v.* O'CONNOR, [1903] 1 I. R. 449.—IR.

558 i. *Payment to creditor under garnishee order—Liability to repay assignee.*]—FOULDS *v.* CHAMBERS (1896), 11 Man. L. R. 300.—CAN.

Sect. 6.—Duty of trustees on mortgage of trust funds. Sect. 7. Part VII. Sect. 1.]

whole over to him, notwithstanding the existence of puisne incumbrancers; all that he is entitled to demand is the amount due upon the mtge.—*Re* BELL, JEFFERY *v.* SAYLES, [1896] 1 Ch. 1; 65 L. J. Ch. 188; 73 L. T. 391; 44 W. R. 99; 40 Sol. Jo. 50, C. A.

Annotations:—**Apld.** Hockey *v.* Western, [1898] 1 Ch. 350. **Consd.** *Re* Lloyd, Lloyd *v.* Lloyd, [1903] 1 Ch. 385.

562. —— —— Refusal to pay until account taken.]—A member of a land society mortgaged his share in the society to pltf., another member of the society, by a deed to which the powers conferred by Conveyancing Act, 1881 (c. 41), Part IV., were incident. The mtgor. died intestate, & there was no legal personal representative of his estate. A sum of money having become due to the mtgor.'s estate from the society, pltf., relying upon his power to give a receipt under s. 22 (1) of the Act, claimed to have the whole amount paid to him as mtgee. The trustees, however, not being furnished with an account & having reason to believe it questionable how much was due on the mtge., offered to pay pltf. so much of the money as upon taking an account should be found due to him, but declined to pay him without such an account:—*Held:* the trustees could not be said to have acted unreasonably.—HOCKEY *v.* WESTERN, [1898] 1 Ch. 350; 67 L. J. Ch. 166; 78 L. T. 1; 46 W. R. 312; 14 T. L. R. 201; 42 Sol. Jo. 232, C. A.

See, generally, MORTGAGE; SETTLEMENTS; TRUSTS & TRUSTEES.

SECT. 7.—OTHER CASES.

563. Does not discharge obligation.]—Bond by deft. as surety for M. & N., with a condition, reciting that obligees were bankers, & M. & N. paper manufacturers, & had overdrawn their account with obligees £4,822, & in order to enable them to carry on their business, had applied to obligees to allow them for a time to overdraw such further sums as they should require, so as that same, together with the £4,822, should not exceed in the whole at any one time £5,000, which obligees had agreed to do, & the condition was for the payment by M. & N. & deft., or any of them, of the sum of £4,822, & also such further sums as obligees should or might thereafter advance to M. & N. in the course of their business, not exceeding in the whole £5,000. Plea, that after the making of the bond, the partnership of obligees was dissolved, & a new partnership formed, by the retiring of one of the old partners and admitting a new partner, with which new partnership M. & N., with the privity of the retired partner, kept an account, & that at the time of the dissolution of partnership, a balance of £5,000 was due from M. & N. to the partnership for such overdrawing, but the partnership did not at any time demand payment of it, but, on the contrary, at & after the dissolution discharged M. & N. from making such payment, & consented that the balance should be, & it was transferred to the account between M. & N. & the new partnership, & became incorporated in their account:—*Held:* the plea was ill, for the assignment of a chose in action was no discharge of an obligation.—PARKER *v.* WISE (1817), 6 M. & S. 239; 105 E. R. 1232.

Annotations:—**Mentd.** Gordon *v.* Rae (1858), 8 E. & B. 1065; Laurie *v.* Scholefield (1869), L. R. 4 C. P. 622.

564. Does not supersede judge's order—In absence of express words to such effect.]—A prisoner for debt had been released upon a judge's order, under which he was to pay the debt by monthly instalments. On the day subsequent to the date of the judge's order he made an assignment of debts for the liquidation of the amount so due to pltf. Default was made in payment under the judge's order, & he was again imprisoned. On motion for his discharge, on the ground that the assignment of debts was an agreement which superseded the judge's order, & that he had been taken in violation of good faith:—*Held:* the assignment had not such operation.

An agreement was entered into for an assignment of debts, but it contained nothing which showed that the judge's order was to be abandoned (WILDE, C.J.).—*Re* RAY (1849), 12 L. T. O. S. 377.

Part VII.—Assignment subject to Equities.

SECT. 1.—IN GENERAL.

565. General rule—Effect of express contract.]—The rule of equity, that assignments of choses in action are subject to the equities subsisting between the original parties to the contract, must yield to a contrary intention appearing from the contract itself.

Where the promoters of a joint stock co. agreed that on the establishment of the co. debentures should be issued to B. & D. payable to bearer, &, the articles of association confirming this agreement, debentures payable to bearer were afterwards issued by the co. to B. & D.:—*Held:* the assignees by mere delivery of B. & D. took the full benefit of their contract, & could, under the winding-up of the co. prove for the debentures in their own names, thus disregarding any equities between the co. & B. & D.—*Re* BLAKELY ORDNANCE CO., *Ex p.* NEW ZEALAND BANKING CORPN. (1867), 3 Ch. App. 154; 37 L. J. Ch. 418; 18 L. T. 132; 16 W. R. 533, L. J.

Annotations:—**Distd.** *Re* Natal Investment Co. (1868), 3 Ch. App. 355. **Expld. & Distd.** *Re* Rhos Hall Co., *Ex p.* Birmingham Bank (1868), 17 W. R. 343, n. **Consd.** *Re* Imperial Land Co. of Marseilles, *Ex p.* Colborne & Strawbridge (1871), L. R. 11 Eq. 478. **Expld.** Pellas *v.* Neptune Marine Insce. (1880), 28 W. R. 405. **Refd.** *Re* General Estates Co., *Ex p.* City Bank (1868), 3 Ch. App. 758; Higgs *v.* Assam Tea Co. (1869), L. R. 4 Exch. 387; Crouch *v.* Credit Foncier of England (1873), L. R. 8 Q. B. 374; *Re* Romford Canal Co., Pocock's Claim, Trickett's Claim, Carew's Claim (1883), 24 Ch. D. 85; *Re* Goy, Farmer *v.* Goy (1900), 69 L. J. Ch. 481; *Re* Tasker, Hoare *v.* Tasker, [1905] 2 Ch. 587.

PART VII. SECT. 1.

565 i. *General rule.*]—Where a non-negotiable chose in action is absolutely transferred for value, & transferee again absolutely assigns it for value to another, who takes without notice, he obtains a valid title to it, free from any latent equity between the original assignor & assignee.—QUEBEC BANK *v.* TAGGART (1896), 27 O. R. 162.—CAN.

565 ii. ——.]—The assignee of a chose in action takes subject to equities existing between the assignor & debtor or fund-holder, & assignee cannot by giving notice create for himself higher rights than the assignor possessed.—CHALMERS *v.* MACHRAY (1916), 33 W. L. R. 656; 9 W. W. R. 1435.—CAN.

p. —— *Estoppel.*]—If the owner

566. Choses assignable in equity—Assignee in same position as assignor—Contingent benefit annexed to estate.]—A contingent benefit annexed to an estate or interest may be assigned with the estate or interest, & the assignee takes the same benefit as his assignor.—HAVERGIL *v.* HARE (1616), 3 Bulst. 250; Cro. Jac. 510; 81 E. R. 211.

Annotations:—**Mentd.** Pateson *v.* Danges, Salisburies Case (1661), 1 Keb 287; Jemot *v.* Cooly (1665), T. Raym. 135; Tewkesbury *v.* Diston (1805), 2 Smith, K. B. 503.

567. —— ——.]—An assignee does not get by the assignment any greater right than the assignor had.—MORGAN *v.* GREENE (1630), W. Jo. 223; 82 E. R. 118.

568. —— —— **Except in special circumstances.**]—BROMLEY *v.* HOLLAND (1802), 7 Ves. 3; Coop. G. 9; 32 E. R. 2, L. C.

Annotations:—**Mentd.** Duff *v.* Atkinson (1803), 8 Ves. 577; Low *v.* Barchard (1803), 8 Ves. 133; Ware *v.* Horwood (1807), 14 Ves. 28; Holbrook *v.* Sharpey (1812), 19 Ves. 131; Brisbane *v.* Dacres (1813), 5 Taunt. 143; Angell *v.* Hadden (1817), 2 Mer. 164; Hawkins *v.* Hall (1837), Donnelly, 236; *Re* Newton (1837), Donnelly, 178; Simpson *v.* Howden (1837), 3 My. & Cr. 97; Irving *v.* Thompson (1839), 9 Sim. 17; Mansfield *v.* Ogle (1855), 24 L. J. Ch. 450; Luke *v.* South Kensington Hotel Co. (1879), 27 W. R. 514; Brooking *v.* Maudslay Son & Field (1888), 38 Ch. D. 636.

569. —— ——.]—PRIDDY *v.* ROSE, No. 151, *ante*.

570. —— ——.]—The assignee of a chose in action, the assignment of which is available only in equity, takes subject to all the equities which subsist against the assignor.—ORD *v.* WHITE (1840), 3 Beav. 357; 49 E. R. 140.

Annotations:—**Consd.** Bartlett *v.* Bartlett (1857), 1 De G. & J. 127. **Mentd.** Castellain *v.* Blumenthal (1841), 12 Sim. 47; Barwell *v.* Barwell (1842), 5 Beav. 373.

571. —— ——.]—In the case of a chose in action which is not assignable at law, the transferee, taking only an equitable interest, can obtain no greater benefit in it than the transferor himself possessed.—CLACK *v.* HOLLAND (1854), 19 Beav. 262; 24 L. J. Ch. 13; 24 L. T. O. S. 49; 18 Jur. 1007; 2 W. R. 402; 52 E. R. 350.

Annotations:—**Refd.** Ashwin *v.* Burton (1862), 32 L. J. Ch. 196. **Mentd.** Williams *v.* Higgins (1868), 17 L. T. 525; Saunders *v.* Dunman (1878), 7 Ch. D. 825; *Re* Leslie, Leslie *v.* French (1883), 23 Ch. D. 552; *Re* Brogden, Billing *v.* Brogden (1888), 38 Ch. D. 546; *Re* Hurst, Addison *v.* Topp (1890), 63 L. T. 665; *Re* Roberts, Knight *v.* Roberts (1897), 76 L. T. 479; *Re* Greenwood, Greenwood *v.* Firth (1911), 105 L. T. 509.

572. —— —— **Where no fraud—Duty of assignee to make inquiries.**]—MANGLES *v.* DIXON, No. 349, *ante*.

573. —— —— **Effect of substitution of security.**]—Assignees of a chose in action are liable to all the equities which attach to the thing assigned as against the assignor.

A retiring partner received security from the continuing partners for his share, which he assigned to third parties:—*Held:* (1) the assignees took subject to the right of equitable set off of the continuing against the retiring partner; (2) the assignees having assented to a substituted security in 1846, in lieu of a prior one in 1845, were subject to all the equities existing at the date of the second security.—SMITH *v.* PARKES (1852), 16 Beav. 115; 51 E. R. 720.

Annotations:—*As to* (1) **Distd.** Watson *v.* Mid. Wales Ry. (1867), L. R. 2 C. P. 593. **Consd.** Baker *v.* Adam (1910), 102 L. T. 248. **Refd.** *Re* Rawbone (1857), 3 Jur. N. S. 837; *Re* National Alliance Assce., Ashworth's Case (1862), 7 L. T. 64; Newfoundland Government *v.* Newfoundland Ry. (1888), 13 App. Cas. 199.

574. —— —— **Trust fund directed to be laid out in land.**]—HAWKER *v.* WOOD, No. 15, *ante*.

575. —— ——.]—The purchaser of a chose in action, whether with or without notice, cannot be in a better position than the person from whom he purchased.—BRANDON *v.* BRANDON (1856), 7 De G. M. & G. 365; 25 L. J. Ch. 896; 27 L. T. O. S. 310; 2 Jur. N. S. 981; 5 W. R. 1; 44 E. R. 142, L. C.

Annotation:—**Mentd.** Curtis *v.* Sheffield (1882), 21 Ch. D. 1.

576. —— —— **Set-off.**]—The assignee of a chose in action which is not assignable at law takes subject to all equities.

The purchaser of a debt commenced an action at law to recover it in the name of the assignor. Debtor pleaded a parol agreement between him & the assignor by way of set-off. Pltf. at law then filed a bill to obtain equitable relief:—*Held:* the bill must be dismissed.—ROLT *v.* WHITE (1862), 31 Beav. 520; 7 L. T. 345; 54 E. R. 1240; *affd.* 3 De G. J. & Sm. 360, L. C.

577. —— —— **Mortgage of moiety of trust fund by trustee beneficially entitled—Subsequent breach of trust.**]—A trustee of a sum of stock, having also a beneficial interest in an undivided moiety

of a chose in action clothes a third party with apparent ownership & right of disposition, he is estopped from asserting his title as against a person who has received it in good faith & for value from such third party. The owner of a chose in action may, by his conduct after discovery that this property is in the hands of a third party, estop himself from setting up a right to its return free from any encumbrance that he, by his neglect, has allowed to be created in the meantime.—MACDONALD *v.* BANK OF VANCOUVER (1915), 32 W. L. R. 339; 9 W. W. R. 8; 25 D. L. R. 567; 22 B. C. R. 310.—**CAN.**

q. —— —— *By acknowledgment of debt.*]—Acknowledgment by consor of judgment, in reply to intended assignee, that sum secured by the judgment is justly due to the consee, shuts out the equitable defence which the consor may have had against the consee.—HICKSON *v.* AYLWARD (1828), 3 Mol. 1.—**IR.**

566 i. *Choses assignable in equity—Assignee in same position as assignor—Usury.*]—Where a pltf. had been guilty of usury in taking a confession of judgment from a deft., the ct. stayed proceedings on payment of true debt & interest, although the judgment had been assigned, the assignee having had notice.—KNAPP *v.* FORREST (1843), 6 O. S. 557.—**CAN.**

566 ii. —— ——.]—The assignee of a judgment cannot enforce it, if his assignor could not.—MARTEN *v.* BRUMELL (1863), 4 P. R. 229.—**CAN.**

566 iii. —— —— *Fraud by agent of assignor.*]—A bond was executed for conveyance of real estate, which by contrivance of agent of obligee, falsely stated that purchase money had been paid to obligor, which bond obligee transferred to a *bonâ fide* assignee for value, who filed a bill to enforce the execution of a conveyance. The ct., following the rule that assignee of a chose in action takes subject to all equities, refused decree except upon terms of payment of such sum as might, on taking an account, be found due to the obligor in respect of the purchase money.—GOULD *v.* CLOSE (1874), 21 Gr. 273.—**CAN.**

566 iv. —— —— *Parol contemporaneous agreement.*]—A stipulation contrary to real intention of the parties was inserted in a conveyance without the knowledge of the parties. Deft. took an assignment of this conveyance in good faith, without knowledge of a parol contemporaneous agreement absolving one of the parties from personal responsibility on his covenant:—*Held:* the assignment of what was a chose in action was subject to all the equities affecting it.—LAWSON *v.* JONES (1899), 40 N. S. R. 303.—**CAN.**

566 v. —— —— *Unconnected transactions.*]—The assignee has no greater right than assignor; where there is the statutory right to set-off, the assignee takes a claim against which there is a valid legal defence, which is one of the "equities" to which the right of the assignee of a chose in action is subject.—BURMAN *v.* ROSIN, ROSIN *v.* BURMAN (1915), 35 O. L. R. 134; 9 O. W. N. 274.—**CAN.**

566 vi. —— —— *Non-negotiable instrument—Payments on account.*]—Any person to whom a creditor cedes a non-negotiable instrument takes it subject to any payments made on account of it, even if such payments are not indorsed on it.—VAN NOORDEN *v.* DE JONGH & HOFMEYR (1892), 9 S. C. 296.—**S. AF.**

566 vii. —— —— *Bookmaker's right—Club rules.*]—R., a bookmaker, ceded his bookmaker's right at a certain club to Y. in security for a debt. On R. defaulting the club proceeded to sell his right in compliance with rules of the club in order to pay R.'s betting engagements. Upon Y. applying for an interdict restraining the club from parting with proceeds:—*Held:* Y. had no greater right than R., & as R.'s right was subject to the rules of the club, Y. could only execute upon any balance left after compliance with the rules.—YATES *v.* AUCKLAND PARK SPORTING CLUB, LTD. & ROBERTS (1915), W. L. D. 55.—**S. AF.**

Sect. 1.—*In general.* *Sect.* 2: *Sub sect.* 1.]

of the fund, assigned his moiety, by way of mtge., & the mtgee. caused a *distringas* to be placed on a moiety of the fund. Afterwards the trustee fraudulently sold out the other moiety, & absconded:—*Held:* the moiety upon which the *distringas* had been placed, being at the time of the assignment subject to the equitable rights of pltf., the *cestui que trust* was not relieved from such equity by the application of the *distringas*, & pltf. was entitled to same as against deft., the mtgee.—WILKINS *v.* SIBLEY (1863), 4 Giff. 442; 8 L. T. 760; 9 Jur. N. S. 888; 11 W. R. 897; 66 E. R. 780.

578. —— —— Mortgage of share of partnership assets.]—The mtgee. of a share of the assets & profits of a partnership takes subject to all the equities of the co-partner of the mtgor.

Where a mtgee. of a share of a newspaper allows the newspaper to be carried on by the mtgor. & his partner, he can only claim the value of the share & profits after satisfying every claim which the partner may have upon taking the accounts of the partnership, including interest upon capital, whether the business was carried on with or without the partner's knowledge of the mtge.—KELLY *v.* HUTTON (1868), 3 Ch. App. 703; 37 L. J. Ch. 917; 19 L. T. 228; 16 W. R. 1182, L. JJ.

Annotations:—**Refd.** Watts *v.* Driscoll, [1901] 1 Ch. 294. **Mentd.** Bradbury *v.* Beeton (1869), 39 L. J. Ch. 57; Lee *v.* Haley (1869), 21 L. T. 546; Walter *v.* Emmott (1885), 54 L. J. Ch. 1059; Whetham *v.* Davey (1885), 30 Ch. D. 574.

579. —— —— Interest under agreement.]—S., a director of a railway co., had entered into an agreement with the co. for the occupation by a firm, of which he was a member, of premises belonging to the co., & had assigned his interest under the agreement to pltf.:—*Held:* pltf. was in the same position as S., & could not maintain a bill for specific performance of the agreement.—FLANAGAN *v.* GREAT WESTERN RY. CO. (1868), L. R. 7 Eq. 116; 38 L. J. Ch. 117; 19 L. T. 345.

Annotation:—**Mentd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1919] 2 K. B. 29.

580. —— ——.]—An assignee of any security stands in the same position as the assignor as to the equities arising upon it.—RODGER *v.* COMPTOIR D'ESCOMPTE DE PARIS (1869), L. R. 2 P. C. 393; 5 Moo. P. C. C. N. S. 538; 38 L. J. P. C. 30; 21 L. T. 33; 17 W. R. 468; 3 Mar. L. C. 271; 16 E. R. 618, P. C.

Annotations:—**Refd.** Chartered Bank of India, Australia & China *v.* Henderson (1874), L. R. 5 P. C. 501. **Mentd.** The Emilien Marie (1875), 44 L. J. Adm. 9; Leask *v.* Scott (1877), 2 Q. B. D. 376; *Re* Love, *Ex p.* Watson (1877), 5 Ch. D. 35; Kendal *v.* Marshall Stevens (1883), 11 Q. B. D. 356.

581. —— —— Assignee of creditor in bankruptcy.]—Where a proof, not being for a provable debt, was rejected by the trustee:—*Held:* an assignee, to whom the creditor had assigned his debt for money advanced to him, was in no better position than the creditor.—*Re* DEERHURST, *Ex p.* SEATON (1891), 60 L. J. Q. B. 411; 64 L. T. 118; 8 Morr. 97; *affd.* 7 T. L. R. 373, C. A.

Annotations:—**Mentd.** Ward *v.* Fry (1901), 85 L. T. 394; *Re* Browne, *Ex p.* Martingell, [1904] 2 K. B. 133.

582. —— —— Assignee of beneficial interest—Equity against beneficiary.]—The trustees of a marriage settlement at the instigation of the husband & wife sold certain rentcharge stock representing property settled by the wife, & advanced the proceeds of such sale to the husband upon the security of an equitable mtge. of certain estates, subject to other incumbrances, & thereby committed a breach of trust. The husband had brought into settlement £5,000, secured by mtge. of the estates. By deed the husband for value assigned his life interest under the settlement in the mtge. debt to S. There was a remainderman under the settlement in existence. There was little evidence as to the circumstances of the assignment:—*Held:* at the date of the assignment there was an equity in the remainderman against the husband, which vested in the trustees on payment into ct. of £4,000 rentcharge stock, & apart from special circumstances, which had not been shown, the assignment was subject to that equity.—BOLTON *v.* CURRE (1894), 70 L. T. 759.

583. —— ——.]—The transferee of a chose in action stands in no better position than the transferor.—*Re* RHODESIA GOLDFIELDS, LTD., PARTRIDGE *v.* RHODESIA GOLDFIELDS, LTD., [1910] 1 Ch. 239; 79 L. J. Ch. 133; 102 L. T. 126; 54 Sol. Jo. 135; 17 Mans. 23.

Annotations:—**Mentd.** *Re* Peruvian Ry. Construction Co., [1915] 2 Ch. 144; *Re* Smelting Corpn., Seaver *v.* Smelting Corpn., [1915] 1 Ch. 472; *Re* National Live Stock Insce., *Re* National General Insce., [1917] 1 Ch. 628; *Re* Melton, Milk *v.* Towers, [1918] 1 Ch. 37; *Re* Jewell's Settlmt., Watts *v.* Public Trustee, [1919] 2 Ch. 161; *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38.

584. —— —— Extends to persons claiming under assignee—Sale of chose in action set aside.]—Where the sale of a chose in action is set aside against the purchaser, it also fails as against those claiming under him.—BARNARD *v.* HUNTER (1856), 28 L. T. O. S. 152; 2 Jur. N. S. 1213; 5 W. R. 92, L. C.

585. Chose transferable at law—General rule not applicable.]—On the occasion of the sale of a freehold estate it was agreed that the purchase-money should be paid in railway bonds, & the purchaser deposited with & assigned to A., who alleged himself to be the solr. of the vendor, one of such bonds in part payment of the purchase-money. The contract turned out to be a fraud on the purchaser & went off, &, on the purchaser applying to A. for the return of the deposited bond, he was informed that A. had placed it in the hands of B., to secure a debt due from himself to B. B. had no notice of the terms upon which A. held the bond:—*Held:* the deposit & assignment of the bond by the purchaser to A. for the purpose above mentioned did not make A. in the events which happened, a constructive trustee for pltf., &, as B. was a *bonâ fide* purchaser of the bond for value without notice, he could not be restrained from dealing with it.—ASHWIN *v.* BURTON (1862), 32 L. J. Ch. 196; 7 L. T. 589; 9 Jur. N. S. 319; 11 W. R. 103.

586. —— ——.]—The rule that the assignee of a chose in action takes subject to all the equities affecting it does not apply in the case of a chose in action assignable at law.—TAYLOR *v.* BLAKELOCK (1886), 32 Ch. D. 560; 56 L. J. Ch. 390; 55 L. T. 8, C. A.

Annotations:—**Refd.** Cloutte *v.* Storey (1910), 79 L. J. Ch. 640. **Mentd.** Taylor *v.* London & County Banking Co., London & County Banking Co. *v.* Nixon, [1901] 2 Ch. 231.

Trustee in bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 635–638, 695, 696, 709, Nos. 5713–5736, 6123, 6124, 6207.

Holder of bill of exchange, etc.]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 138, 141, Nos. 913 *et seq.*, 925 *et seq.*

Debenture holder.]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., p. 448, No. 2876; COMPANIES.

Assignee of bond.]—*See* BONDS, Vol. VII., pp. 224–227, Nos. 665–694.

Assignee of insurance policy.]—*See* INSURANCE.

Assignment of rights under building contracts.]—*See, generally,* BUILDING CONTRACTS, ENGINEERS &

ARCHITECTS, Vol. VII., pp. 417–420, Nos. 338–345.

—— **Fraudulent agreement between contractor & certifying engineer.**]—*See* BUILDING CONTRACTS, ENGINEERS & ARCHITECTS, Vol. VII., p. 361, No. 117.

Assignment of property recovered in action—To defeat solicitor's right to lien.]—*See* No. 440, *ante*.

Assignment of proceeds of sale—In hands of auctioneers.] — *See* AUCTION & AUCTIONEERS, Vol. III., p. 35, No. 256.

Assignment of legacy—Subject to legacy duty.]—*See* ESTATE & OTHER DEATH DUTIES.

Assignment of patent rights.]—*See* PATENTS & INVENTIONS.

SECT. 2.—SET-OFF AND CROSS CLAIMS.

SUB-SECT. 1.—ARISING BEFORE ASSIGNMENT AND NOTICE.

See, also, No. 576, *ante*, &, *generally*, SET-OFF & COUNTERCLAIM.

587. Whether assignee affected by rights—Rights of continuing partner against retiring partner—Taking security for share of partnership profits.]—SMITH *v.* PARKES, No. 573, *ante*.

588. —— Sale of book debts by executors—Purchaser entitled only to balance due—After deducting trade & private debts of testator.]—On a sale, by the exors., of the book debts of their testator, debtors to the estate being also creditors, both on trade & also private debts, but claiming no right of set-off:—*Held:* the purchaser was entitled only to the balance remaining due, after deducting both trade & private debts due from testator's estate.—CHICK *v.* BLACKMORE (1854), 2 Sm. & G. 274; 2 Eq. Rep. 724; 23 L. J. Ch. 622; 23 L. T. O. S. 285; 2 W. R. 488; 65 E. R. 398.

589. —— Assignment by bank of customer's securities—Money due to customer on current account.]—Bankers assigned the securities given by a customer indebted to them without giving him any notice of the assignment. The bankers afterwards became bkpt. In a suit, by debtor, against the assignees of the securities:—*Held:* he was entitled to set off the money due to him on his running account, against the debts due from him, & the assignees had merely the rights of the assignors, & could claim no advantage beyond what the bankers were entitled to.—CAVENDISH *v.* GEAVES (1857), 24 Beav. 163; 27 L. J. Ch. 314; 29 L. T. O. S. 256; 3 Jur. N. S. 1086; 5 W. R. 615; 53 E. R. 319.

Annotation:—Apprvd. Pellas *v.* Neptune Marine Insce. (1879), 5 C. P. D. 34.

590. —— Arrears of rent due from unpaid legatee—Accrued at date of notice.]—A trustee or exor., when he receives notice that a legatee has charged his legacy, is bound to withhold all further payments to that legatee. All right of set-off & adjustment of equities between the legatee & the exor. existing at the date of the notice have priority over the charge, but the trustees can create no new charges or rights of set-off after that time.

Exors. granted a lease of part of testator's property to a legatee, who afterwards incumbered his legacy. Notice of the charge having been given to the exors.:—*Held:* they had, as against the mtgee., a right to set off the rent due from the legatee at the date of the notice, but not the subsequent rents.—STEPHENS *v.* VENABLES (No. 1) (1862), 30 Beav. 625; 54 E. R. 1032; *subsequent proceedings*, 31 Beav. 124.

Annotation:—Refd. *Re* Pain, Gustavson *v.* Haviland, [1919] 1 Ch. 38.

591. —— Equities existing at date of award—Though then not put forward.]—B. brought an action against A. for the benefit of F., to whom he assigned all money owing from A., whereof A. had due notice; the action was referred, & £299 4*s*. 8*d*. were awarded, together with £17 6*s*. for costs. A second action was brought on the award by B., for the benefit of F., to which A. pleaded a set-off of matters that had not been brought forward at the time of making the award:—*Held:* A. was entitled to do so, & it was not a good reply in equity, that the matter might have been brought forward at the time of making the award, & that F. had thereby been induced to think there was no further set-off.—BAKER *v.* ALEXANDER (1866), 35 L. J. C. P. 217; 12 Jur. N. S. 692; 14 W. R. 612.

592. —— Price of commission received by army agents—Overdrawn current account.]—K., an officer in the army, mortgaged to R., to secure £5,000, all money which should be realised by sale of his commission. In Dec. 1877, K. obtained leave to retire from the army, & his commission was valued at £3,000, which on Dec. 6 was paid by the Paymaster-General to C. & Co., the army agents of the regiment, & was carried to the deposit account kept by C. & Co. with the Army Purchase Comrs., there to remain till K.'s retirement was gazetted. K. kept an account current with C. & Co. as his bankers, which was overdrawn to the amount of £647. K.'s retirement was gazetted on the evening of Dec. 18, & as soon as C. & Co.'s office opened on the 19th, R. gave them notice of his security. R. having claimed payment of the £3,000, C. & Co. claimed to retain out of it the £647:—*Held:* (1) as soon as K.'s retirement was gazetted the £3,000 became money had & received by C. & Co. for his use, & for which he could have brought an action at law, & they had a right to set off the balance due to them against this demand; (2) the set-off was equally available against R., of whose security C. & Co. had no notice until after their right to set off had arisen.—ROXBURGHE *v.* COX (1881), 17 Ch. D. 520; 50 L. J. Ch. 772; 45 L. T. 225; 30 W. R. 74, C. A.

Annotations:—*As to* (1) Apld. Johnstone *v.* Cox (1881), 19 Ch. D. 17; Webb *v.* Smith (1885), 30 Ch. D. 192. Expld. *Re* Dallas, [1904] 2 Ch. 385. *Generally*, Mentd. *Re* Gregson, Christison *v.* Bolam (1887), 36 Ch. D. 223.

Sale of commissions, *see, now*, Army Act, 1881 (c. 58), s. 155.

593. —— Assignment of debts due by company—Unpaid shares transferred to assignor by promoter.]—A co. in 1877 was ordered to be wound up. In 1879 H. took assignments for value of the debts proved by & certified to be due to several creditors. On Jan. 23, 1880, the liquidator took

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PART VII. SECT. 2, SUB-SECT. 1.

r. *Whether assignee affected by rights.*}—A. taking an assignment of a judgment, after notice that assignor had agreed with deft. to set off the amount against a judgment recovered by deft. against assignor, is bound by that agreement; & cannot, by issuing execution upon the judgment, defeat deft.'s right of set-off.—COOMBES *v.* HATHEWAY (1848), 3 Kerr, 632.—CAN.

s. ——.]—T. & M. having cross-judgments applied to set off the one against the other, which was refused on the ground that the judgment against T. had been assigned to a third person without notice.—THOMPSON *v.* MILLER (1854), 4 Gr. 481.—CAN.

t. ——.]—Defts. entitled to set off claim for goods sold to S. Co. as against claim of pltf. upon an assignment to them by the S. Co. of their claim for goods sold to the defts. to the extent of such set-off as it stood at the time of receiving notice of the assignment, there being evidence of an agreement that there should be such set-off.—BANK OF MONTREAL *v.* TUDHOPE (1911), 21 Man. L. R. 380.—CAN.

Sect. 2.—Set-off and cross claims: Sub-sects. 1, 2, 3 & 4.]

out a summons under Cos. Act, 1862 (c. 89), s. 165, that H., who had been a director, might be ordered to pay £2,000, the nominal value of certain shares in the co. received by him from the promoter, or to make compensation on the ground of misfeasance. On Feb. 25, H. assigned the above debts to T. for value, T. knowing nothing of the claims against H., & notice of the assignment was at once given to the liquidator. In July an order was made on the summons for H. to pay £2,000 to the liquidator. On Aug. 4, 1881, an order was made giving the liquidator liberty to declare a dividend of 11s. in the pound on the debts of the co. T. applied for payment of that dividend on the debts assigned to him, but the liquidator claimed to retain the dividend by way of set-off against the £2,000 :—*Held :* the liquidator had no such right of set-off, & T. was entitled to receive the dividend. —*Re* MILAN TRAMWAYS CO., *Ex p.* THEYS (1884), 25 Ch. D. 587 ; 53 L. J. Ch. 1008 ; 50 L. T. 545 ; 32 W. R. 601, C. A.

Annotations :—**Consd.** *Re* Gillespie, *Ex p.* Reid (1885), 14 Q. B. D. 963 ; Newfoundland Government *v.* Newfoundland Ry. (1888), 13 App. Cas. 199 ; *Re* Jewell's Settlmt., Watts *v.* Public Trustee, [1919] 2 Ch. 161. **Refd.** *Re* Auriferous Properties, [1898] 1 Ch. 691 ; *Re* Auriferous Properties (No. 2), [1898] 2 Ch. 428 ; *Re* Leeds & Hanley Theatres of Varieties, [1904] 2 Ch. 45. **Mentd.** *Re* Hart, *Ex p.* Caldicott (1884), 25 Ch. D. 716 ; Alcoy & Gandia Ry. & Harbour Co. *v.* Greenhill (1897), 76 L. T. 542 ; *Re* Daintrey, *Ex p.* Mant, [1900] 1 Q. B. 546 ; *Re* Goy, Farmer *v.* Goy, [1900] 2 Ch. 149 ; Fryer *v.* Ewart, [1902] A. C. 187 ; Watney, Combe, Reid *v.* Ewart (1902), 86 L. T. 242 ; *Re* Brown *v.* Gregory, Shepheard *v.* Brown & Gregory, Andrews *v.* Brown & Gregory, [1904] 1 Ch. 627 ; *Re* Rhodesia Goldfields, Partridge *v.* Rhodesia Goldfields, [1910] 1 Ch. 239.

594. —— Assignment of money alleged to be due from owners of steamers—Assignor indebted to owners at date of assignment—In respect of other steamers.]—A line of steamers, the property of different sets of co-owners, was managed by T. & Co. T. & Co. assigned to pltfs. money alleged to be due to them from the owners of two of the steamers, & in consideration of the assignment pltfs. cashed cheques drawn by T. & Co. "*per pro.* owners." At the date of the assignment nothing was in fact owing from the owners to T. & Co., & the cheques were dishonoured. In an action by pltfs. against the owners :—*Held :* the owners were entitled to set off sums owing to them from T. & Co. at the date of the assignment, in respect of other steamers of the line, & pltfs. having taken the cheques with notice that the authority of T. & Co. was limited, the owners were not liable for the amounts of the cheques.—NATIONAL BANK OF SCOTLAND, LTD. *v.* DEWHURST, THE GONCHAR & THE IZGAR (1896), 1 Com. Cas. 318.

595. —— Assignment of shares of next of kin—Costs awarded executor in probate action—Assignment before date of judgment.]—By the judgment in a probate action unsuccessfully brought by two of the children & next of kin of a father who had died leaving a will, against the exor. for revocation of the probate, deft.'s costs were ordered to be taxed & to be paid by pltfs. Subsequently, in an action for administration of the estate of the mother, who had died intestate, deft., her administrator, who was the same person as the exor. of the father, paid into ct. in that action a balance which had been found due from him in taking the accounts. On a summons in that action for the distribution of that balance among the several persons entitled to the intestate's estate, two of whom were the assignees of the shares of the two next of kin pltfs. in the probate action :—*Held :* deft. was entitled to set off his costs of the probate action, which had been taxed but not yet paid, against the shares of the two assignees, whose assignments were dated one before & the other after the judgment in the probate action.—*Re* JONES, CHRISTMAS *v.* JONES, [1897] 2 Ch. 190 ; 66 L. J. Ch. 439 ; 76 L. T. 454 ; 45 W. R. 598.

Annotation :—**Mentd.** *Re* England's Settlmt. Trusts, Dobb *v.* England, [1918] 1 Ch. 24.

596. —— Assignment of spes successionis—Debt owing personally by assignor.]—If C. gives an indemnity to A., & B. covenants to assign his *spes successionis* to the benefit of that indemnity to D., when the *spes successionis* is realised, B. immediately becomes a trustee for D., & C. cannot claim to set off a debt due to him from B. before satisfying the demands of D.—*Re* POULTER, POULTER *v.* POULTER, EDWARDS *v.* POULTER (1912), 56 Sol. Jo. 291.

See, also, BANKERS & BANKING, Vol. III., p. 294, No. 923 ; BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 105, 391, 400, 495, Nos. 940, 3576, 3651, 4453 ; Vol. V., p. 1087, No. 8896.

SUB-SECT. 2.—ARISING AFTER ASSIGNMENT AND NOTICE.

597. Whether assignee affected by rights—Whether right to retain dividends.]—Testator in Calcutta gave £50,000 English stock to his sons, J., C., B. & M., & the survivors & survivor, etc., in trust, during ten years next ensuing his death, to pay the dividends equally among them, with benefit of survivorship in case of the death of any of them within that time without leaving lawful male issue, & if any of them should die leaving such issue, then in trust as to the share or shares of him or them so dying to the use of such issue ; & after the expiration of the ten years, in trust to transfer the capital stock equally among them, with like benefit of survivorship, but the share or shares of such of them as should die within ten years leaving lawful male issue to be paid to such issue or the issue of such issue on attaining 21, etc. Testator appointed his sons his exors. They carried on business in Calcutta as merchants in co-partnership under the style of J. S. & Co. ; they sent a copy of the will to F. & Co., their commercial agents in London, with a power to receive the dividends on the stock, to be put to their credit in an account distinct from their commercial

PART VII. SECT. 2, SUB-SECT. 2.

u. *Whether assignee affected by rights—Assignment of share in mining royalties—Assigned to lessees—Action for rent & royalties.]*—Pltf., lessee of a mine, employed N. to float a co. to work it. N. effected a sub-lease to defts. & pltf. agreed to pay N. a royalty on coal won out of the royalty reserved to him under the lease to defts. N. assigned to defts. all sums which should become due to him from pltf. under the agreement, undertaking to hold the sums as trustees for defts. & pltf. had notice of the assignment. In action by pltf. to recover rent & royalties under his lease to defts., defts. claimed to deduct certain sums due from pltf. to N. under the agreement :—*Held :* defts. were entitled to set off the sums due by pltf. to N.—RALSTON *v.* SOUTH GRETA COLLIERY CO. (1912), 13 S. R. N. S. W. 6 ; 30 N. S. W. W. N. 5. —AUS.

v. ——.]—A rule to set off judgment recovered by deft. against pltf. against judgment in this cause, was discharged because pltf. had assigned this judgment *bond fide* to a third party, & deft. had notice of such assignment.—MILLER *v.* THOMPSON (1853), 1 P. R. 245.—CAN.

w. ——.]—S. recovered judgment against M. S. assigned his judgment to B. in trust for his creditors. C. recovered judgment against S. for mtge. money which he assigned to M. M. recovered judgment against S. on the mtge. which C. had assigned to M. Other judgments were subsequently recovered against S. in respect of the mtge. :—*Held :* M. was not entitled to set off his claim against S.'s judgment which had been assigned for the benefit of creditors before recovery of any of the judgments against him.—*Re* SMART *v.* MILLER (1866), 3 P. R. 385.—CAN.

accounts. One of the agents obtained administration, with the will annexed, received the dividends for ten years, & put them to the account of "S. & Brothers" with "F. & Co." M. & J. died within the ten years, J. leaving lawful male issue, & a will by which he appointed exors. C. & B. continued to carry on business under the firm of J. S. & Co., & being largely indebted, assigned all their joint & separate personal estate & effects to trustees for their creditors, & executed a power of attorney to enable the trustees to possess themselves of their interest in the stock; & notice of the assignment & power was given to F. & Co. C. then died, within the ten years, leaving lawful male issue:—*Held:* all the interest of C. & B. in the stock passed by the assignment, & F. & Co. had no right to any part of the stock, or to retain the dividends that they received after they got notice of the assignment towards the discharge of a debt due to them in their commercial dealings with J. S. & Co., there being no contract to that effect between them.—COLVIN *v.* HARTWELL (1837), 5 Cl. & Fin. 484; 7 E. R. 488, H. L.

598. —— Judgment recovered by debtor against assignor.]—To an action for non-payment of £45, the balance due upon a building agreement, deft. pleaded a set-off of a judgment for £40 2*s.* obtained by him in an action against pltf. To that plea pltf. replied that, before the recovery of the judgment, he for a good consideration assigned the debt of £45 to S.; that deft. before the recovery of the judgment had notice of the assignment; & that he, pltf., was suing as trustee for S.:—*Held:* the replication was bad, as disclosing no legal answer to the plea.—WATKINS *v.* CLARK (1862), 12 C. B. N. S. 277; 6 L. T. 819; 142 E. R. 1149.

Annotation:—**Refd.** Watson *v.* Mid-Wales Ry. (1867), 36 L. J. C. P. 285.

599. —— Assignment of debt due by company—Whether subject to subsequent calls on shares—Whether assignee bound by compromise made by liquidator of company.]—Assignees of a chose in action take it subject to any right of set-off which may be enforced against the assignor.

A. assigned to B. a debt due from the co., of which he was director, for fees. Calls were made & the co. was subsequently wound up, & a compromise was made by the official manager, by which A. was released from all liability on his relinquishing all claims against the co.:—*Held:* B., who, although he had given notice of the assignment, had not sued for the debt before the calls were made, was bound by the compromise under which the official manager had set off the debt against A.'s liability for calls.—*Re* NATIONAL ALLIANCE ASSURANCE CO., ASHWORTH'S CASE (1862), 7 L. T. 64; 10 W. R. 771.

600. —— —— —— Company in liquidation.]—After a co. has commenced to be wound up, a shareholder can assign a debt due to him by the co. only subject to a right of set-off by the co. of all calls which may be made subsequently to the assignment & previously to payment of the debt.—*Re* CHINA S.S. CO., *Ex p.* MACKENZIE (1869), L. R. 7 Eq. 240; 38 L. J. Ch. 199; 19 L. T. 667; 17 W. R. 343.

Annotations:—**Distd.** *Re* Milan Tram. Co., *Ex p.* Theys (1882), 22 Ch. D. 122; Christie *v.* Taunton, Delmard, Lane, *Re* Taunton, Delmard, Lane, [1893] 2 Ch. 175.

601. —— Debts due under instruments of different dates—Debts payable on different dates.]—When an equitable chose in action has been assigned, debtor cannot set off against the assignee a debt which has accrued due to him from the assignor since the notice of assignment, though resulting from a contract entered into previously, unless from the nature of the transaction it appears to have been intended between the original parties that the one should be set off against the other.

The assignees of a Lloyd's bond sued the makers in the name of the original bondholder; the makers sought to set off arrears of rent due from the original bondholder, which had accrued due since notice of the assignment, upon a lease granted after the making of the bond, but before notice of assignment. On equitable pleadings stating these facts:—*Held:* deft. could not set off the arrears of rent.—WATSON *v.* MID WALES RY. CO. (1867), L. R. 2 C. P. 593; 36 L. J. C. P. 285; 17 L. T. 94; 15 W. R. 1107.

Annotations:—**Consd.** Higgs *v.* Assam Tea Co. (1869), L. R. 4 Exch. 387. **Apld.** *Re* Milan Tram. Co., *Ex p.* Theys (1882), 22 Ch. D. 122. **Consd.** Newfoundland Government *v.* Newfoundland Ry. (1888), 13 App. Cas. 199. **Consd. & Apld.** Christie *v.* Taunton, Delmard, Lane, *Re* Taunton, Delmard, Lane, [1893] 2 Ch. 175. **Refd.** Harter *v.* Colman (1882), 19 Ch. D. 630.

602. —— Assignment of shares of next of kin—Costs awarded executor in probate action—Assignment after date of judgment.]—*Re* JONES, CHRISTMAS *v.* JONES, No. 595, *ante*.

On policies of insurance.]—*See* INSURANCE.

SUB-SECT. 3.—ARISING AFTER ASSIGNMENT AND BEFORE NOTICE.

603. Debt from shipowner against freight.]—During the voyage the shipowner assigned the accruing freight on goods conveyed for defts. in a ship. Before notice of the assignment the shipowner had become indebted to defts. In an action by the shipowner for & on account of the assignees against defts. for the freight:—*Held:* defts. were entitled to set off the debt due from the shipowner to them, & the assignment did not prevent them from so doing.—WILSON *v.* GABRIEL (1863), 4 B. & S. 243; 2 New Rep. 321; 8 L. T. 502; 11 W. R. 803; 1 Mar. L. C. 346; 122 E. R. 450.

Annotation:—**Apld.** Christie *v.* Taunton, Delmard, Lane, *Re* Taunton, Delmard, Lane, [1893] 2 Ch. 175.

SUB-SECT. 4.—CLAIMS FOR DAMAGES CONNECTED WITH SUBJECT-MATTER OF ASSIGNMENT.

604. For breach of contract by assignor—Against debt due to assignor arising on same contract.]—The statement of claim alleged that

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x. —— *Fraudulent device to prevent set-off.*]—Pltf. recovered judgment against deft., but judgment had not been signed. Deft. recovered judgment against pltf. & signed judgment. Pltf. assigned his judgment to his brother:—*Held:* a device to prevent a set-off, & deft. was entitled to have pltf.'s verdict set off *pro tanto* by entering satisfaction upon his judgment to the extent of the judgment, & paying costs of suit. It made no difference that the judgment had not been entered by pltf.—GRANT *v.* MCALPINE (1881), 46 U. C. R. 284.—**CAN.**

a. —— *Assignment of claim for payment.*]—LANGLEY *v.* LAW SOCIETY OF UPPER CANADA (1902), 1 O. W. R. 718.—**CAN.**

b. —— *Assignment of claim to become due.*]—Agreement by which lessor cedes for a term rent of property let, gives the cessionary a title to sue for such rent.—SMITH *v.* HOWSE (1835), 2 M. 163.—**S. AF.**

c. —— ——.]—E., to whom money was to become due from appellants, ceded his claim to S., & notice was given to appellants. On being sued by S. for the amount ceded, appellants claimed to set off a sum which was owing by E. to them before and at the time E. ceded his claim:—*Held:* as there was no mutuality of debts between the parties, inasmuch as E. had ceded his claim before it actually became due, appellants' contention must fail.—OUDTSHOORN TOWN COUNCIL *v.* SMITH (1911), 2 C. P. D. 558.—**S. AF.**

Sect. 2.—Set-off and cross claims: Sub-sect. 4. Sects. 3, 4 & 5.]

pltf. sued as assignee by deed of a debt due from deft. to the assignor on a building contract. Deft. pleaded, by way of set-off & counterclaim, that he was entitled to damages for breaches of contract by the assignor to complete & deliver the buildings at the specified time whereby deft. lost the use of them. On demurrer to so much of the defence as alleged breaches of contract by the assignor:—*Held:* deft. was not entitled to recover any damages against pltf., but was entitled by way of set-off or deduction from pltf.'s claim to the damages which he had sustained by the non-performance of the contract by the assignor, & the form of defence must be amended accordingly.—YOUNG *v.* KITCHIN (1878), 3 Ex. D. 127; 47 L. J. Q. B. 579; 26 W. R. 403.

Annotations:—**Distd.** Stoddart *v.* Union Trust, [1912] 1 K. B. 181; Reeves *v.* Pope, [1914] 2 K. B. 284. **Refd.** Newfoundland Government *v.* Newfoundland Ry. (1888), 13 App. Cas. 199.

605. —— ——.]—By contract in 1881 embodied in a statute pltf. co. covenanted to complete a railway in five years, & thereafter to maintain & continuously operate same. In consideration thereof the Govt. covenanted (*a*) to pay the co. upon the construction & continuous operation of the line an annual subsidy for thirty-five years, such subsidy to attach in proportionate parts & form part of the assets of the co. as & when each five-mile section was completed & operated; (*b*) to grant to the co. in fee simple five thousand acres of land for each one mile of railway completed, on completion of each section of five miles. It appeared that the co. completed a portion of the line, & received from the Govt. on the completion of each five-mile section the specified grant of land, & certain half-yearly payments in respect of the proportionate part of the subsidy which was deemed by the parties to attach thereto; thereafter the contract was broken by the co., & the Govt. refused further payments. In a suit by the co. & its assignees of a division of the railway & of the rights relating thereto:—*Held:* (1) by the law of the Colony the Govt. were entitled to set off a counterclaim for unliquidated damages for the co.'s breach of contract in not completing the line; (2) the set-off availed against the assignees of the co., the claim & counterclaim having their origin in the same portion of the same contract, the obligations which gave rise to them being closely intertwined.—NEWFOUNDLAND GOVERNMENT *v.* NEWFOUNDLAND RY. CO. (1888), 13 App. Cas. 199; 57 L. J. P. C. 35; 58 L. T. 285; 4 T. L. R. 292, P. C.

Annotations:—*As to* (1) **Distd.** Christie *v.* Taunton, Delmard, Lane, *Re* Taunton, Delmard, Lane, [1893] 2 Ch. 175. *As to* (2) **Refd.** Baker *v.* Adam (1910), 15 Com. Cas. 227. *Generally*, **Consd.** Samuel, Samuel *v.* West Hartlepool Steam Navigation Co. (1906), 11 Com. Cas. 115. **Distd.** Stoddart *v.* Union Trust, [1912] 1 K. B. 181; Reeves *v.* Pope, [1914] 2 K. B. 284. **Mentd.** *Re* Milton, Milk *v.* Towers, [1918] 1 Ch. 37.

606. —— ——.]—A receiver of a co., having delivered goods to a customer of the co. under a contract made by the co. before his appointment, assigned the amounts due for such goods to a bank, & afterwards cancelled the contract made by the co. Notice of the assignment to the bank was not given to the customer until after the contract had been cancelled. In an action brought by the bank against the customer to recover the debt so assigned:—*Held:* the customer was entitled to set off damages sustained by the cancellation of the contract.—PARSONS *v.* SOVEREIGN BANK OF CANADA, [1913] A. C. 160; 82 L. J. P. C. 60; 107 L. T. 572; 29 T. L. R. 38; 20 Mans. 94, P. C.

607. For fraudulent misrepresentation by assignor—Against claim for balance of purchase-money assigned.]—Defts. entered into a contract for the purchase of a newspaper for a sum of £1,000, of which £200 was paid on completion of the contract, & the balance of £800 was to be payable by certain instalments. Defts. were induced to enter into the contract by fraudulent misrepresentations made to them by the vendor. The vendor for valuable consideration assigned the balance of the purchase-money by deed absolutely to pltf., & notice in writing of that assignment was given to defts. Pltf. at the time of the assignment had no notice of the fraud on the part of the vendor. In an action by pltf. against defts. for the debt of £800 so assigned, defts. pleaded, by way of defence, in substance, that they were induced to enter into the contract for the purchase of the newspaper by the fraud of the vendor, & that by reason thereof they had sustained damage exceeding £800 & no money was due from them at the date of the assignment to the pltf., &, in the event of their being held liable to pay the sum claimed by pltf., they counterclaimed against the vendor damages for fraud to an equal amount. Defts. were not in a position, & did not claim, to rescind the contract for the purchase of the newspaper. At the trial the jury found that defts. had been induced to enter into the contract for purchase of the newspaper by fraud of the vendor, & had thereby sustained damage to the amount of £800. The judge on those findings gave judgment for defts. on the pltf.'s claim & judgment for defts. against the vendor for £800 damages upon the counterclaim, but stayed execution on the latter judgment:—*Held:* defts. could not set up the claim to £800 damages for the fraud of the vendor by way of defence against the claim of pltf., & pltf. was entitled to judgment against defts. for £800.—STODDART *v.* UNION TRUST, LTD., [1912] 1 K. B. 181; 81 L. J. K. B. 140; 105 L. T. 806, C. A.

608. For breach of personal covenant by assignor—Assignment of reversion expectant on determination of lease—General rule not applicable.]—A building co. entered into an agreement with deft. to erect & complete an hotel so as to be ready for occupation by a certain date, & deft. agreed to take a lease of the hotel for twenty-eight years at a specified rent, as soon as it was ready for use. The building co. made default in completing the

arising on same contract.]—G. & H. brought counter actions for breaches of agreement. In March, 1884, G. obtained a verdict with leave to move for increased damages, which were granted, & in June, 1885, signed judgment. In Apr. 1884, G. assigned to L. his interest in the suit against H. & gave notice in May, 1884. In Feb. 1885, H. signed judgment against G. on confession:—*Held:* H. could not set off his judgment against the judgment recovered against him by G. & assigned to L.—GREENE *v.* HARRIS (1887), 16 S. C. R. 714.—**CAN.**

604 ii. —— ——.]—By agreement for dissolution of a firm, it was provided that all claims of the firm were to be collected by pltfs., who were to be owners thereof, & by virtue of which pltfs. sued deft. for balance due for goods sold & delivered by the firm to deft. who set up claim for damages for non-delivery of goods by the firm, which arose before dissolution of partnership:—*Held:* deft. could set off the claim for damages arising by reason of a breach of the agreement under which the debt arose.—SEYFANG *v.* MANN (1896), 27 O. R. 631.—**CAN.**

604 iii. —— ——.]—LILLIE *v.* THOMAS (1905), 1 W. L. R. 467.—**CAN.**

607 i. *For fraudulent misrepresentation by assignor—Against claim for balance of purchase-money assigned.*]—CUMMINGS *v.* JOHNSON (1913), 24 W. L. R. 144; 4 W. W. R. 543.—**CAN.**

e. *For breach of warranty by assignor - Against claim for balance of purchase money assigned.*]—A purchaser of a tractor is entitled to set off, as against an assignee of the balance of the purchase price, a claim for damages for breach of warranty contained in the contract of sale.—MAGER *v.* BAIRD RANCH CO., LTD. & BAIRD, [1919] 3 W. W. R. 128; 48 D. L. R. 724.—**CAN.**

hotel, but on its subsequent completion, deft. accepted a lease for the stipulated term without prejudice to any claim for damages for breach of the agreement. The co., who had obtained a head lease of ninety-nine years from the freeholder, mortgaged same to pltfs. In an action by them, as mtgees. in possession, against deft., for arrears of rent accrued since the date of the mtge., deft. sought to set off a claim for damages in respect of the co.'s default in not completing the hotel by the specified time, & alleged that the mtge. was taken by pltfs. with full notice & knowledge of that claim :—*Held :* (1) inasmuch as the right attempted to be set off was not an interest in land, but merely a claim for damages for breach of a personal covenant, the claim to set off could not be allowed ; (2) the cases as to set-off by an assignee of a chose in action had no application to the present case.—REEVES *v.* POPE, [1914] 2 K. B. 284 ; 83 L. J. K. B. 771 ; 110 L. T. 503 ; 58 Sol. Jo. 248, C. A.

See, generally, LANDLORD & TENANT.

Arising on insurance policies.]—*See* INSURANCE.

SECT. 3.—ASSIGNMENT OF LEGACIES AND TRUST FUNDS.

See EQUITY ; EXECUTORS & ADMINISTRATORS ; MORTGAGE ; TRUSTS & TRUSTEES.

SECT. 4.—ASSIGNMENT OF MORTGAGE DEBTS.

See EQUITY ; MORTGAGE.

SECT. 5.—RELEASE OF EQUITIES.

609. Debentures—Payable to assigns—Not subject to calls on shares of assignor—Transfer of debentures recognised by company.]—Pltf. was owner of debentures payable to assigns & of shares in defts.' co. Under their articles of assocn. defts. had a primary lien on the debentures of any member of the co. who might become indebted to it. Pltf. assigned certain of his debentures to C. & S., & they were duly registered & acknowledged by defts. as the assignees of such debentures. In actions brought by C. & S. in the name of pltf. against defts. on the assigned debentures, defts. pleaded a set-off on the ground that calls on pltf.'s shares in their co. were due & unpaid :—*Held :* as pltf. & defts. must have contemplated the assignment of the debentures, as no assignment of them could practically be made if they were to remain subject to pltf.'s liabilities, & as defts. had in their dealings with C. & S. treated them as the substantial owners of the debentures, equity would restrain defts. from availing themselves of the plea of set-off.—HIGGS *v.* ASSAM TEA CO. (1869), L. R. 4 Exch. 387 ; 38 L. J. Ex. 233 ; 21 L. T. 336 ; 17 W. R. 1125.

Annotations :—**Foll.** *Re* Northern Assam Tea, *Ex p.* Universal Life Assce. (1870), L. R. 10 Eq. 458. **Consd.** *Re* Hercules Insce., Brunton's Claim (1874), L. R. 19 Eq. 302 ; *Re* Romford Canal Co., Pocock's Claim, Trickett's Claim, Carew's Claim (1883), 24 Ch. D. 85. **Refd.** *Re* South Essex Estuary, *Ex p.* Chorley (1870), L. R. 11 Eq. 157 ; Sankey Brook Coal Co. *v.* Marsh (1871), L. R. 6 Exch. 185 ; Crouch *v.* Credit Foncier of England (1873), L. R. 8 Q. B. 374 ; Pellas *v.* Neptune Marine Insce. (1879), 42 L. T. 35. **Mentd.** *Re* Imperial Land Co. of Marseilles, *Ex p.* Colborne & Strawbridge (1870), 23 L. T. 515.

610. —— —— —— ——.]—The assignee of a chose in action takes it subject to all equities available against the assignor ; but the person entitled to such equities may release them, either expressly or by implication arising from his course of conduct.

The articles of assocn. of a co. provided that the co. should have a primary lien on the debentures of any member of the co. who might be either absolutely or contingently indebted to the co. for any amount or on any account, & that the directors might, after any such debt became absolutely payable, sell & transfer any debentures of the member so indebted or liable. The holder of certain debentures, who was also a shareholder, transferred his debentures in Aug. 1865, & the transferees were registered as the proprietors of the debentures, & received certificates to that effect from the co. In 1866 & 1867 calls were made on the shares held by the transferor, which were unpaid. In Dec. 1867, the co. fell into difficulties, & applied to the transferees of the debentures to renew them for a period of three years :—*Held :* the co. had precluded themselves by their conduct from setting up their lien for unpaid calls as against the transferees.—*Re* NORTHERN ASSAM TEA CO., *Ex p.* UNIVERSAL LIFE ASSURANCE CO. (1870), L. R. 10 Eq. 458 ; 39 L. J. Ch. 829 ; 23 L. T. 639.

Annotations :—**Refd.** Sankey Brook Coal Co. *v.* Marsh (1871), L. R. 6 Exch. 185 ; *Re* Hercules Insce., Brunton's Case (1874), 31 L. T. 747.

See, further, BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 448–450, Nos. 2876–2878, 2881, 2882, &, *generally*, COMPANIES.

Bond.]—*See* BONDS, Vol. VII., pp. 224 *et seq.*

Letter of credit.]—*See* BANKERS & BANKING, Vol. III., p. 254, No. 753.

611. By estoppel—Direction to pay mortgage debt out of first money coming to hands of solicitors—Conduct amounting to acquiescence—Right to charging order postponed.]—While a suit for redemption of a mortgaged estate was pending pltf. mortgaged his interest in the estate to D. Pltf.'s solrs. in the suit acted for both parties in the mtge. A co. had given notice to take the property compulsorily, but the price had not been ascertained. On the day of the execution of the mtge. to D. pltf. wrote to his solrs. & their London agents a letter directing them to pay D.'s mtge. debt out of the first money that should come to their hands from the co., & the solrs. handed this letter to D. with the mtge. deed. After that the price of the land was ascertained by arbn., in which arbn. the London agents acted as pltf.'s solrs., & the price was carried over to the credit of the redemption suit, & left a balance after paying off the original debt. After that the solrs. & their London agents applied for an order charging the fund with their costs in the action & in the arbn. :—*Held :* (1) the mere fact that the solrs. acted for D., as well as for pltf., in the matter of the mtge., did not disentitle them to priority ; (2) pltf.'s letter was a direction to the solrs. that money to come to their hands from the property was to be applied in the first place in paying D., & they having forwarded the letter to D. was bound by the direction, & could not set up a claim of their own in opposition to it, & were in no better position as to money in ct. than as to money which actually came to their hands, & their charge must be postponed to D.'s mtge.—MACFARLANE *v.* LISTER (1887), 37 Ch. D. 88 ; 57 L. J. Ch. 92 ; 58 L. T. 201 ; 4 T. L. R. 106, C. A.

Annotations :—*As to* (1) **Refd.** Brunton *v.* Electrical Engineering Corpn., [1892] 1 Ch. 434 ; *Re* Walker, Meredith *v.* Walker (1893), 68 L. T. 517. *Generally*, **Mentd.** *Re* Becket, Purnell *v.* Paine, [1918] 2 Ch. 72.

612. —— **Lien not to operate until mortgage paid off—Mortgage recognised by assignees—Right**

Sect. 5.—Release of equities. Part VIII.]

of set-off lost by assignees.]—Defts., tenants of an exhibition ground, entered into a contract with C., by which C. undertook to equip part of the ground & was to receive half of certain takings. C. was also to pay part of the cost of advertising, & if defts. had to pay any part of C.'s share thereof they were to have a lien on his share of the receipts for admission, but such lien was not to operate until payment of a mtge. by which C. mortgaged to pltfs. his share in the profits. Defts. were also to supply C. with electricity, for which he was to pay, the accounts to be rendered weekly. On a motion by pltfs. to restrain defts. from parting with money received for admission defts. claimed to set off from the share of receipts due to pltfs. as C.'s mtgees., money due from C. to defts. for electricity:—*Held:* although as a general principle a claim arising under the same contract might be set off against an assignee of a party thereto, yet as defts. recognised the mtge. as part of the venture, & as the lien was not to operate till after the discharge of the mtge., defts. had no right of set-off against pltfs. until after its discharge.—PHOENIX ASSURANCE CO., LTD. *v.* EARLS COURT, LTD. (1913), 30 T. L. R. 50, C. A.

—— **Lien on bank shares—Representation induced by fraud of assignor.**]—*See* BANKERS & BANKING, Vol. III., p. 292, No. 917.

—— **Statement by secured debtor of bankrupt—Of intention not to prove for deficiency—Subsequent assignee seeking to prove bound.**]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 330, No. 3099.

See, generally, ESTOPPEL.

Part VIII.—Voluntary Assignments.

See, generally, SETTLEMENTS; TRUSTS.

613. General rule—Enforced if completed by assignor—Legal transfer actually made.]—The assistance of the ct. cannot be had without consideration to constitute a party *cestui que trust,* as upon a voluntary covenant to transfer stock, etc.; but if the legal conveyance is actually made, constituting the relation of trustee & *cestui que trust* as if the stock is actually transferred, etc., though without consideration, the equitable interest will be enforced.—ELLISON *v.* ELLISON (1802), 6 Ves. 656; 31 E. R. 1243, L. C.

Annotations:—**Consd.** Garrard *v.* Lauderdale (1831), 2 Russ. & M. 451; Kekewich *v.* Manning (1851), 1 De G. M. & G. 176. **Apld.** Bridge *v.* Bridge (1852), 16 Beav. 315. **Consd.** Dilrow *v.* Bone (1862), 3 Giff. 538; Paul *v.* Paul (1880), 15 Ch. D. 580. **Refd.** Bill *v.* Cureton (1835), 2 My. & K. 503; Edwards *v.* Jones (1836), 1 My. & Cr. 226; Dillon *v.* Coppin (1839), 4 My. & Cr. 647; Hughes *v.* Stubbs (1842), 1 Hare, 476; M'Fadden *v.* Jenkyns (1842), 1 Hare, 458; Meek *v.* Kettlewell (1842), 1 Hare, 464; Walker *v.* Jeffreys (1842), 1 Hare, 341; Griffith *v.* Ricketts, Griffith *v.* Luneil, (1849), 7 Hare, 299; Beech *v.* Keep (1854), 18 Beav. 285; Donaldson *v.* Donaldson (1854), Kay, 711; Burton *v.* Jackson (1856), 26 L. T. O. S. 321; Forbes *v.* Forbes (1857), 3 Jur. N. S. 1206; Gilbert *v.* Overton (1864), 2 Hem. & M. 110. **Mentd.** Alexander *v.* Wellington (1831), 2 Russ. & M. 35.

614. —— —— Distinct declaration of trust in favour of donee.]—The ct., in order to give effect to voluntary settlements, requires, where the settlor is the legal owner, everything to have been done which is requisite to transfer the legal ownership, &, where he is the equitable owner, clear & distinct evidence of a declaration of trust in favour of the donee.

Testator being entitled, during the life of his son, to the dividends on funds standing in the names of himself & three other trustees, directed two of the trustees to pay over the dividends for the future to his son. They acted on the direction, & testator afterwards recognised the gift:—*Held:* there was a valid & effectual voluntary settlement which this ct. would give effect to.—BENTLEY *v.* MACKAY (1851), 15 Beav. 12; 51 E. R. 440.

Annotations:—**Consd.** Dipple *v.* Corles (1853), 11 Hare, 183. **Refd.** *Re* Chrimes, Locovich *v.* Chrimes, [1917] 1 Ch. 30.

615. —— —— Obligation accepted by fundholders.]—HARDING *v.* HARDING, No. 191, *ante.*

Notice to debtor or fundholder generally, *see* Part V., Sect. 1, *ante.*

616. —— Right of debtor to plead that assignment voluntary—In action by assignee.]—WALKER *v.* BRADFORD OLD BANK, No. 73, *ante.*

617. Whether effectual or complete—Assignment of expectancy—Operating only as agreement to assign.]—Testator bequeathed a sum of money to trustees in trust for his daughter for life, & in case she died without leaving issue, for her next of kin, exclusive of her husband. During the lifetime of the daughter, her mother, as presumptive next of kin, by a voluntary deed assigned her expectant interest in reversion to the husband:—*Held:* on the death of the daughter, without leaving issue, the assignment operated only as an agreement to assign, &, being voluntary, a Ct. of Equity would not enforce it.—MEEK *v.* KETTLEWELL (1843), 1 Ph. 342; 13 L. J. Ch. 28; 2 L. T. O. S. 205; 7 Jur. 1120; 41 E. R. 662, L. C.

Annotations:—**Consd.** Kekewich *v.* Manning (1851), 1 De G. M. & G. 176; Bridge *v.* Bridge (1852), 16 Beav. 315. **N.F.** Voyle *v.* Hughes (1854), 2 Sm. & G. 18. **Consd.** Penfold *v.* Mould (1867), L. R. 4 Eq. 562; Harding *v.* Harding (1886), 17 Q. B. D. 442; *Re* Parsons, Stockley *v.* Parsons (1890), 45 Ch. D. 51. **Foll.** *Re* Ellenborough Towry Law *v.* Burne, [1903] 1 Ch. 697. It is suggested that [*Meek* v. *Kettlewell*] was overruled or affected by *Kekewich* v. *Manning,* No. 624, *post.* In my opinion *Kekewich* v. *Manning* has no bearing upon that which was decided in *Meek* v. *Kettlewell* (BUCKLEY, J.). **Consd.** *Re* Mudge, [1914] 1 Ch. 115. **Refd.** Price *v.* Price (1851), 14 Beav. 598; *Re* Way's Trusts (1864), 2 De G. J. & Sm. 365; Richardson *v.* Richardson (1867), L. R. 3 Eq. 686; Baddeley *v.* Baddeley (1878), 38 L. T. 906. **Mentd.** Cramer *v.* Moore (1855), 25 L. T. O. S. 31; De Hoghton *v.* Money (1865), L. R. 1 Eq. 154; *Re* Johnson, Moore *v.* Johnson, [1891] 3 Ch. 48; *Re* Lind, Industrials Finance Syndicate *v.* Lind, [1915] 2 Ch. 345.

618. —— —— Imperfect declaration of trust.]—(1) A covenant by a settlor to transfer, convey & assure property, if any, which he might thereafter acquire, if of a certain value, does not amount either to an imperfect declaration of trust, or to an incomplete assignment of the property, if any,

PART VIII.

613 i. *General rule—Enforced if completed by assignor—Legal transfer actually made.*]—Voluntary assignment of a chose in action by indenture, which also appointed the assignee irrevocably the assignor's attorney, will be carried into execution, because the transaction is complete by execution of the deed.—BLAKELY *v.* BRADY (1839), 2 Dr. & Wal. 311.—IR.

614 i. —— —— *Distinct declaration of trust in favour of donee.*]—ELLIOTT *v.* ELLIOTT (1898), 19 N. S. W. Eq. 162; 15 N. S. W. W. N. 186.—AUS.

f. —— —— *Assignment of benefit of contract—Obligation accepted by fundholder—Death of donor prior to funds reaching fundholder.*]—WALKER *v.* CLARKE (1907), 10 O. W. R. 169.—CAN.

g. *Whether effectual or complete—Informal assignment of reversionary interest—Notice to fundholder—Priority over subsequent assignment for value.*]—MCMURCHIE *v.* THOMPSON (1906), 8 O. W. R. 637. CAN.

which afterwards came to be acquired, upon which this ct. will operate.

W., by a post-nuptial settlement, in consideration of natural love & affection, & for divers other good causes & considerations, covenanted to transfer & convey & assure all property to which he might thereafter become entitled "at any time or times, by gift, descent, succession, or otherwise, from or through his mother," if of a certain amount in value at any one time, to trustees upon the trusts of that settlement. At the date of the settlement he was entitled to certain interests in remainder, subject to his mother's life interest. Afterwards he became entitled in reversion to another fund, subject to a life interest given to his mother. Lastly, his mother died, leaving him property by will:—*Held:* none of these funds were in equity affected by the trusts of the settlement by virtue of the covenant.

Qu.: whether any & which of such funds are comprised in the covenant at all.

(2) It is immaterial by what form of conveyancing, whether by assignment, declaration, &c., the equity of a fund be conveyed. Any of such modes, if anything be done that can be done, & if the intention be clear, will convey the equitable interest in the fund. But a covenant to convey the fund in a certain contingency will not, when that contingency arises, be held to amount to a conveyance of the equitable right.—WILKINSON *v.* WILKINSON (1857), 4 Jur. N. S. 47.

619. —— —— Mere spes successionis.]—The decision in *Meek* v. *Kettlewell*, No. 617, *ante*, has not been overruled by *Kekewich* v. *Manning*, No. 624, *post*.

A mere *spes successionis* is not capable of valid assignment & any purported assignment thereof operates only by way of covenant, which will not be enforced in favour of a volunteer.

L., having an expectation of succeeding by will or under intestacy to property belonging absolutely to her brother & sister respectively, executed a voluntary settlement, purporting to assign to trustees all the real & personal estate to which in the event of their respective deaths she might become entitled by will or under intestacy. On the death of the brother, intestate & a bachelor, L., an heiress-at-law & sole next of kin, obtained letters of administration to his estate:—*Held:* the trustees of the settlement could not compel her to hand over the property to them.—*Re* ELLENBOROUGH, TOWRY LAW *v.* BURNE, [1903] 1 Ch. 697; 72 L. J. Ch. 218; 87 L. T. 714; 51 W. R. 315; 47 Sol. Jo. 255.

Annotations:—Distd. Clegg *v.* Bromley, [1912] 3 K. B. 474; Refd. *Re* Mudge, [1914] 1 Ch. 115.

620. —— Assignment of insurance policy—Covenant for further assurance—No notice to grantor—Policy not delivered.]—(1) A trustee under a voluntary settlement of chattels, policy of assurance & mtge., filed a bill against the representatives of the settlor for the recovery thereof:—*Held:* if the property was legally vested in pltf., he might recover it at law & apply it on the trusts, but if otherwise, then as the deed was voluntary, the ct. could afford pltf. no assistance in recovering it.

(2) In the case of an imperfect voluntary deed, neither the assignor nor his exor. can be compelled to permit the assignee to use his name for the recovery of the debt.

(3) *Held:* neither a voluntary assignment by deed of a mtge. debt, accompanied by a grant, not specifying the particular estate, but of all estates held in mtge., & by a covenant for further assurance & without delivery of the mtge. deed or notice to the mtgor., nor the voluntary assignment of a policy of assurance retained in the hands of the assignor, & without notice given to the grantor, though accompanied by a covenant for further assurance, can be considered as a complete & effectual assignment, to be acted upon & enforced by the assignee, without any further or other act to be done by the assignor.—WARD *v.* AUDLAND (1845), 8 Beav. 201; 14 L. J. Ch. 145; 9 Jur. 384; 50 E. R. 79.

Annotations:—*As to* (1) Refd. Kekewich *v.* Manning (1851), 1 De G. M. & G. 176. *Generally*, Mentd. Parnell *v.* Hingston (1856), 3 Sm. & G. 337; Walrond *v.* Walrond (1858), 28 L. J. Ch. 97; *Re* Jones, Farrington *v.* Forrester, [1893] 2 Ch. 461.

621. —— —— Letter to be followed by deed—Delivery of policy.]—(1) A letter expressed to be a binding assignment upon trusts by way of voluntary settlement of certain policies of life assurance, before such policies were at law assignable, & accompanied with delivery of those of the policies which were in the assignor's possession:—*Held:* an effectual equitable assignment, although the writer expressed his intention of subsequently executing a deed to vest the policies in the assignee jointly with another person not yet selected as trustees, & although some of the policies, being in mtge. to the office, were not handed over, & no notice of the assignment was given to the office.

(2) It was the duty of the assignee, not of the assignor, to give notice to the office.

(3) The letter contained an undertaking by the assignor, which was not performed, to discharge the mtge.:—*Held:* the assignment could be given effect to independently of this undertaking. —*Re* KING, SEWELL *v.* KING (1879), 14 Ch. D. 179; 49 L. J. Ch. 73; 28 W. R. 344.

Annotations:—*As to* (1) Refd. *Re* Richardson, Weston *v.* Richardson (1882), 47 L. T. 514. *Re* Hughes (1888), 59 L. T. 586.

622. —— Assignment of mortgage debt—Covenant for further assurance—No delivery of mortgage deed or notice to mortgagor.]—WARD *v.* AUDLAND, No. 620, *ante*.

623. —— Assignment of dividend on funds standing in name of assignor & trustees—Recognition of gift by assignor.]—BENTLEY *v.* MACKAY, No. 614, *ante*.

624. —— Assignment of equitable reversionary interest—Notice to tenant for life.]—Residuary estate, consisting of money in the funds, was bequeathed to a mother & daughter in trust for the mother for life & afterwards for the daughter absolutely. By a settlement made in contemplation of the daughter's marriage, the daughter assigned her interest under the will to trustees, upon trust for the issue of the intended marriage & for a niece of the daughter & the issue of the niece. The daughter's husband died soon after the marriage, of which there was no issue. The mother was not a party to the settlement, but had notice of it before the husband's death:—*Held:*

h. —— *Assignment of I.O.U.—No notice to debtor.*]—B. assigned to C. an I.O.U. from A. to whom no notice of the transfer was given by B.:—*Held:* the completeness of the assignment as between C. & the representatives of B. did not depend on notice to A.—GASON *v.* RICH (1886), 19 L. R. Ir. 391, 396.—IR.

k. —— *Assignment of promissory note—Indorsement & delivery of note—Appointment of maker as executor.*]—The payee of a promissory note, not negotiable & not then payable, indorsed it as follows: "I indorse the within promissory note for £100 to L.," & delivered the note to L. There was no consideration for the indorsement & delivery, but such indorsement & delivery were made by the payee with the intention of vesting in L. the beneficial interest in the money represented by the note. The payee died before the note fell due & bequeathed to one of the makers of the note all the moneys she should die possessed of or entitled to, & appointed him exor.

even if the settlement was voluntary as regards the trusts in favour of the niece, it was a complete alienation, so as to be capable of enforcement at the instance of the trustees of the settlement against the daughter, & the trustees of another settlement which she made upon a second marriage inconsistent with the former settlement.

Qu : whether the first settlement was voluntary as regarded the trust for the niece.—KEKEWICH *v.* MANNING (1851), 1 De G. M. & G. 176 ; 21 L. J. Ch. 577 ; 18 L. T. O. S. 263 ; 16 Jur. 625 ; 42 E. R. 519, L. JJ.

Annotations :—**Distd.** Bridge *v.* Bridge (1852), 16 Beav. 315 ; Beech *v.* Keep (1854), 18 Beav. 285. **Foll.** Donaldson *v.* Donaldson (1854), Kay, 711 ; Voyle *v* Hughes (1854), 2 Sm. & G. 18. **Distd.** Scales *v.* Maude (1855), 6 De G. M. & G. 43. **Consd.** Wilkinson *v.* Wilkinson (1857), 4 Jur. N. S. 47. **Apld.** Gilbert *v.* Overton (1864), 10 L. T. 900. **Foll.** Richardson *v.* Richardson (1867), L. R. 3 Eq. 686. **Apld.** *Re* King, Sewell *v.* King (1879), 14 Ch. D. 179. **Consd.** *Re* Walhampton Estate (1884), 26 Ch. D. 391. **Apld.** *Re* Patrick, Bills *v.* Tatham, [1891] 1 Ch. 82. **Distd.** *Re* Ellenborough, Towry Law *v.* Burne, [1903] 1 Ch. 697. **Apld.** Vavasseur *v.* Vavasseur (1909), 25 T. L. R. 250. **Refd.** Page *v.* Cox (1852), 10 Hare, 163 ; Paterson *v.* Murphy (1853), 11 Hare, 88 ; Cramer *v.* Moore (1855), 3 Sm. & G. 141 ; Pownall *v.* Anderson (1856), 2 Jur. N. S. 857 ; Bartlett *v.* Bartlett (1857), 3 Sm. & G. 533 ; Dilrow *v.* Bone (1862), 31 L. J. Ch. 417 ; Penfold *v.* Mould (1867), L. R. 4 Eq. 562 ; Glegg *v.* Rees (1871), 7 Ch. App. 71 ; Warriner *v.* Rogers (1873), L. R. 16 Eq. 340 ; Richards *v.* Delbridge (1874), L. R. 18 Eq. 11 ; Baddeley *v.* Baddeley (1878), 48 L. J. Ch. 36 ; Paul *v.* Paul (1880), 15 Ch. D. 580 ; *Re* Flavell, Murray *v.* Flavell (1883), 25 Ch. D. 89 ; *Re* Lucan, Hardinge *v.* Cobden (1890), 45 Ch. D. 470 ; Johnstone *v.* Mappin (1891), 60 L. J. Ch. 241 ; *Re* Spark's Trusts, Spark *v.* Massey, [1904] 1 Ch. 451. **Mentd.** Crofts *v.* Middleton (1856), 8 De G. M. & G. 192 ; Consolidated Investment & Insce. *v.* Riley (1859), 29 L. J. Ch. 123 ; Clarke *v.* Wright (1861), 6 H. & N. 849 ; Milroy *v.* Lord (1862), 4 De G. F. & J. 264 ; Price *v.* Jenkins (1876), 4 Ch. D. 483.

625. —— —— **Notice to fundholders.**]—(1) A. made a voluntary assignment to B. of a reversionary interest in a sum of stock standing in the name of a trustee, & gave the trustee notice of the assignment :—*Held :* the assignment was valid.

(2) The assignment by deed of an equitable reversionary interest in personal property is not to be treated as a mere agreement ; &, although it be voluntary, is not an incomplete gift, but is a transfer of the beneficial interest of the assignor.—VOYLE *v.* HUGHES (1854), 2 Sm. & G. 18 ; 2 Eq. Rep. 42 ; 23 L. J. Ch. 238 ; 22 L. T. O. S. 269 ; 18 Jur. 341 ; 2 W. R. 143 ; 65 E. R. 283.

Annotations :—*As to* (2) **Refd.** Bartlett *v* Bartlett (1857), 3 Sm. & G. 533. *Generally*, **Refd.** Cramer *v.* Moore (1855), 3 Sm. & G. 141 ; Dilrow *v.* Bone (1862), 3 Giff. 538. **Mentd.** Strange *v.* Fooks (1863), 4 Giff. 408.

626. —— —— **Absence of notice—Retention & destruction of deed by assignor.**]—A *feme sole* made a voluntary assignment, by deed, of her reversionary interest in stock held under a settlement. The deed was irrevocable. It was duly executed by her, & attested, but was not communicated either to the trustees of the paramount settlement, or to the trustees of the deed itself, or to any of the parties who were to take under it. The lady subsequently destroyed the deed, & made a different disposition of the stock by a codicil to her will :—*Held :* the assignor having done all that she could for transferring her interest, the assignment was complete & effectual, notwithstanding the absence of notice.—*Re* WAY'S TRUSTS (1864), 2 De G. J. & Sm. 365 ; 5 New Rep. 67 ; 34 L. J. Ch. 49 ; 11 L. T. 495 ; 10 Jur. N. S. 1166 ; 13 W. R. 149 ; 46 E. R. 416, L. JJ.

Annotations :—**Apld.** Garnham *v.* Skipper (1865), 2 T. L. R. 64 ; *Re* Patrick, Bills *v.* Tatham (1890), 63 L. T. 752. **Refd.** R. *v.* Paulson, [1921] 1 A. C. 271. **Mentd.** Hall *v.* Hall, Hall *v.* Hall (1872), L. R. 14 Eq. 365 ; *Re* Lucan, Hardinge *v.* Cobden (1890), 45 Ch. D. 470.

627. —— **Charge on reversionary fund—Not accompanied by assignment.**]—Although a voluntary assignment of a reversionary fund effectually passes the equitable interest therein to the assignee, a charge on such a fund, unaccompanied by an assignment, will not be enforced against the fund in favour of a volunteer.—*Re* LUCAN (EARL), HARDINGE *v.* COBDEN (1890), 45 Ch. D. 470 ; 60 L. J. Ch. 40 ; 63 L. T. 538 ; 39 W. R. 90.

628. —— **Assignment without complete legal transfer—Notice to fundholders.**]—A., being equitably entitled to a freehold estate, & also to certain stocks & shares in public cos. standing in the names of the trustees of his uncle's will, which were to be transferred to him absolutely on his attaining the age of twenty-five years, before that time arrived executed a voluntary settlement, whereby he assigned all his interest to certain new trustees, of whom he constituted himself one, upon certain trusts, & gave notice of the deed to the trustees of the will. Some of the shares were transferred to the new trustees :—*Held :* notwithstanding the notice, the ct. would not enforce the voluntary settlement either as to the real or personal estate, except with respect to those shares which had been actually transferred.—BRIDGE *v.* BRIDGE (1852), 16 Beav. 315 ; 22 L. J. Ch. 189 ; 20 L. T. O. S. 75 ; 16 Jur. 1031 ; 1 W. R. 4 ; 51 E. R. 800.

Annotations :—**Distd.** Beech *v.* Keep (1854), 18 Beav. 285 ; Donaldson *v.* Donaldson (1854), 1 Jur. N. S. 10 ; Hogarth *v.* Phillips (1858), 4 Drew. 360 ; Gilbert *v.* Overton (1864), 2 Hem. & M. 110. **Foll.** *Re* Way's Trust (1864), 4 New Rep. 453. **Dbtd.** *Re* King, Sewell *v.* King (1879), 14 Ch. D. 179. **Refd.** Tierney *v.* Wood (1854), 19 Beav. 330 ; Lambe *v.* Orton (1860), 1 Drew. & Sm. 125.

629. —— —— **Not enforced by court.**]—The ct. will not enforce the transfer of stock in favour of a volunteer to whom it has been merely assigned.

Some consols belonging beneficially to A. for life, with remainder to B., stood in the names of two trustees, of the survivor of whom B. was the representative. B. voluntarily assigned the stock to A., but no transfer was made :—*Held :* the ct. would not either declare B. a trustee of the stock for A. or compel her to transfer it.

The distinction between an assignment for the benefit of a volunteer, & a declaration of trust in his favour, though very thin, yet pervades the cases.—BEECH *v.* KEEP (1854), 18 Beav. 285 ; 23 L. J. Ch. 539 ; 23 L. T. O. S. 54 ; 18 Jur. 971 ; 2 W. R. 316 ; 52 E. R. 113.

Annotations :—**Consd.** Donaldson *v.* Donaldson (1854), 23 L. T. O. S. 306. **Refd.** *Re* Way's Trusts (1864), 10 Jur. N. S. 836.

630. —— —— **Declaration of trusts.**]—A settlor holding an agreement for a lease subject to rents & covenants, by a voluntary deed, assigned all his interest to trustees to hold upon the trusts thereby declared, & shortly afterwards took a lease under the agreement to himself. The legal estate was never assigned to the trustees. It did not appear whether at the date of the settlement the settlor was entitled to call for an immediate lease :—*Held :* the settlement was complete, & ought to be carried into execution.—GILBERT *v.* OVERTON (1864), 2 Hem. & M. 110 ; 4 New Rep. 420 ; 33 L. J. Ch. 683 ; 10 L. T. 900 ; 10 Jur. N. S. 721 ; 12 W. R. 1141 ; 71 E. R. 402.

631. —— **Assignment of interest in stock—No notice to fundholders in assignor's lifetime.**]—DONALDSON *v.* DONALDSON, No. 514, *ante*.

After the death of the payee, & before action, express notice in writing of the indorsement was given to the makers :—*Held :* there had been no legal transfer of the debt to L., so as to enable her to maintain an action on the note.—LEE *v.* MAGRATH (1862), 10 L. R. Ir. 45, 313.—**IR.**

1. —— *Assignment of interest in bank officers' fund—Prohibited by regulations.*]—Testator, a bank manager, was a contributor to the bank officers' fund, & at his death his personal representatives became, under the regulations of

632. —— ——.]—Trustees who held railway stock in trust for H. absolutely, executed a deed of transfer to him, & delivered it to the secretary of the co., who returned it because it was not properly stamped & dated. After that H. made a voluntary settlement purporting to include this stock. Several years afterwards the defects in the deed of transfer were supplied, & it was delivered to the secretary, who received it & registered the stock in H.'s name :—*Held :* at the time of the execution of the voluntary settlement the stock was not legally vested in H., but he was only equitable owner, & the voluntary settlement of it was effectual, & H.'s representative was bound to transfer the stock to the trustees of the voluntary settlement.—NANNEY *v.* MORGAN (1887), 37 Ch. D. 346 ; 57 L. J. Ch. 311 ; 58 L. T. 238 ; 36 W. R. 677 ; 4 T. L. R. 129, C. A.

Annotations :—**Consd.** Roots *v.* Williamson (1888), 38 Ch. D. 485. **Refd.** *Re* Dodds, *Ex p.* Brown & Coates (1891), 60 L. J. Q. B. 599 ; Powell *v.* London & Provincial Bank, [1893] 1 Ch. 610 ; Rimmer *v.* Webster, [1902] 2 Ch. 163.

633. —— **Agreement to execute future instrument—No declaration of trust.**]—B. & D. were married at Malta. Shortly after their marriage a paper was sent out from England by the advisers of D., the wife, headed as "proposals for a settlement upon the intended marriage of B. & D.," & containing certain terms upon which D.'s fortune was to be settled ; amongst others, that if no child of the marriage, the property to be disposed of by D. by will ; if no disposition by her will, to go to her next of kin. This paper was signed by B. & D., but nothing further done by way of settlement. Soon after the marriage D. died intestate, without having had a child :—*Held :* B., who had taken out administration to D., & possessed himself of her property, in which was included a reversionary interest, was entitled to it for his own benefit, no declaration of trust in favour of the next of kin having been created by this agreement to execute a future instrument.—POWNALL *v.* ANDERSON (1856), 2 Jur. N. S. 857 ; 4 W. R. 407.

634. —— **Assignment of shares with power of attorney—Failure of assignee to complete gift.**]—M. executed a voluntary deed purporting to assign fifty of his shares in the L. Bank to L., to be held by him upon certain trusts for the benefit of pltfs. The shares were transferable only by entry in the books of the bank ; but no such transfer was ever made. L. held at the time a general power of attorney authorising him to transfer M.'s shares, & M., after the execution of the settlement, gave him a further power of attorney authorising him to receive the dividends on his shares in the bank. M. lived three years after the execution of the deed, during which period the dividends on the shares were received by L. & remitted by him to pltfs., sometimes directly & sometimes through M. :—*Held :* (1) as it was the intention of the settlor to constitute himself a trustee of the shares, but to vest the trust in L., there was no valid trust of the shares created in the settlor ; (2) no valid trust of the shares was created in L., for although he held a power of attorney under which he might have vested the shares in himself, he did not do so, & was not bound to do so without directions from the settlor, since he held the power only as agent for the settlor ; (3) the disposition of the shares failed, as being an imperfect voluntary gift.—MILROY *v.* LORD (1862), 4 De G. F. & J. 264 ; 31 L. J. Ch. 798 ; 7 L. T. 178 ; 8 Jur. N. S. 806 ; 45 E. R. 1185, L. JJ.

Annotations :—*As to* (1) **Consd.** Heartley *v.* Nicholson (1875), L. R. 19 Eq. 233 ; *Re* Shield, Pethybridge *v.* Burrow (1885), 53 L. T. 5. **Refd.** Johnstone *v.* Mappin (1891), 60 L. J. Ch. 241 ; Coleman *v.* North (1898), 47 W. R. 57 ; Carter *v.* Hungerford, [1917] 1 Ch. 260. *As to* (2) **Apld.** Bottle *v.* Knocker (1876), 46 L. J. Ch. 159. **Refd.** Bizzey *v.* Flight (1876), 45 L. J. Ch. 852. *As to* (3) **Consd.** Warriner *v.* Rogers (1873), L. R. 16 Eq. 340 ; *Re* Breton's Estate Breton *v.* Woollven (1881), 17 Ch. D. 416 ; *Re* Patrick, Bills *v.* Tatham (1890), 63 L. T. 752. **Refd.** Moore *v.* Moore (1874), L. R. 18 Eq. 474 ; Richards *v.* Delbridge (1874), L. R. 18 Eq. 11 ; *Re* King, Sewell *v.* King (1879), 14 Ch. D. 179 ; *Re* Ashcroft, *Ex p.* Todd (1887), 19 Q. B. D. 186 ; *Re* Griffin, Griffin *v.* Griffin, [1899] 1 Ch. 408 ; *Re* Smith, Bull *v.* Smith (1901), 84 L. T. 835 ; Mallott *v.* Wilson, [1903] 2 Ch. 494 ; *Re* Williams, Williams *v.* Ball, [1917] 1 Ch. 1.

635. —— **Assignment of specific property & all other personalty—Complete declaration of trust—Assignee entitled to unindorsed promissory notes.**]—E., by a voluntary deed, in 1858, assigned certain specific property, & "all other the personal estate, whatsoever & wheresoever," of her, E., to R. absolutely, & she thereby appointed R., his exors., administrators, & assigns, her attorney & attorneys in her name, but for the sole benefit of R., to sue for & recover the thereby assigned premises & every part thereof, & to do & execute all such acts & deeds as should be necessary for deriving the full benefit of the assignment thereby made. At the date of the assignment, E. was possessed of (*inter alia*) certain promissory notes, given to her to secure the repayment of advances made by her. These were not specifically mentioned in the deed. Upon R.'s death, in 1864, these notes were found in his possession, but not indorsed to him. There was no evidence as to any delivery of the notes by E. to R. :—*Held :* the property in the notes passed by the deed to R., on the principle that the deed of assignment operated as a complete declaration of trust by E. of all her property in favour of R.—RICHARDSON *v.* RICHARDSON (1867), L. R. 3 Eq. 686 ; 36 L. J. Ch. 653 ; 15 W. R. 690.

Annotations :—**Consd.** Warriner *v.* Rogers (1873), L. R. 16 Eq. 340 ; Richards *v.* Delbridge (1874), L. R. 18 Eq. 11 ; *Re* King, Sewell *v.* King (1879), 14 Ch. D. 179. **Refd.** Penfold *v.* Mould (1867), 17 L. T. 59 ; Baddeley *v.* Baddeley (1878), 9 Ch. D. 113. **Mentd.** *Re* Breton's Estate, Breton *v.* Woollven (1881), 17 Ch. D. 416.

636. —— **Assignment of debts secured by bills of sale—No express assignment of bills of sale or chattels comprised therein—No notice to debtors.**]—P. by a voluntary settlement assigned to trustees certain debts specified in the schedule thereto owing to him on the security of certain bills of sale in such schedule also specified, & all interest thereon respectively. He directed the trustees to get in the debts, & empowered them to do whatever was necessary for that purpose. The settlement contained no express assignment of either the bills of sale or the chattels comprised in them. No notice of the assignment was ever given to the debtors. P. died, having received from the debtors the debts in question :—*Held :* (1) the settlement amounted to a complete assignment of the debts, within the principle of *Kekewich* v. *Manning* (No. 624, *ante*) ; (2) the fact that notice of the assignment was not given to the debtors did not make the gift incomplete ; & the settlor's estate was liable to account to the trustees of the settlement for the amount of the debts that he had got in.

Qu. : whether the settlor could have been sued at law by the trustees on the ground of his having

the fund, entitled to a sum of £431 out of the fund. The regulations prohibited the assignment, by any contributor, of his interest in the fund, save to the bank. By indenture dated Oct. 30, 1900, the testator purported, for natural love & affection, to assign his interest in the fund to pltfs. :—*Held :* the indenture was an incomplete disposition in favour of volunteers & could not be enforced.—VIZE *v.* FITZMAURICE (1905), 39 I. L. T. 123.—IR.

m. *Resulting trust in favour of assignor—Whether assignment valid.*]—An assignment is not bad because of a resulting trust in favour of the assignor. —O'CONNOR *v.* WEEKS (1872), 9 N. S. R. 71.—CAN.

defeated his own assignment by getting in the debts.—*Re* PATRICK, BILLS *v.* TATHAM, [1891] 1 Ch. 82; 60 L. J. Ch. 111; 63 L. T. 752; 39 W. R. 113; 7 T. L. R. 124, C. A.

Annotation :—**Refd.** *Re* Griffin, Griffin *v.* Griffin, [1899] 1 Ch. 408.

Notice generally, *see* Part V., *ante*.

637. —— Assignment of amount at bank—Indorsement & delivery of banker's deposit receipt—Appointment of donee as executor.]—*Re* GRIFFIN, GRIFFIN *v.* GRIFFIN, No. 238, *ante*.

See, also, Part IV., Sect. 2, sub-sect. 1, B. (*f*), *ante*.

638. —— Non-observance of statutory requirements.]—A. made a voluntary assignment of turnpike bonds & shares in cos. to B., in trust for himself for life, & after his death for his nephew. He delivered the bonds & shares to B., but did not observe the formalities required by the Turnpike Road Act & the deeds by which the cos. were formed, to make the assignment effectual :—*Held :* on his death, no interest, in either the bonds or the shares, passed by the assignment, & B. ought to deliver them to his exors.—SEARLE *v.* LAW (1846), 15 Sim. 95; 15 L. J. Ch. 187; 7 L. T. O. S. 78; 10 Jur. 191; 60 E. R. 553.

Annotations :—**Expld.** Parnell *v.* Hingston (1856), 3 Sm. & G. 337. **Consd.** Rummens *v.* Hare (1876), 1 Ex. D. 169. **Refd.** Cheale *v.* Kenward (1858), 3 De G. & J. 27; *Re* Richardson, Shillito *v.* Hobson (1885), 30 Ch. D. 396.

Under 13 Eliz. c. 5.]—*See* FRAUDULENT & VOIDABLE CONVEYANCES.

Necessity for consideration.]—*See* Nos. 51-55, *ante*, & Part IV. Sect. 6, *ante*.

Part IX.—Assignments under Particular Statutes.

Under 1873 Act.]—*See* Part IV., Sect. 1, *ante*.

Bills of exchange—Under Bills of Exchange Act, 1882 (c. 61).]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 183 *et seq.*

Bills of lading—Under Bills of Lading Act, 1855 (c. 111).]—*See* SHIPPING & NAVIGATION.

Bonds—Administration bonds—Under Court of Probate Acts, 1857 (c. 77) & 1858 (c. 95).]—*See* EXECUTORS & ADMINISTRATORS.

—— **Bail bonds—Under 4 & 5 Anne, c. 3, s. 20.**]—*See* EXECUTION.

—— **East India Company's bonds.**]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., p. 446, No. 2863; East India Company Bonds Act, 1811 (c. 64), s. 4.

—— **Replevin bonds—Under Distress for Rent Act, 1737 (c. 19).**]—*See* DISTRESS.

639. —— Turnpike bond—Transfer invalid unless statutory formalities observed.]—SEARLE *v.* LAW, No. 638, *ante*.

—— **Of public company—Under Companies Clauses Consolidation Act, 1845 (c. 16).**]—*See* COMPANIES.

Cheques—Under Bills of Exchange Act, 1882 (c. 61) & Bills of Exchange (Crossed Cheques) Act, 1906 (c. 17).]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 183 *et seq.*, 441 *et seq.*

Copyright—Under Copyright Act, 1911 (c. 46).]—*See* COPYRIGHT & LITERARY PROPERTY.

Covenants running with the land—Under 32 Hen. 8, c. 34—Conveyancing Acts, 1881 to 1911.]—*See* CONTRACT; EQUITY; LANDLORD & TENANT; REAL PROPERTY & CHATTELS REAL.

Debentures—Under Companies (Consolidation) Act, 1908 (c. 69).]—*See* COMPANIES.

—— **Under Local Loans Act, 1875 (c. 83).**]—*See* MONEY & MONEY-LENDING.

Designs—Under Patents & Designs Act, 1907 (c. 29).]—*See* TRADE MARKS, TRADE NAMES, & DESIGNS.

Insurance policies—Under Policies of Assurance Act, 1867 (c. 144).]—*See* INSURANCE.

—— **Under Marine Insurance Act, 1906 (c. 41).**]—*See* INSURANCE.

Patents—Under Patents & Designs Act, 1907 (c. 29).]—*See* PATENTS & INVENTIONS.

Promissory notes—Under Bills of Exchange Act, 1882 (c. 61).]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 183 *et seq.*

Right of entry to land—Under Real Property Act, 1845 (c. 106).]—*See* REAL PROPERTY & CHATTELS REAL.

—— **Under Conveyancing Acts, 1881 to 1911.**]—*See* LANDLORD & TENANT.

Shares—In public companies—Under Companies (Consolidation) Act, 1908 (c. 69).]—*See* COMPANIES.

Stock—In public companies—Under Companies Clauses Consolidation Act, 1845 (c. 16).]—*See* COMPANIES.

—— —— **Under Companies (Consolidation) Act, 1908 (c. 69).**]—*See* COMPANIES.

—— **In the public funds—Under National Debt Acts.**]—*See* BANKERS & BANKING, Vol. III., p. 129, No. 48; REVENUE.

Trade Marks—Under Trade Marks Act, 1905 (c. 15).]—*See* TRADE MARKS, TRADE NAMES, & DESIGNS.

PART IX.

n. *Book debts — Under Victorian Book Debts Act, 1896—Whether registration essential.*]—Only that part of an instrument which operates as an assignment or transfer is invalidated by non-registration. The invalidity does not extend to covenants & recitals therein contained.—NATIONAL BANK OF AUSTRALASIA, LTD. *v.* FALKINGHAM, [1902] A. C. 585.—**AUS.**

o. —— —— —— ——.]—*Re* JONES, [1906] V. L. R. 432.—**AUS.**

p. —— —— —— *When carrying on business.*]—A. contracted to supply firewood to a hospital. The contract was not confined to a single specific act, but extended over a considerable time. On two previous occasions A. had entered into contracts for the supply of firewood, but whether they were isolated transactions or extended over a considerable time was not known. On the facts :—*Held :* A. did not carry on a "business" within above Act & the assignment of the debt resulting from such contract did not require to be registered.—SCHRODER *v.* HEBBARD, [1907] V. L. R. 107.—**AUS.**

Part X.—Assignments by the Law Merchant.

640. Assignment of debts not governed by law merchant.]—Bills of exchange & promissory notes are governed by the mercantile law, but assignments of debts are not.—GLYN *v.* HOOD (1860), 1 De G. F. & J. 334; 29 L. J. Ch. 204; 1 L. T. 353; 6 Jur. N. S. 153; 8 W. R. 248; 45 E. R. 388, L. JJ.

Negotiable instruments other than bills of exchange, cheques, & promissory notes.]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 444 *et seq.*

Part XI.—Assignments by and to the Crown.

641. Crown may assign.]—The King can assign his action, or anything which lies in action.—ANON. (1486), Y. B. 2 Hen. 7, p. 8, pl. 25.

Annotations:—**Retd.** Reynel's Case (1612), 9 Co. Rep. 95 a; Bankers Case (1695), Skin. 601. **Mentd.** Page's Case (1589), 5 Co. Rep. 52 a; R. *v.* Hornbee (1691), Freem. K. B. 331.

642. ——.]—The King may assign a chose in action, & the assignee may sue in the King's name.—R. *v.* WENDMAN (1605), Cro. Jac. 82; 79 E. R. 69, Ex. Ch.

Annotation:—**Mentd.** Anon. (1700), 12 Mod. Rep. 438.

643. ——.]—The King, by his prerogative, may assign a chose in action, & the assignee may sue, either in his own name, or in the King's, but if he assign it to another it is void.—R. *v.* TWINE (1607), Cro. Jac. 179; 79 E. R. 156.

Annotation:—**Retd.** Master *v.* Miller (1791), 4 Term Rep. 320.

644. ——.]—Choses in action can be granted by the private seal of the Sovereign (COKE, C.J.).—CULLOM *v.* SHERMAN (1614), 1 Roll. Rep. 7; 81 E. R. 287.

645. May be assigned to Crown.]—MYLES *v.* WILLIAMS, No. 499, *ante*

646. Royal grant of goods & chattels of suicides—Does not include choses in action.]—Choses in action do not pass under a Royal grant of all goods & chattels of suicides, for they are not expressly named.—SOUTHAMPTON CORPN. *v.* RICHARDS (1662), 1 Sid. 142; 82 E. R. 1020.

See, now, Forfeiture Act, 1870 (c. 73), s. 1, & Civil Procedure Acts & Repeal Act, 1879 (c. 59), s. 3.

Escheat.]—*See* DESCENT & DISTRIBUTION.

647. Assignment to Crown—Must be of entirety.]—Damages recovered in action on the case, & thereupon before execution, assignment of parcel of the debt to the Queen, who brought a *sci. fa:*—*Held:* parcel or a moiety of this debt could not be assigned.—R. *v.* ALLEN (1584), Owen, 2; 74 E. R. 856; *sub nom.* ANON., Owen, 46.

Right of assignee—Under royal grant—To sue in his own name.]—*See* Nos. 497, 499, 642, 643, *ante.*

648. —— —— **Cannot assign to another.**]—R. *v.* TWINE, No. 643, *ante.*

Part XII.—Assignments by Operation of Law.

On appointment of new trustee.]—*See* TRUSTS & TRUSTEES.

On bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. V., pp. 630 *et seq.*, 650 *et seq.*, 743, 971 *et seq.*

On death.]—*See* No. 508, *ante;* DESCENT & DISTRIBUTION; EXECUTORS & ADMINISTRATORS.

—— **Corporation sole.**]—*See* CORPORATIONS.

—— **Of co-owner.**]—*See* PERSONAL PROPERTY; PARTNERSHIP.

On marriage.]—*See* HUSBAND & WIFE.

By appropriation under Poor Law Amendment Act, 1849 (c. 103), s. 16.]—*See* POOR LAW.

By execution.]—*See* EXECUTION.

Covenants running with the land.]—*See* CONTRACT; EQUITY; LANDLORD & TENANT; REAL PROPERTY & CHATTELS REAL.

Part XIII.—Stamp Duties.

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Part I.—Nature of a Club.

1. Not an association or partnership for making trade profits.]—(1) Clubs are not partnerships or associations within Joint Stock Cos. Winding-up Acts.

(2) No one can receive profit, in the sense of profit from trade, from a club (LORD ST. LEONARDS, C.).

(3) The law is now settled, that no member of a club is liable to a creditor, except so far as he has assented to the contract in respect of which such liability has arisen (LORD ST. LEONARDS, C.). —*Re* ST. JAMES' CLUB (1852), 2 De G. M. & G. 383; 19 L. T. O. S. 307; 16 Jur. 1075; 42 E. R. 920, L. C.

Annotations:—*As to* (1) **Reld.** Rigby *v.* Connol (1880), 14 Ch. D. 482; *Re* British Athenæum (1889), 61 L. T. 795. *As to* (2) **Distd.** Carlisle & Silloth Golf Club *v.* Smith (1913), 82 L. J. K. B. 837. *As to* (3) **Reld.** Overton *v.* Hewett (1886), 3 T. L. R. 246; Royal Albert Hall Corpn. *v.* Winchilsea (1891), 7 T. L. R. 362. *Generally*, **Reld.** Wise *v.* Perpetual Trustee Co., [1903] A. C. 139.

2. ——.]—A society was formed in 1844 for the promotion of "moral & intellectual improvement by means of libraries for circulation & reference, newspapers & periodical publications, lectures, discussions, & classes for instruction & improvement in literature & the arts & sciences." The society consisted of life members who had subscribed £20, of shareholders & annual subscribers, & its property was vested in trustees. No trust deed was executed, & the society was not registered under Cos. Acts. A petition having been presented by shareholders, life members, & directors of the society for a winding up order:—*Held:* this was not a society which came within Joint Stock Cos. Acts.

This is a club, & cannot be wound up (KAY, J.). —*Re* BRISTOL ATHENÆUM (1889), 43 Ch. D. 236; 59 L. J. Ch. 116; 61 L. T. 795; 38 W. R. 396; 6 T. L. R. 83; 1 Meg. 452.

Annotations:—**Consd.** *Re* Jones, Clegg *v.* Ellison, [1898] 2 Ch. 83; *Re* Russell Institution, Figgins *v.* Baghino, [1898] 2 Ch. 72.

3. ——.]—WISE *v.* PERPETUAL TRUSTEE CO., No. 63, *post*.

4. Unrecognised in law.]—The position of a club is in law an entity, neither a co. nor a corporate body of any sort; its position is unrecognised in law (DAY, J.).—STEELE *v.* GOURLEY & DAVIS, No. 77, *post*.

5. Proprietary club.]—LYTTELTON *v.* BLACKBURNE, No. 42, *post*.

6. —— **Right of property in.**]—BAIRD *v.* WELLS, No. 39, *post*.

7. Members' club—Possession of property—Cricket club.]—Pltf. & deft. being both members of the A. cricket club, which occupied as a cricket

PART I.

1 i. *Not an association or partnership for making trade profits.*]—The committee of management of an Italian band, not formed for the purposes of gain, sued the bandmaster for the recovery of band instruments & music:—*Held:* the instruments & music were the property of the band, which was not a partnership but a voluntary association governed by the law applicable to the ordinary unincorporated members' club.—DEMARCHI *v.* SPARTARI (1914), 27 W. L. R. 152. —**CAN.**

a. *Not a "business" within 4 Edw. 7, c. 23, s. 10.*]—A social club, having no capital stock, & consequently no dividends, profits, or earnings to be divided among its members, although it furnishes meals & liquors to them & their guests, is not a club within above sect.—RIDEAU CLUB *v.* OTTAWA CITY (1907), 10 O. W. R. 519; 15 O. L. R. 118.—**CAN.**

7 i. *Members' club—Possession of property—Diversion to purposes not contemplated—Majority vote—Injunction.*]—VICK *v.* TOIVONEN (1913), 24 O. W. R. 802; 4 O. W. N. 1542; 12 D. L. R. 299.—**CAN.**

7 ii. —— —— —— ——.]—WIRTA *v.* VICK (1914), 26 O. W. R. 531; 6 O. W. N. 599; 7 O. W. N. 384.—**CAN.**

7 iii. —— —— —— ——.]—A cup was presented to the curling clubs of D. for competition as a trophy; these clubs, which were not incorporated, framed rules under which the cup was to become the property of the club winning the cup twice in succession. The cup was so won by A. club. At a meeting of that club, it was resolved by a majority of members present, to present the cup to M., who had been "skip" of the rink which obtained the highest score on the occasions on which the club had won the cup. In an action brought against M. by members of the club, who had objected to the presentation:—*Held:* (1) the cup was the joint property of all the individual

field, at an annual rent & under an agreement between the club, by name, & the owner of the soil, a certain close, were present at a match played there by eleven members of the club with eleven members of the B. cricket club, at the invitation of the A. club. A part of the close was tabooed off, & only the players, of whom deft. was one, & pltf. was not one, were at liberty to go within that part. Pltf. went within that part to take the place of a player who was called away; & thereupon a dispute as to the manner in which pltf. had come to take a part in the game arose between him & deft., which ended in deft. removing pltf. by violence from the close:—*Held:* (1) an issue on the joint possession of the close by pltf. & deft. together with the other members of the A. club, was properly found for pltf.; (2) a plea of justification framed on a joint possession of the twenty-two members of the two clubs actually playing could not be supported, as the members of the B. club were on the close on invitation only, & not in the exercise of any right of possession in them.

Semble: a plea framed on the right to exclude pltf. from the part of the close tabooed off would have been an answer to the declaration.—HOLMES *v.* BAGGE (1853), 1 E. & B. 782; 22 L. J. Q. B. 301; 21 L. T. O. S. 256; 17 J. P. 631; 17 Jur. 1095; 118 E. R. 629.

8. —— ——.]—BAIRD *v.* WELLS, No. 39, *post.*

—— Liability of members.]—*See* Part IV., *post.*

Part II.—Jurisdiction of the Courts.

9. Interference with rules.] —Save for the due disposal & administration of property there is no authority in the cts. either of England or of Scotland to take cognisance of the rules of a voluntary society entered into merely for the regulation of its own affairs. But if funds are settled to be disposed of amongst members of a voluntary assocn., according to their rules & regulations, the ct. must necessarily take cognisance of these rules & regulations, for the purpose of satisfying itself as to who is entitled to the funds (LORD CRANWORTH).

A ct. of law will not interfere with the rules of a voluntary assocn. unless to protect some civil right or interest which is said to be infringed by their operation (LORD COLONSAY).—FORBES *v.* EDEN (1867), L. R. 1 Sc. & Div. 568, H. L.

Annotations:—**Consd.** Baird *v.* Wells (1890), 44 Ch. D. 661. **Refd.** Kelly *v.* National Soc. of Operative Printers (1915), 113 L. T. 1055. **Mentd.** Free Church of Scotland General Assembly *v.* Overtoun, Macalister *v.* Young, [1904] A. C. 515.

10. When committee acts according to rules—Stock Exchange.]—By the rules of the Stock Exchange, the committee for general purposes have in each year the duty of admitting all such candidates & re-electing all such existing members as they may deem eligible for membership during the ensuing year:—*Held:* the rules giving authority to the committee form a contract binding upon every member, & in the absence of any evidence that the committee have acted dishonestly or unfairly their discretion is absolute & cannot be interfered with by the ct.

Semble: when a similar tribunal with like powers chooses to advance a reason for its action the ct. may inquire into the sufficiency of that reason.—CASSEL *v.* INGLIS, [1916] 2 Ch. 211; 85 L. J. Ch. 569; 114 L. T. 935; 32 T. L. R. 555.

Annotations:—**Refd.** Weinberger *v.* Inglis, [1918] 1 Ch. 133; Weinberger *v.* Inglis, (No. 2) [1918] 1 Ch. 517. **Mentd.** *Re* Halstead, *Ex p.* Richardson, [1917] 1 K. B. 695.

11. —— ——.] —Under the rules of the Stock Exchange the committee for general purposes re-elect in Mar. such members as they deem eligible for the ensuing year. If, acting under this rule, they refuse to re-elect a member, & act fairly & honestly, & there is no evidence to show that they are actuated by *mala fides*, or that their procedure is contrary to law or natural justice, the ct. has no power to enquire into or interfere with the exercise of their discretion.

The exercise of such discretion by the committee is an ordinary act of management, & not a judicial or quasi-judicial act (SWINFEN EADY, L.J.).—WEINBERGER *v.* INGLIS (No. 2), [1918] 1 Ch. 517; 87 L. J. Ch. 345; 118 L. T. 769; 34 T. L. R. 337; 62 Sol. Jo. 450, C. A.; *affd.*, [1919] A. C. 606, H. L.

See, generally, STOCK EXCHANGE.

12. When right of property involved—Lodge of freemasons.]—On a bill by some members of a lodge of freemasons against others to have the dresses & decorations, books, papers, & other effects, of the society delivered up:—*Held:* the ct. had jurisdiction for the delivery of a chattel.—LLOYD *v.* LOARING (1802), 6 Ves. 773; 31 E. R. 1302, L. C.

Annotations:—**Consd.** Clough *v.* Ratcliffe (1847), 1 De G. & Sm. 164. **Mentd.** Meux *v.* Maltby (1818), 2 Swan. 277; *Re* Lead Co.'s Workmen's Fund Soc., Lowes *v.* Smelting Down Lead with Pit & Sea Coal Co., [1904] 2 Ch. 196.

13. —— Subscriber to hospital.] —A surgeon, who was also a subscriber to & a governor of a hospital was asked to resign his appointment as surgeon & on his refusing to do so the committee suspended him. Pltf. claimed an injunction & damages on the ground that by his subscription he had an interest in the property of the hospital

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members of the club; (2) it was *ultra vires* of a majority of the members to give away the joint property against the wishes of the minority.—MURRAY *v.* JOHNSTONE (1896), 23 R. (Ct. of Sess.) 981.—**SCOT.**

b. —— *Incorporated—Whether proprietary*—8 *Edw.* 7, c. 48, s. 14.]—A club, to encourage & promote billiards, was incorporated. The members were all shareholders in the capital stock of the club. Premises, whereon there were billiard tables, were leased by the club in T. Fees were paid by the members for games played on the billiard tables; such fees went into the club funds, & were used for paying the expenses of managing & carrying on the club. A police bye-law of T. passed pursuant to above sect. provided that a license should be taken out by every proprietary club, having in its possession or on its premises a billiard table; the club had no license for billiard tables:—*Held:* the club was not "proprietary" within above sect.—R. *v.* DOMINION BOWLING & ATHLETIC CLUB, LTD. (1909), 19 O. L. R. 107; 14 O. W. R. 468; 15 Can. Crim. Cas. 105.—**CAN.**

PART II.

12 i. *When right of property involved.*]—A voluntary assocn. was formed "to promote & establish uniformity in commercial usages, & for the exchange of information of advantage to the members." An annual subscription was paid by the members "to defray expenses." Pltf., who had been a member of the assocn., brought suit for an injunction to restrain the committee from refusing to accept his subscription & from turning him out of the assocn. The only property possessed by the assocn. at the date of the suit was £35 being the balance of subscriptions over expenses:—*Held:* the ct. had no jurisdiction to entertain the suit, as the assocn. was a purely voluntary one, & no right to property was in question.—AMOS *v.* BRUNTON (1897), 18 N. S. W. Eq. 184; 14 N. S. W. W. N. 69.—**AUS.**

& his position in that respect was similar to that of a member of a club :—*Held :* an injunction must be refused.

When a club was formed it was by means of the subscriptions of members which were expended in the purchase or hire of certain property, & each member had a right to use that property & had an interest in it. Upon that ground cts. of Equity had interfered (LORD ESHER, M.R.).—MILLICAN *v.* SULIVAN (1888), 4 T. L. R. 203, C. A.

See, further, Part III., Sect. 2, sub-sect. 2, D. & E., *post.*

Part III.—Constitution and Internal Arrangements.

SECT. 1.—RULES.

SUB-SECT. 1.—IN GENERAL.

14. Power to make—Duty of members to conform to.]—INNES *v.* WYLIE, No. 27, *post.*

15. —— Bye-law not oppressive on minority—Intra vires.]—An assocn. formed to promote & protect the cotton trade in L. made a bye-law rendering a member liable to expulsion for disreputable conduct in dealings with members of associated societies. The L. assocn. having threatened to expel pltfs. under their bye-law :—*Held :* the bye-law was within the powers of the assocn. & not being oppressive on the minority of its members was *intra vires*.—MERRIFIELD ZIEGLER & CO. *v.* LIVERPOOL COTTON ASSOCN., LTD. (1911), 105 L. T. 97 ; 55 Sol. Jo. 581.

Annotation :—Mentd. Harrop *v.* Harrop, [1920] 3 K. B. 386.

16. Members' knowledge of—When presumed—Rule book accessible to members.]—If the rules of a club be contained in a book kept by the master of the club, & accessible to the members, every member of the club must be taken to be acquainted with them.—RAGGETT *v.* MUSGRAVE (1827), 2 C. & P. 556, N. P.

Effect of Shop Clubs Act, 1902 (c. 21)—On rules of provident society.]—*See* FRIENDLY SOCIETIES.

Election, resignation & expulsion of members.]—*See* Sect. 2, *post.*

SUB-SECT. 2.—ALTERATION.

17. Whether authorised—Where rules contain no provision for alteration—Raising amount of annual subscription.]—A club which is governed by rules prescribing the amount of the annual subscription, but not containing any provision for the amendment or alteration thereof, cannot by a resolution passed by a majority of the members present at a general meeting raise the amount of the subscription so as to bind existing members, & the ct. will interfere by injunction to restrain the expulsion of a dissentient member for refusing to pay the increased subscription.—HARINGTON *v.* SENDALL, [1903] 1 Ch. 921 ; 72 L. J. Ch. 396 ; 88 L. T. 323 ; 19 T. L. R. 302 ; *sub nom.* HARRINGTON *v.* SENDALL, 51 W. R. 463 ; 47 Sol. Jo. 337.

18. —— To provide for expulsion of member—General meeting empowered to alter rules affecting "general interests" of club.]—(1) The ct. will not interfere against the decision of the members of a club professing to act under their rules, unless it can be shown either that the rules are contrary to natural justice, or that what has been done is contrary to the rules, or that there has been *mala fides* or malice in arriving at the decision.

(2) One of the rules of a club provided that a general meeting might alter any of the standing rules affecting the general interests of the club, provided this was done with certain formalities & by a certain majority :—*Held :* a rule providing for the expulsion of members who should be guilty of conduct injurious to the interests of the club was within the regulation, & could be validly passed by a general meeting.

One of the rules of a club provided that in case the conduct of any member should, in the opinion of the committee, be injurious to the character & interests of the club, the committee should be empowered to recommend such member to resign, & if he should not comply, the committee should then call a general meeting, & if a majority of two-thirds of the meeting agreed by ballot to the expulsion of such member, he should be expelled. Pltf., a member of the club, sent a pamphlet which reflected on the conduct of S., a gentleman in a high official position, also a member of the club, to S., at his official address, enclosed in an envelope on the outside of which was printed "Dishonourable Conduct of S." The committee being of opinion that this action was injurious to the character & interests of the club, called upon pltf.

PART III. SECT. 1, SUB-SECT. 1.

c. *Duty of members to conform to—Meeting summoned without proper notice.*]—A rule provided that all meetings of the club should be called by advertisement, stating the business to be considered, published in a daily newspaper on not less than two different days, one of them bieng the day of the meeting & one at least ten days before such meeting. A meeting was held, notice of which was not given ten days before the day of meeting. B., a member of the club, was present at the meeting & questioned its legality on the ground that insufficient notice had been given. His objection was overruled by the chairman. No one was injured by reason of non-compliance with the rules. In an action by B. to have the proceedings of the meeting declared null & void : —*Held :* (1) the rules should have been followed ; (2) in the circumstances the application must be refused.—BRADY *v.* SOUTH AFRICAN TURF CLUB (1906), 16 C. T. R. 237.—S. AF.

d. *Rules of Hockey Clubs Association—Assumption that all clubs would continue in existence—Club no longer existing—Whether rules binding on remaining clubs.*]—TORONTO HOCKEY CLUB, LTD. *v.* OTTAWA HOCKEY ASSOCN., LTD. (1918), 15 O. W. N. 145.—CAN.

e. *Where rules prescribe no quorum—Majority.*]—It is sufficient if a majority of all members are present if there is no rule as to a quorum, & a majority of those present can exercise a power possessed by the members as a whole.—MCCOLL *v.* HORNE & YOUNG (1888), 6 N. Z. L. R. 590.—N.Z.

PART III. SECT. 1, SUB-SECT. 2.

f. *Whether authorised — Where rules contain provision for alteration—Material alteration of constitution.*]—T. Assocn. consisted of delegates representing clubs named in its constitution & other clubs complying with conditions therein specified. On payment of dues, a constituent club became entitled to representation for the current year. The assocn. had power to alter, vary, or suspend any part of the constitution & also to cancel, on the ground of improper conduct, a club's right to representation. Due notice was given of a motion, to be made at a special meeting, for the alteration in almost every particular of the assocn.'s constitution with respect to the representation of clubs. At the special meeting, an amendment was proposed which included the deletion of the name of B. club from the constitution. This amendment was carried. B. club claimed an injunction restraining the assocn. from acting on the amendment, on the ground that it was not passed in accordance with the constitution :—*Held :* the power to alter, vary, or suspend any part of the constitution extended to such alteration as would exclude a club, & was independent of the power to cancel for misconduct a club's right to representation.—JAMES *v.* AMOTT (1918), 14 Tas. L. R. 99.—AUS.

Sect. 1.—*Rules: Sub-sect.* 2. *Sect.* 2: *Sub-sects.* 1 & 2, *A. & B.*]

for an explanation, which he refused to give. They then called on him to resign, & as he did not comply with their recommendation, they duly summoned a general meeting, at which a resolution was passed by the requisite majority expelling pltf. from the club:—*Held:* (3) the ct. would not interfere to restrain the committee from excluding pltf. from the club; (4) the fact that a decision is unreasonable may be strong evidence of malice but it is not conclusive, & may be rebutted by evidence of *bona fides*.—DAWKINS *v.* ANTROBUS (1881), 17 Ch. D. 615; 44 L. T. 557; 29 W. R. 511, C. A.; *affg.* (1879), 41 L. T. 490.

Annotations:—As to (1) **Consd.** Lambert *v.* Addison (1882), 46 L. T. 20. **Folld.** Young *v.* Ladies' Imperial Club, [1920] 1 K. B. 81. **Refd.** Baird *v.* Wells (1890), 59 L. J. Ch. 673; Hope *v.* I'Anson & Weatherby (1901), 18 T. L. R. 201. *As to* (2) **Refd.** Kelly *v.* National Soc. of Operative Printers (1915), 113 L. T. 1055. *As to* (3) **Distd.** Labouchere *v.* Wharncliffe (1879), 41 L. T. 638. **Refd.** Gray *v.* Allison (1909), 25 T. L. R. 531.

19. —— To provide for readmission of member —Committee empowered to make bye-laws.]—(1) A club rule provided that all its concerns & arrangements for management should be conducted by a committee who should have all needful powers for its government, election of members, of additional committee members, & should be empowered to publish bye-laws as they deemed expedient. Other rules provided that the entrance fee should be subject to any modification by the committee; that proposed new members should be ballotted for, & their names posted for fourteen days. The committee passed a bye-law that retired members might be readmitted on payment of back subscriptions, & G. & others were readmitted not only without entrance fee, but without the other formalities prescribed by the rules:—*Held:* the bye-law was within the powers of the committee.

(2) A rule empowered a majority of two-thirds of the committee to expel any member whose conduct they deemed injurious to the character & interests of the club. Pltf., a member, had at a club meeting protested against G.'s readmission as being contrary to the rules, & designated the committee as a "pocket borough" & on another evening, Nov. 30, 1881, pltf. used the same term in the club-house, stating also that "the committee could propose & alter any rules they deemed fit." Some of pltf.'s remarks were made at the bar of the club. The committee by a majority of two-thirds passed a resolution that pltf.'s conduct on Nov. 30, 1881, & in the club generally, in publicly disparaging the committee before strangers & the club servants, was injurious to the character & interests of the club, & that pltf. be requested to resign. The majority included G. without whose vote it would not have been complete. Pltf. moved to restrain the committee from expelling him, alleging that the resolution was solely the result of ill-will towards him on the part of some of the committee, & particularly of G., & not of a *bonâ fide* regard for the interests of the club:—*Held:* there was nothing to show that the resolution of the committee was not *bonâ fide*, the reason given not being of itself evidence of malice, & the ct. would not interfere.—LAMBERT *v.* ADDISON (1882), 46 L. T. 20.

20. —— To discontinue one of several purposes of club—Express power to alter by resolution of prescribed majority—Alteration confined to management of concerns of club.]—The H. club was formed in 1868 with express powers to alter any of its rules by the resolution of a prescribed majority. The rules were accordingly altered from time to time, & the subsisting rule 2 read thus: "The club is instituted for the purpose of providing a ground for pigeon-shooting, polo, & other sports surrounded with such accessories & so situated as to render it an agreeable country resort." Rule 22 (*b*) gave a power to alter rules with the sanction of a majority of two-thirds of the members at the annual general meeting; rule 22 (*c*) confined the subjects which could be brought forward at any such annual general meeting to those which related to the management of the concerns of the club. Pigeon-shooting had been carried on at the club from its commencement down to 1905, prizes being given & competitions arranged by the committee. Polo & other sports had also been carried on for a shorter period. At a general meeting of the club held in May 1905, a resolution was passed by the requisite majority that as from Dec. 31, 1905, pigeon-shooting should be discontinued at the club. The minority brought an action against the trustees & committee for a declaration that the resolution was null & void, on the ground that it was not competent to the majority, under the guise of altering the rules of the club, to change its fundamental object:—*Held:* (1) no one of the objects in rule 2, was more a fundamental object of the club, in the sense that it could not be varied or excluded than any other mentioned in the rule; what had been done was within the power of altering the rules, & consequently no such declaration as was asked for ought to be made; (2) the general power of altering the rules contained in rule 22 (*b*) was not cut down by rule 22 (*c*).—THELLUSSON *v.* VALENTIA (VISCOUNT), [1907] 2 Ch. 1; 76 L. J. Ch. 465; 96 L. T. 657; 23 T. L. R. 455; 51 Sol. Jo. 427, C. A.

21. Effect of—Binding if made bonâ fide.]—Where, in the case of a voluntary assocn. to provide for the support of such of the members as may become incapacitated for their work, there is a power to alter the rules of the assocn., such a power is *primâ facie* valid, &, if used *bonâ fide*, it has the effect of making all existing members bound by the altered rules, provided that the alteration does not go to the foundation of the association & is not incompatible with its fundamental object.—MORGAN *v.* DRISCOLL (1922), 38 T. L. R. 251.

SECT. 2.—ELECTION, RESIGNATION AND EXPULSION OF MEMBERS.

SUB-SECT. 1.—ELECTION AND RESIGNATION.

22. Election—Eligibility—Law society club.]—FORD *v.* INCORPORATED LAW SOCIETY (1887), 3 T. L. R. 633.

When membership commences.]—*See* No. 106, *post*.

23. Resignation — Operates from receipt — Acceptance unnecessary.]—The members of a voluntary trade protection society became such by election, & paid an annual subscription, in

g. Re-election — After insolvency — Discretion of committee.]—R., an ex-member of a club had, under a rule, on insolvency *ipso facto* ceased to be a member. The rule provided that the insolvent might be re-elected by the committee at their discretion without payment of entrance fee. R., on rehabilitation, applied to the committee for re-election. The committee replied that they were not prepared to exercise their discretion under the rule. The facts showed that the committee had acted *bonâ fide*, had not done anything contrary to natural justice, & their action was within the powers conferred by the rules:—*Held:* their discretion had been properly exercised.—RAINSFORD

return for which they were entitled to legal assistance for the purposes of their trade & to some other benefits. By the rules the members incurred no obligation beyond the payment of their subscriptions. The rules contained no provision as to the retirement or expulsion of the members :—*Held :* (1) a member was entitled to retire at any time without any consent of the other members ; (2) on the receipt by the society of a letter from a member stating his wish to retire he at once ceased to be a member, without the necessity of the acceptance by the society of his resignation ; (3) he could not before acceptance withdraw his resignation ; (4) he could not become a member again without re-election —FINCH *v.* OAKE, [1896] 1 Ch. 409 ; 65 L. J. Ch. 324 ; 73 L. T. 716 ; 60 J. P. 309 ; 12 T. L. R. 156 ; 40 Sol. Jo. 224, C. A.

SUB-SECT. 2.—EXPULSION.

A. Must be in Accordance with Rules.

24. Power to expel after inquiry by committee —Inadequate inquiry—Meeting summoned without proper notice—Insufficient majority.]—The rules of a club provided that in case the conduct of any member should, in the opinion of the committee after inquiry, be injurious to the welfare & interests of the club, the committee should call upon him to resign, & in the event of his refusal to do so, should call a general meeting, which was to be called on giving a fortnight's notice at which it should be competent for the votes of two-thirds of those present to expel such member. The committee having called on pltf., a member of the club, to resign on the alleged ground that his conduct was injurious to its interests, pltf. having refused to do so, a general meeting was summoned by notices issued on Nov. 1 for Nov. 14, when 117 members were present of whom 115 voted, 77 in favour of a resolution for expelling pltf., & 38 against it. The resolution was declared to be carried :—*Held :* (1) the committee had acted without full inquiry & without giving pltf. notice of any definite charge ; (2) the general meeting was summoned without proper notice ; (3) the resolution was carried by an insufficient majority ; & (4) pltf. was entitled to an injunction to restrain the committee from interfering with the enjoyment by pltf. of the use & benefit of the club.—LABOUCHERE *v.* WHARNCLIFFE (EARL) (1879), 13 Ch. D. 346 ; 41 L. T. 638 ; 28 W. R. 367.

Annotations :—As to (1) **Refd.** Russell *v.* Russell (1880), 14 Ch. D. 471 ; De Souza *v.* British Museum Trustees (1886), 2 T. L. R. 586 ; Hope *v.* I'Anson & Weatherby (1901), 18 T. L. R. 201 ; Gray *v.* Allison (1909), 25 T. L. R. 531. *Generally* **Distd.** Cassel *v.* Inglis, [1916] 2 Ch. 211. **Refd.** Dawkins *v.* Antrobus (1881), 44 L. T. 557 ; Baird *v.* Wells (1890), 44 Ch. D. 661 ; Lapointe *v.* Assocn. de Bienfaisance et de Retraite de la Police de Montréal, [1906] A. C. 535 ; R. *v.* Housing Appeal Tribunal, *Ex p.* Alhambra Picture Theatre, Huddersfield (1920), 123 L. T. 673. **Mentd.** Royal Aquarium & Summer & Winter Garden Soc. *v.* Parkinson, [1892] 1 Q. B. 431.

25. —— One committee member not summoned—Notice insufficient as to objects of meeting.]—One of the rules of a ladies' proprietary club provided that if the conduct of any member should, in the opinion of the executive committee, be injurious to the character & interests of the club, the committee should have power to suspend the member from the use of the club & to recommend her to resign, & if she did not do so within a certain time, the committee should erase her name from the list of members, provided that no member could be so suspended or recommended to resign unless a resolution to that effect should have been passed by a certain majority of the members of the committee actually present at a meeting specially convened for the purpose. Acting under the rule the committee of deft. club recommended pltf., who was a member, to resign, &, as she did not do so, the committee erased her name from the list of members. The notice convening the meeting of the committee stated that the object of the meeting was "to report on & discuss the matter concerning [pltf.] & Mrs. L.," & it was sent to each member of the committee except one, who had previously intimated to the chairman that she would be unable to attend meetings of the committee. In an action for a declaration that pltf. was still a member of the club :—*Held :* (1) the omission to summon the absent member of the committee invalidated the proceedings of that body ; (2) that the notice did not state the object of the meeting with sufficient particularity.—YOUNG *v.* LADIES' IMPERIAL CLUB, [1920] 2 K. B. 523 ; 89 L. J. K. B. 563 ; 123 L. T. 191 ; 36 T. L. R. 392 ; 64 Sol. Jo. 374, C. A.

26. Power to expel for infringing rules — No actual infringement of rules—Conduct prejudicial to club.]—The committee of a working man's club who, by the rules, are to enforce them with power to expel members for infringing them, subject to appeal from the decision of the committee to a special general meeting of the club, have no inherent jurisdiction to expel a member who has not actually infringed any of the rules, though guilty of conduct displeasing to the committee & prejudicial to the club in endeavouring to obtain a conviction against the club for a breach of the excise laws ; especially where no opportunity was given to the expelled member of appearing before the committee for the purpose of explaining his conduct.—FOSTER *v.* HARRISON, [1881] W. N. 171.

See, also, No. 39, *post.*

B. Must be in Accordance with Natural Justice.

27. Member entitled to be heard in defence —No rule as to expulsion—Society owning no property.]—Any society may make any rules by which the admission & expulsion of its members are to be regulated, & the members must conform to those rules ; but where there is not any property in which all the members of the society have a joint interest, & where there is no rule as to expulsion, the majority may, by resolution, remove any member ; but, before that is done, notice must

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v. SALISBURY CLUB TRUSTEES (1914), S. R. 65.—S. AF.

h. *Resignation — Necessity for written notice.*]—The rules laid down that a member "must send in written notice of his resignation" :—*Held :* compliance with the rule was necessary to relieve a person from membership. —LIMERICK HORSE SHOW SOCIETY *v.* RYAN (1897), 31 I. L. T. 215.—IR.

PART III. SECT. 2, SUB-SECT. 2.—A.

26 i. *Power to expel for default in payment of subscription—Notice to members.*]—Rules provided that a member whose subscription was in arrear for one calendar month, & who should still be in default one month after having received notice from the secretary, should be liable to have his name posted on the notice board of the club ; and after a certain interval be liable to be expelled by the committee. Further, it was provided that such notice should be deemed to have been served on the date on which it had been posted :—*Held :* (1) to entitle the committee to exercise the powers of expulsion, the notice must have been sent to the proper address of such member, or to an address given by such member to the secretary ; (2) on failure clearly to prove such posting, the decision of the committee might be upset & the member reinstated.—EHRLICH *v.* JOHANNESBURG TURF CLUB, [1903] T. S. 677.—S. AF.

PART III. SECT. 2, SUB-SECT. 2.—B.

27 i. *Member entitled to be heard in defence—No rule as to expulsion.*]—The directors of a club, without hearing the member & notwithstanding a request to be heard, resolved to suspend her from membership :—*Held :* the resolution of the directors was a void act, & did not affect her

Sect. 2.—Election, resignation and expulsion of members: Sub-sect. 2, B.]

be given to him to answer the charge made against him, & an opportunity given to him for making his defence.

A member of such a society had used menacing language towards another member of the society, & for this a majority of a general meeting of the society voted that he should no longer be considered a member of the society, but did not give him any notice of the intention to take his conduct into consideration, or any opportunity of making his defence :—*Held :* this expulsion was invalid, & he was still a member of the society.—INNES *v.* WYLIE (1844), 1 Car. & Kir. 257 ; 8 J. P. 280, N. P. ; *subsequent proceedings*, 8 J. P. Jo. 295.

Annotations :—**Refd.** Wood *v.* Woad (1874), L. R. 9 Exch. 190 ; Kelly *v.* National Soc. of Operative Printers (1915), 113 L. T. 1055.

28. —— Member not guilty of fraud in connection with election.]—By the charter of the Saddlers' Co., the wardens & assistants were empowered to elect assistants from the freemen, & to remove any for ill conduct or other reasonable cause, & to make such bye-laws as should seem to them salutary & necessary for the good government of the body in general & its various officers ; no qualification for an assistant, beyond that of being a freeman, was imposed by the charter itself, but certain oaths were to be taken after election & before admission, & any election contrary to the directions or restrictions of the charter was declared void. An assistant was eligible to become warden, which was an office of trust, the holder of it having the custody & disposal of the corporate funds. A bye-law was duly made, that no person who has been bkpt., or become otherwise insolvent, should hereafter be admitted a member of the ct. of assistants, unless it be proved to the satisfaction of the ct. that such person, after his bkpcy. or insolvency, had paid his creditors in full, or should have established a fair & honourable character for the seven years subsequent. D., being otherwise qualified, but being in insolvent circumstances, & unable to pay his creditors 20*s.* in the pound, was elected an assistant, & after his election, of which he was not aware, but before his admission, he made to the agent of the wardens & assistants a statement, false to his own knowledge, that he was solvent ; he was then admitted, & exercised the office of assistant. D. was afterwards adjudged bkpt., & this & his false statement having come to the knowledge of the wardens & assistants, they, at a meeting duly held, but of which D. had no notice or knowledge, expelled him from the office. D., having obtained a *mandamus* to restore him, the above facts appeared on the record :—*Held :* (1) the bye-law was valid ; (2) its validity depended on the meaning of the words "or become otherwise insolvent," & these words must be construed to mean notorious or avowed insolvency, such as stopping payment or compounding with creditors, & not a mere inability of a person to pay his debts in full ; (3) as D. was admitted to the office of assistant without such fraud as rendered his admission void, he could not be legally removed without being heard in his defence, & he was entitled to a peremptory *mandamus*.—R. *v.* SADDLERS' CO. (1863), 10 H. L. Cas. 404 ; 32 L. J. Q. B. 337 ; 9 L. T. 60 ; 28 J. P. 36 ; 9 Jur. N. S. 1081 ; 11 W. R. 1004 ; 11 E. R. 1083, H. L. ; *subsequent proceedings*, 4 B. & S. 570.

Annotations :—*As to* (2) **Consd.** Sissons *v.* Sissons (1910), 54 Sol. Jo. 802 ; James *v.* Rockwood Colliery Co. (1912), 106 L. T. 128 ; London & Counties Assets Co. *v.* Brighton Grand Concert Hall & Picture Palace, [1915] 2 K. B. 493.

29. —— Rule providing for expulsion.] —Pltf. was a member of a marine insurance assocn., & defts. were the committee of the society. The rules provided that the committee should have entire control of its affairs, & that if the committee should at any time deem the conduct of any member suspicious, or that such member was for any other reason unworthy of remaining in the society, they should have full power to exclude such member by directing the secretary to give such member notice in writing that the committee had excluded such member . . . & after the giving of such notice the member should be excluded, & have no claim to be responsible for or in respect of any loss or damage happening after such notice. Pltf. alleged that he was entitled to receive, &, but for the grievances thereinafter mentioned, would have received, from the funds of the society an indemnity for any loss or damage to his ship by the perils of the sea during his membership, & that defts., wrongfully, collusively, & improperly contriving to deprive pltf. of the benefit of such indemnity . . . did wrongfully, collusively, & improperly expel pltf. from the society, on the alleged ground that his conduct was, in the terms of the rule, suspicious, without any just, reasonable, or probable cause whatsoever for such expulsion, & without giving him any opportunity of being heard, & without in fact hearing pltf. or any person on his behalf in defence & vindication of his conduct. A few days after the expulsion, pltf.'s ship sustained damage, &, but for the expulsion, he would have been entitled to receive, & would have received a certain sum as indemnity for the damage, & by reason of his expulsion he lost the said sum :—*Held :* the declaration was bad ; (*per* KELLY, C.B. & AMPHLETT, B.) because as the committee had not heard pltf., nor given him an opportunity of being heard before them in his own defence, their act of expulsion was void, & he remained still a member of the society, & entitled to all his rights of membership, & had not suffered the damage alleged ; (*per* CLEASBY, B.)

rights as a member of the club.—GRAHAM *v.* SINCLAIR (1918), 25 C. L. R. 102 ; 18 S. R. N. S. W. 550 ; 35 N. S. W. W. N. 104.—AUS.

27 ii. —— ——.]—G. was expelled by the committee of a club on the ground that he had published a pamphlet which they considered a libel & for writing letters to members of the committee ; he did not have an opportunity of defending himself on the charge of writing the letters :—*Held :* his expulsion was illegal.—GOMPERTZ *v.* GOLDINGHAM (1886), I. L. R. 9 Mad. 319.—IND.

29 i. —— *Rule providing for expulsion.*]—Pltf. was expelled from V. Racing Club under a rule authorising expulsion "for suspicious circumstances" in connection with the running of a horse ; he was not given an opportunity of defending himself. In an action to restrain the club from expelling him :—*Held :* misconduct in respect of the running of the horse did not disentitle pltf. to the relief claimed, the question of his guilt or innocence of such misconduct not being in issue in the action.—MEYERS *v.* CASEY (1913), 17 C. L. R. 90.—AUS.

29 ii. —— ——.]—The rules of a club provided for the expulsion of a member who, after having been given every facility to be heard in self-defence before the committee, should be found guilty of improper & ungentlemanly conduct. A member was informed by the committee that an inquiry was to be made into allegations made against his conduct in book-making transactions & he was called upon to appear & give evidence at such inquiry. He appeared & gave evidence. No specific charge was made against him, & he was never called upon to defend himself. After the inquiry he was expelled from the club :—*Held :* the committee in expelling him had violated the provisions of the rules of the club & the elementary principles of justice.—GOLDMAN *v.* JOHANNESBURG CLUB, [1904] T. H. 251.—S. AF.

29 iii. —— —— *Principles of natural justice.*]—The rules of a Jockey Club provided that the stewards of a race

because, even if a fraudulent expulsion would have been actionable, there was no allegation that the act of defts. had been fraudulently done; (*per* POLLOCK, B.) because the declaration omitting any distinct allegation of fraud did not show such a wrongful act as would be actionable without damage, & the expulsion being invalid, the damage laid had not occurred.—WOOD *v.* WOAD (1874), L. R. 9 Exch. 190; 43 L. J. Ex. 153; 30 L. T. 815; 22 W. R. 709; 2 Asp. M. L. C. 289.

Annotations:—**Distd.** Cooper *v.* Page (1876), 34 L. T. 90. **Consd.** Russell *v.* Russell (1880), 14 Ch. D. 471. **Expld.** James *v.* Chartered Accountants Institute (1907), 98 L. T. 225. **Consd.** Green *v.* Howell, [1910] 1 Ch. 495; R. *v.* Housing Appeal Tribunal, [1920] 3 K. B. 334. **Refd.** Steuart *v.* Gladstone (1879), 10 Ch. D. 626; Lapointe *v.* Assocn. de Bienfaisance et de Retraite de la Police de Montréal, [1906] A. C. 535; D'Arcy *v.* Adamson (1913), 29 T. L. R. 367; Cassel *v.* Inglis, [1916] 2 Ch. 211; Weinberger *v.* Inglis, [1919] A. C. 606; R. *v.* Leman Street Police Station Inspector, *Ex p.* Vinicoff (1920), 89 L. J. K. B. 1200.

30. —— Member entitled to notice of charge against him—Rule providing for expulsion.]—The committee of a club, being a *quasi*-judicial tribunal, are bound, in proceeding under their rules against a member of the club for alleged misconduct, to act according to the ordinary principles of justice, & are not to convict him of an offence warranting his expulsion from the club without giving him due notice of their intention to proceed against him, & affording him an opportunity of defending or palliating his conduct: & the ct. will at the instance of any member so proceeded against, declare any resolution passed by the committee without previous notice to him, based upon *ex parte* evidence & purporting to expel him from the club, to be null & void, & will restrain the committee by injunction from interfering, by virtue of such a resolution, with his rights of membership. —FISHER *v.* KEANE (1878), 11 Ch. D. 353; 49 L. J. Ch. 11; 41 L. T. 335.

Annotations:—**Consd.** Labouchere *v.* Wharncliffe (1879), 41 L. T. 638; D'Arcy *v.* Adamson (1913), 29 T. L. R. 367. **Distd.** Cassel *v.* Inglis, [1916] 2 Ch. 211. **Refd.** Russell *v.* Russell (1880), 14 Ch. D. 471; De Souza *v.* British Museum Trustees (1886), 2 T. L. R. 586; Baird *v.* Wells (1890), 44 Ch. D. 661; Hope *v.* I'Anson & Weatherby (1901), 18 T. L. R. 201; Lapointe *v.* Assocn. de Bienfaisance et de Retraite de la Police de Montréal, [1906] A. C. 535; R. *v.* Housing Appeal Tribunal, *Ex p.* Alhambra Picture House, Huddersfield (1920), 123 L. T. 673.

31. —— —— ——.]—ANDREWS *v.* SALMON (1888), 4 T. L. R. 490.

32. —— —— ——.]—Pltf. claimed a declaration that a resolution expelling him from a club of which he was a member was null & void, & also an injunction restraining the defts. as members of the committee from interfering with him as a member of the club:—*Held:* pltf. was entitled to the declaration & injunction claimed inasmuch as no notice was given to him of the charge preferred against him & upon which defts. purported to act in expelling him, &, therefore, his expulsion was in those circumstances contrary to natural justice. —GRAY *v.* ALLISON (1909), 25 T. L. R. 531.

33. —— —— ——.]—Pltf. claimed an injunction restraining defts., representing the committee of a club to which pltf. belonged, from interfering with his enjoyment of the use & benefit of the club. The committee had passed a resolution, in accordance with one of the rules, recommending pltf. to send in his resignation, which, if not complied with, would have been followed up by his expulsion, owing to his alleged disregard of the rules of the club:—*Held:* pltf. was entitled to the injunction claimed as he had had no notice of the real reasons upon which the committee had acted in coming to the resolution in question, & thus had no opportunity of being heard thereon.—D'ARCY *v.* ADAMSON (1913), 29 T. L. R. 367; 57 Sol. Jo. 391.

34. —— —— Notice not delivered through members' own negligence—Charter providing for expulsion.]—By a clause in the charter of an institute it was provided that if any person while he was a member of the institute failed to pay any subscription for six months after the same had become due he should be liable to be excluded from membership by a resolution of the council passed at a meeting specially convened for that purpose, the member having first had an opportunity of being heard, & that notice of such exclusion should be sent to the person affected thereby. In 1903, pltf., who was a member of the institute, failed through oversight to pay his annual subscription which fell due in Jan. of that year. Notices were in Sept. 1903 & on a subsequent occasion given to pltf. by letters sent through the post to pltf.'s address as registered in the books of the institute, calling attention to such failure. These letters were, however, returned through the Dead Letter Office as pltf. had changed his address but he had omitted to give information to the institute or to the Post Office of such change. In Oct. 1903, the council of the institute passed a resolution excluding the pltf. from membership:—*Held:* (1) pltf. had solely by reason of his own negligence not received notice of the proposed meeting of the council at which he was to be excluded from membership; (2) communication through the Post Office must have been within the contemplation of the parties in respect to all matters regulating their contractual rights; (3) there was nothing more that the council were bound to do in order to give pltf. an opportunity of being heard.—JAMES *v.* CHARTERED ACCOUNTANTS INSTITUTE (1907), 98 L. T. 225; 24 T. L. R. 27, C. A.

35. What constitutes unfair proceedings.]—L., a fellow of the Chartered Institute of Patent Agents, brought an action against the Institute for a declaration that certain resolutions passed by the council to the effect that L. had been guilty of acts discreditable to a patent agent & that he should be excluded from membership of the Institute were invalid & *ultra vires*, & that the Institute should be restrained from acting thereon. An application had been made by the council to the Board of Trade for erasure of L.'s name from the register of members on the ground of professional misconduct, but this failed. Subsequently the council called upon L. to show cause at a meeting of the council why he should not be excluded or suspended. L. attended the meeting

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meeting might hold an inquiry, inflict a limited punishment after such inquiry, & were then to make a report & transmit the records of the inquiry to the Jockey Club, who might inflict a further punishment, *e.g.* warning off. In an action against the club:—*Held:* (1) the club might act on the records of the inquiry held by the stewards of the race meeting without themselves conducting a further inquiry into the same circumstances; (2) if a distinct charge is made, & the person charged has an opportunity of meeting it, the requirements of natural justice are satisfied. It is not a principle of natural justice that the person charged should be present during the whole of such inquiries, or that he should have the right to cross-examine.—JOHNSON *v.* JOCKEY CLUB OF SOUTH AFRICA, [1910] W. L. D. 136.—**S. AF.**

30 i. —— *Whether entitled to particulars of charge against him—Rule providing for expulsion.*]—A charge, upon proof of which a member had been expelled, had been made, discussed, & replied to, in the public prints; the accused person had taken part in such discussion, & when calling upon him to show cause against his proposed expulsion, specific particulars of the accusation were not given:—*Held:* a general statement was sufficient.—GUINANE *v.* SUNNYSIDE BOATING CO. OF TORONTO (1893), 21 A. R. 49.—**CAN.**

Sect. 2.—Election, resignation and expulsion of members: Sub-sect. 2, B., C., D., E. & F. Sect. 3.]

& objected to the jurisdiction of the council, in so far as it was composed of members who had taken any active or substantial part in the previous proceedings, to adjudicate. An adjournment was asked for, & refused. L. thereupon withdrew, & after his departure the council passed the resolutions in question:—*Held:* (1) the conduct of the council in preferring & supporting the charges against L. made before the Board of Trade would be calculated to raise grave doubts of their ability to conduct with impartiality a judicial investigation into the truth of the same charges; (2) the resolutions complained of were invalid & *ultra vires* on the ground that the council as then constituted, had no jurisdiction to adjudicate on the matters on which the resolutions were passed; (3) L. was entitled to judgment in the action.—LAW *v.* CHARTERED INSTITUTE OF PATENT AGENTS, [1919] 2 Ch. 276; 88 L. J. Ch. 319; 121 L. T. 50; 35 T. L. R. 385; 63 Sol. Jo. 447; 36 R. P. C. 163.

See, also, No. 39, *post.*

C. Must be Bonâ Fide.

36. Committee must act bonâ fide—For general interest of members.]—Where a member is expelled from a club the governing body must act with an honest & *bonâ fide* desire for the general interests of the members, & not from any indirect or sinister motive or spiteful *animus* against the member expelled.—TANTUSSI *v.* MOLLI (1886), 2 T. L. R. 731.

37. —— Whether their opinion just or unjust immaterial.]—When the committee of a club have power to expel any member whose conduct is in their opinion injurious to the interests of the club, & they exercise this power, all that is required is that the committee should form their opinion in a *bonâ fide* way, & the question whether their opinion is just or unjust is immaterial.

Two members of a club concerting together returned to a third member a number of circulars issued by him, sending them back in unpaid envelopes addressed in an annoying way; & one of the two members also sent one of the circulars, unpaid, to the committee of another club, to which the third member also belonged, & put the third member's initials outside the envelope. The third member complained to the committee of the club, charging one of the two members with the whole offence, & describing the last mentioned act as "forging his initials for an unworthy purpose." The committee having ascertained that the individual charged had only sent half the circulars to complainant, & that the envelope bearing the complainant's initials was not sent by him nor with his express knowledge, expelled complainant from the club. The expelled member filed a bill & moved for an interlocutory injunction to restrain the committee from enforcing their sentence:—*Held:* the ct. had no jurisdiction to interfere.—RICHARDSON-GARDNER *v.* FREMANTLE (1870), 24 L. T. 81; *sub nom.* GARDNER *v.* FREMANTLE, 19 W. R. 256.

Annotation:—**Mentd.** Young *v.* Ladies' Imperial Club, [1920] 1 K. B. 81.

See, also, Nos. 18, 19, 24, 29, *ante,* Nos. 39–42, 44, 46, *et seq., post.*

D. Interference by Court to Prevent.

38. General rule—Foundation of jurisdiction—Must be right of property involved.]—The foundation of the jurisdiction of a ct. of equity to interfere in the case of a society or club on the expulsion of a member is the invasion of some right of property in the member, & therefore if the society or club has no property, the ct. cannot interfere. Such right of property must be alleged in the statement of claim, as otherwise it will be demurrable.—RIGBY *v.* CONNOL (1880), 14 Ch. D. 482; 49 L. J. Ch. 328; 42 L. T. 139; 28 W. R. 650.

Annotations:—**Folld.** Duke *v.* Littleboy (1880), 49 L. J. Ch. 802. **Distd.** Wolfe *v.* Matthews (1882), 21 Ch. D. 194. **Consd.** Baird *v.* Wells (1890), 44 Ch. D. 661; Yorkshire Miners' Assocn. *v.* Howden, [1905] A. C. 256; Osborne *v.* Amalgamated Soc. of Ry. Servants, [1911] 1 Ch. 540. **Expld.** Braithwaite *v.* Amalgamated Soc. of Carpenters, [1921] 2 Ch. 399. **Refd.** Millican *v.* Sullivan (1888), 4 T. L. R. 203; Winder *v.* Kingston-upon-Hull Incorporation for the Poor (1888), 58 L. T. 583; Swaine *v.* Wilson (1889), 24 Q. B. D. 252; Old *v.* Robson (1890), 59 L. J. M. C. 41; Mullett *v.* United French Polishers' London Soc. (1904), 91 L. T. 133; Steele *v.* South Wales Miners' Federation, [1907] 1 K. B. 361; Cope *v.* Crossingham, [1908] 2 Ch. 624; Cassel *v.* Inglis, [1916] 2 Ch. 211. **Mentd.** Ryan *v.* Mutual Tontine Westminster Chambers Assocn. (1892), 62 L. J. Ch. 252; Chamberlain's Wharf *v.* Smith, [1900] 2 Ch. 605; Taff Vale Ry. *v.* Amalgamated Soc. of Ry. Servants, [1901] A. C. 426; Cullen *v.* Elwin (1904), 90 L. T. 840; Amalgamated Soc. of Ry. Servants *v.* Osborne, [1910] A. C. 87.

39. —— —— —— Members' clubs & proprietary clubs distinguished.]—(1) The jurisdiction of the ct. to interfere in the case of a club on the expulsion of a member is based upon the right of property vested in the member.

(2) In the case of an ordinarily constituted club, in which members have rights of property, a member whose rights have been interfered with by the committee is entitled to ask the ct. to consider whether the rules of the club have been observed; whether anything has been done which is contrary to natural justice; & whether the decision complained of has been come to *bonâ fide.*

(3) In the case of a proprietary club, in which members have no right of property, a member who has been expelled by a committee, though the proceedings were irregular, cannot obtain relief by way of injunction, but will be left to obtain it in damages.—BAIRD *v.* WELLS (1890), 44 Ch. D. 661; 59 L. J. Ch. 673; 63 L. T. 312; 39 W. R. 61; 6 T. L. R. 229, C. A.

Annotations:—*As to* (1) **Consd.** Young *v.* Ladies' Imperial Club, [1920] 1 K. B. 81. **Refd.** Finch *v.* Oake (1896), 60 J. P. 309. *As to* (2) **Refd.** Gray *v.* Allison (1909), 25 T. L. R. 531; Kelly *v.* National Soc. of Operative Printers (1915), 113 L. T. 1055.

40. Court will not interfere—When member expelled bonâ fide—& in accordance with rules.]—The rules of the C. Club authorised the committee to call a general meeting in case any circumstance should occur likely to endanger the welfare & good order of the club, & provided that any member might be removed by the votes of two-thirds of the persons present at such meeting. On a bill filed by

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PART III. SECT. 2, SUB-SECT. 2.—D.

38 i. *General rule—Foundation of jurisdiction—Must be right of property involved.*]—The foundation of a ct.'s jurisdiction to prevent an improper expulsion of a member rests upon the principle that by such expulsion the member may be deprived of his right of property.—HUMPHREY *v.* WILSON, [1917] 3 W. W. R. 529.—CAN.

38 ii. —— —— ——.]—ROWE *v.* HEWITT (1906), 12 O. L. R. 13; 7 O. W. R. 543.—CAN.

40 i. *Court will not interfere—When member expelled bonâ fide—& in accordance with rules.*]—Where a resolution of a committee of a club expelling a member is within the powers of such committee & has been honestly arrived at without violating any elementary principle of justice, the ct. has no power to consider an appeal from such resolution & order such member to be re-instated.—HERZBERG *v.* JOHANNESBURG STOCK EXCHANGE, [1903] T. H. 336.—S. AF.

40 ii. —— —— *Even if legal rules of evidence ignored.*]—In exercising disciplinary jurisdiction under a bye-law providing that "any member guilty of conduct which, in the opinion of the committee, merits such course, may be expelled," the committee are not

a member so removed praying to be reinstated in his rights as a member of the club :—*Held :* as in the judgment of the ct. the meeting was fairly called, & the decision arrived at *bonâ fide*, & not through caprice, such decision was final, & the ct. had no jurisdiction to interfere.—HOPKINSON *v.* EXETER (MARQUIS) (1867), L. R. 5 Eq. 63 ; 37 L. J. Ch. 173 ; 17 L. T. 368 ; 32 J. P. 195 ; 16 W. R. 266.

Annotations :—**Refd.** Rigby *v.* Connol (1880), 14 Ch. D. 482 ; Lambert *v.* Addison (1882), 46 L. T. 20 ; Tantussi *v.* Molli (1886), 2 T. L. R. 731.

41. —— —— ——.]—Where, by the rules of a club, the committee is empowered to expel any member whose conduct shall, in the opinion of the committee, be injurious to the character & interests of the club, & the committee exercise their power *bonâ fide*, the ct. will not interfere to reinstate the expelled member. The ct. has no jurisdiction to interfere in such a case.—RICHARDSON-GARDNER *v.* FREMANTLE (1870), 24 L. T. 81 ; *sub nom.* GARDNER *v.* FREMANTLE, 19 W. R. 256.

Annotation :—**Mentd.** Young *v.* Ladies' Imperial Club, [1920] 1 K. B. 81.

42. —— —— —— **Proprietary club.**]—(1) The committee of a club had, by the rules, power to expel any member whose conduct they thought injurious to the character & interests of the club. One of the members wrote to the committee a letter which they considered discourteous, & as they felt they could not pass it over without weakening their authority, & that would be highly injurious to the interests of the club, they expelled him. The member filed a bill to have his name restored to the list of members :—*Held :* on the facts, the power had been exercised *bonâ fide*, & not capriciously, & the ct. could not interfere.

(2) The club was a proprietary club, that is, a club where a person, not a member, took the fees & subscriptions, & provided what was requisite for the use of the members :—*Semble :* on this ground alone, the bill could not have been sustained, as pltf. did not retain an interest in property.—LYTTELTON *v.* BLACKBURNE (1875), 45 L. J. Ch. 219 ; 33 L. T. 641.

43. —— —— —— **Opportunity of explanation given.**]—DAWKINS *v.* ANTROBUS, No. 18, *ante*.

44. —— —— —— ——.] — HARRISON *v.* ABERGAVENNY (MARQUIS), THE CONSTITUTIONAL CLUB (1887), 3 T. L. R. 653, C. A.

Annotation :—**Mentd.** Temperton *v.* Russell (1893), 9 T. L. R. 298.

45. —— —— ——.]—LAMBERT *v.* ADDISON, No. 19, *ante*.

46. —— —— ——.] — SEATON *v.* GOULD (1889), 5 T. L. R. 309.

47. Court will interfere — Where unauthorised alteration in rules—Member refusing to pay increased subscription.]—HARINGTON *v.* SENDALL, No. 17, *ante*.

E. Remedies for Wrongful Expulsion.

48. Proprietary club — Damages.] — BAIRD *v.* WELLS, No. 39, *ante*.

49. Members' club — Injunction.] — BAIRD *v.* WELLS, No. 39, *ante*.

F. Effect of Expulsion.

50. Excluded member not entitled to use name of institution.]—Deft. took honours at the final examination for membership of the Institute of Chartered Accountants in England & Wales, but he was afterwards adjudicated bkpt. & was excluded from membership under the provisions of the charter of the Institute. After his exclusion deft. continued to use letter-paper headed "Honours Final. Institute of Chartered Accountants." In an action by the Institute for an injunction the evidence was that this heading conveyed the impression that deft. was still connected with the Institute :—*Held :* though deft. was entitled to state that he had obtained honours in the examination, the Institute was entitled to an injunction against his making the statement in such a way as to lead to the belief that he was a member of the Institute or was connected with it.—INSTITUTE OF CHARTERED ACCOUNTANTS OF ENGLAND & WALES *v.* HARDWICK (1918), 35 T. L. R. 342, C. A.

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SECT. 3.—**ENTRANCE FEES AND SUBSCRIPTIONS.**

51. Subscription—Who may sue for arrears.]—(1) The master of a club-house is the proper person to sue one of its members for the arrears of his subscriptions.

(2) If by one of the rules of a club, every member is to be taken as continuing so, unless he give previous notice of his intention to discontinue being a member, he is liable to be sued for his arrears of subscriptions, unless he can prove that he gave such notice.—RAGGETT *v.* BISHOP (1826), 2 C. & P. 343, N. P.

Annotation :—*As to* (2) **Consd.** I. R. Comrs. *v.* New University Club (1887), 2 Tax Cas. 279.

52. —— **Liability of members to be sued for —Until ceasing to be member in accordance with rules.**]—RAGGETT *v.* BISHOP, No. 51, *ante*.

53. —— —— **When liability commences — Whether fully admitted to membership.**]—*Re* DUTY ON ESTATE OF NEW UNIVERSITY CLUB, No. 106, *post*.

—— **Raised by alteration of rules.**]—*See* No. 17, *ante*.

54. Entrance fee payable by instalments — Death of member—Unpaid instalments not recoverable.]—W. joined a club & availed himself of a rule that the entrance fee might be paid in instalments. The rule provided that members who elected to pay their entrance fee by instalments should, in the event of ceasing to belong to the club, be liable to pay any balance due in one sum. W. having been killed after having paid one instalment, the trustees of the club sued his extrix. for the balance of the entrance fee :—*Held :* the action failed, as the rule was not intended to cover the case of death, but only cases in which a member was to remain under a personal liability.—DENISON *v.* WYNN (1909), 26 T. L. R. 64.

Actions by & against clubs & members generally, *see* Part V., *post*.

bound by legal rules of evidence, & their decision, arrived at after a fair investigation of the facts, will not be interfered with, because they have admitted as part of the evidence in proof of the charge, the informally sworn statement of one of the persons concerned in the transaction.—GUINANE *v.* SUNNYSIDE BOATING CO. OF TORONTO (1893), 21 A. R. 49.—**CAN.**

k. —— *When committee have power to expel.*]—Where the committee have the power of expulsion & act fairly the cts. have no jurisdiction to review its decision.—BARNARD *v.* PURVES (1885), 11 V. L. R. 259.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—E.

49 l. *Members' club—Injunction—Damages.*]—In a members' club the remedy is by declaration & injunction, if necessary ; apart from this the cts. take no cognisance of expulsions, except in so far as they may be a breach of contract ; & in the latter case the ordinary principles of assessing damages apply.—HUMPHREY *v.* WILSON, [1917] 3 W. W. R. 529.—**CAN.**

SECT. 4.—MANAGEMENT.

SUB-SECT. 1.—ELECTION, POWERS AND DUTIES OF COMMITTEE AND TRUSTEES.

55. Power of management — Not power to pledge credit of members.]—FLEMYNG *v.* HECTOR, No. 65, *post.*

Duties as to expulsion of members.]—*See* Sect. 2, sub-sect. 2, *ante.*

Liability on contracts made by club-servants.]—*See* Sub-sect. 2, *post.*

SUB-SECT. 2.—INDEMNITY TO COMMITTEE OR TRUSTEES.

56. Indemnity for committee or trustees — Right of contribution inter se—Assent to & ratification of act of committee.]—A. & B. & twenty-four other persons were members of the committee of management of a club. The club being in debt, a resolution was passed at a general meeting of the club, at which B. was not present, on June 1, 1852, to the effect that a loan of £4,000 was necessary to free the society from outstanding liabilities, & that the committee be empowered to raise that sum on the guarantee of the society. At a meeting of the committee on June 15, at which B. was present, the above resolution was discussed; &, at a second general meeting of the society, held on the same day, the resolution for the loan was confirmed. At a meeting of the committee on Aug. 3, at which B. was not present, the terms of a loan of £4,000 from the C. Bank were arranged, & the money was placed to the credit of the club on the 5th, their account being at the same time transferred from another bank to the C. Bank. On Aug. 12, the signatures of B. & of certain other members of the committee who were authorised to sign cheques on behalf of the club, were transmitted to the C. Bank; & various cheques were afterwards drawn by B. & other members of the committee upon the C. Bank, for the current expenses of the club. An action having been brought by the C. Bank against A., to recover the balance due to them from the club, & judgment having been recovered therein against A. for a large sum, which he had paid:—*Held:* (1) there being evidence of his previous assent to, & subsequent ratification of, the act of the committee in obtaining the loan, B. was liable to contribution; (2) the proceedings at the meetings at which he was not present were admissible in evidence against him in an action brought by A. to enforce such contribution.—MOUNTCASHELL (EARL) *v.* BARBER (1853), 14 C. B. 53; 23 L. J. C. P. 43; 22 L. T. O. S. 134; 2 W. R. 99; 2 C. L. R. 60; 139 E. R. 23.

Annotation:—As to (1) **Distd.** Whillier *v.* Roberts (1873), 28 L. T. 668.

57. —— —— Exhibition committee.] — HILL (LORD) *v.* LATHOM (EARL) (1894), 10 T. L. R. 301.

58. —— Personal liability of members—Ascertainment of—Third party procedure.]—HALL *v.* SIM (1894), 10 T. L. R. 463, D. C.

59. —— —— Not unless provided for by rules—Lien on club property.]—WISE *v.* PERPETUAL TRUSTEE CO., No. 63, *post.*

SUB-SECT. 3.—PAYMENT OF GRATUITY OR PENSION TO RETIRING OFFICIAL.

60. Rule forbidding payment out of funds to members—Income & property to be applied towards promotion of objects of club—Payment to retired secretary—Settlement of action—In interests of club.]—The memorandum of assocn. of a co., which was incorporated under the Companies Acts, but not for the purposes of gain, provided that the income & property of the club, whencesoever derived, should be applied solely towards the promotion of the objects of the club, as set forth in the memorandum of assocn., & no portion thereof should be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the club, provided that nothing therein contained should prevent the payment in good faith of remuneration to any officer or servant of the club, or to any member of the club or other person, in return for any services actually rendered to the club. The secretary of the club received a salary of £500 a year, & his employment was determinable on three months' notice. He tendered his resignation as secretary, which was accepted by the council of the club, who passed a resolution that he should be paid £125, three months' salary, less £60 alleged to be due from him to the club. This resolution was rescinded at a meeting of the club. The secretary having brought an action against the club to recover £125, the new council of the club, upon the recommendation of the finance committee, with the view of putting an end to the action, passed a resolution to pay him £125,

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PART III. SECT. 4, SUB-SECT. 1.

l. *Committee of management — Members' club.*]—A general committee of management has a general control over all that concerns the welfare & interests of the club.—DEMARCHI *v.* SPARTARI (1914), 27 W. L. R. 152.—**CAN.**

m. *Election — Member of committee.*]—Candidates for the committee of a club required nomination in writing except when members of the retiring committee. S. had not been nominated in writing & it was alleged that he had ceased to be a member of the retiring committee, by reason of absence from four consecutive meetings without leave; in the minutes there was no entry showing that leave had been granted:—*Held:* (1) the absence of such entry was not fatal, seeing that leave in fact had been granted; (2) the committee could give leave of absence although L. had not applied for it.—LANGERMAN *v.* SOUTH AFRICAN TURF CLUB (1908), 18 C. T. R. 253.—**S. AF.**

n. *Expulsion — Rules not declaring in whom power to expel vests.*]—The rules of a club in which the members had a proprietary interest provided that a member might be expelled for "conduct detrimental to the interests of the club," but did not say in whom the power of expulsion was vested. The committee had vested in it alone the power of admission of members, as well as the management of the club, & a power of putting a veto on persons proposed to be added as committeemen:—*Held:* the committee had the power to expel a member.—BARNARD *v.* PURVES (1885), 11 V. L. R. 259.—**AUS.**

o. *Turf club — Committee hearing appeals from racing clubs—Duty to act judicially.*]—The proceedings of the committee of W. Turf Club in the hearing of appeals from the decisions of racing clubs, under the jurisdiction conferred by Turf Club Act & by bye-laws thereunder, on matters connected with turf offences, are of the nature of judicial proceedings. Although the committee, in the exercise of its powers as an appellate tribunal, is not a legal ct., it acts in a similar capacity, & is bound to act in such manner as a recognised ct. of justice would act.—THOMAS *v.* HAYWARD (1907), 9 W. A. L. R. 212.—**AUS.**

PART III. SECT. 4, SUB-SECT. 2.

p. *Indemnity for committee or trustees—Authority given to committee to raise money for club purposes—Guarantee of individual members of committee—Lien on club property.*]—At a general meeting of the members of a club a resolution was passed authorising the managing committee to raise money for the purpose of improving & adding to the buildings of the club-house, & of providing necessary fittings & furniture therefor; the committee, being unable to raise the money by a mtge. of the club property, raised it on the guarantee of individual members of the committee; the members of the club enjoyed the advantages of the improvements made & the furniture bought. The individual members of the committee had personally to pay the amount raised:—*Held:* they had a lien on the club premises so added to & improved, & on the furniture & all other property of the club acquired or purchased by the money advanced by them.—MINNITT *v.* TALBOT DE MALAHIDE (LORD) (1881), 7 L. R. Ir. 407.—**IR.**

less the £60. Upon an application for an injunction to restrain the council from making the payment: —*Held:* as the payment was proposed to be made with the view of settling the action in the interests of the club, it was not *ultra vires*.—YATES *v.* CYCLISTS' TOURING CLUB (1908), 24 T. L. R. 581.

61. —— —— Grant of pension to retired secretary—In furtherance of objects of club.]—A club formed to encourage cycling, protect the rights of cyclists, & provide for the comfort of its members (who numbered 20,000) while touring, was registered with limited liability, as an assocn. not for profit, under Companies Act, 1867 (c. 131), s. 23. The Board of Trade licence, dispensing with the word "limited" in the title, was given on a condition, embodied in the memorandum of assocn., that the income should be applied solely towards the promotion of the co.'s objects, & no portion redistributed as profit to the members, but there was a proviso allowing the payment in good faith of remuneration to officers or servants or to any member in return for services actually rendered. The secretary, whose duties were multifarious & required considerable ability, had retired & been paid all salary due to him, but he remained a member of the club. A proposal to grant him a pension was passed by a majority on a general poll of the members:—*Held:* it was important to the club to be able, by generous treatment of old servants, to attract the best assistance, & therefore the payment of a pension for long & faithful service was within the powers of the club as being in furtherance of its objects & within the proviso, & none the less that it was gratuitous & there was no legal obligation to make it.—CYCLISTS' TOURING CLUB *v.* HOPKINSON, [1910] 1 Ch. 179; 79 L. J. Ch. 82; 101 L. T. 848; 26 T. L. R. 117; 54 Sol. Jo. 134; 17 Mans. 11.

SUB-SECT. 4.—DISTRIBUTION OF PROPERTY.

62. On sale of property—No provision in rules.]—Upon the sale of land belonging to a co. of the nature of a voluntary society, with no rules or provisions as to the disposition of its property:—*Held:* the members of the co. for the time being were entitled to divide the proceeds in equal shares.—BROWN *v.* DALE (1878), 9 Ch. D. 78; 27 W. R. 149.

—— On dissolution of club.]—*See* Part X., *post*.

Part IV.—Liability of Clubs and Members.

SECT. 1.—IN CONTRACT.

SUB-SECT. 1.—UNINCORPORATED MEMBERS' CLUBS.

63. General rule—Members not liable beyond subscriptions.]—(1) An ordinary club is formed upon the tacit understanding, judicially recognised, that no member as such becomes liable to pay to its funds or otherwise any money beyond the subscriptions required by its rules.

(2) Trustees of a club who have incurred liability under onerous covenants contained in a lease, accepted by them on its behalf, are entitled to indemnity out of any property of the club to which their lien as trustees extends. (3) Its members are not, by reason only of being *cestuis que trust*, personally liable to indemnify them, where there is no rule imposing such liability upon them.

(4) Clubs are assocns. of a peculiar nature. They are societies the members of which are perpetually changing. They are not partnerships; they are not assocns. for gain (LORD LINDLEY).—WISE *v.* PERPETUAL TRUSTEE CO., [1903] A. C. 139; 72 L. J. P. C. 31; 87 L. T. 569; 51 W. R. 241; 19 T. L. R. 125, P. C.

64. Member—Goods ordered by one member on behalf of club—Concurring in or subsequent assent to order.]—Where goods are ordered by one member of a club for the benefit of all, every member, who either concurs in the order or subsequently assents to it, is liable, although the member who ordered the goods is made the debtor in pltf.'s books & the bill is sent to him, unless it clearly appear that pltf. meant to give credit to that member only.—DELAUNEY *v.* STRICKLAND (1818), 2 Stark. 416, N. P.

Annotations:—**Consd.** Royal Albert Hall Corpn. *v.* Winchilsea (1891), 7 T. L. R. 362. **Refd.** Steele *v.* Gourley & Davis (1887), 3 T. L. R. 772.

65. —— Contract made by committee—Committee not authorised to pledge members' personal credit.]—A club was formed subject to the following among other rules, *viz.* that the entrance fee on admission should be ten guineas, & the annual subscription five guineas; that if the subscription were not paid within a certain limited period, the defaulter should cease to be a member; that there should be a committee to manage the affairs of the club, to be chosen at a general meeting; & that all members should discharge their club bills daily, the steward being authorised, in default of payment on request, to refuse to continue to supply them:—*Held:* (1) the members of the club, merely as such, were not liable for debts incurred by the committee for work done or goods supplied for the use of the club, for the committee had no authority to pledge the personal credit of the members; (2) a member who had been nominated on the committee, but had never accepted his nomination, nor acted on the committee, was not liable to be sued by tradesmen for goods supplied to the club.—FLEMYNG *v.* HECTOR (1836), 2 M. & W. 172; 2 Gale, 180; 6 L. J. Ex. 43; 150 E. R. 716.

Annotations:—*As to* (1) **Consd.** Todd *v.* Emly (1841), 7 M. & W. 427. **Distd.** Cockerell *v.* Aucompte (1857), 2 C. B. N. S. 440. **Consd.** De Yries *v.* Corner (1865), 13 L. T. 636. **Refd.** Royal Albert Hall Corpn. *v.* Winchilsea (1891), 7 T. L. R. 362; *Generally* **Refd.** Barnett *v.* Lambert (1846), 15 M. & W. 489; Wise *v.* Perpetual Trustee Co., [1903] A. C. 139. **Mentd.** Tredwen *v.* Bourne (1840), 6 M. & W. 461.

66. —— Liable only so far as contract assented to.]—*Re* ST. JAMES' CLUB, No. 1, *ante*.

67. —— Expenses incurred by member in professional capacity—Rules providing for indemnity to member wishing to resign.]—(1) A solr. was a member of a club, & *ex officio* member of the committee. He was employed by a resolution of the committee to take proceedings in Chancery for winding up the affairs of the club:—*Held:* he was entitled to sue a member of the committee by whom he was employed, to recover the amount of his bill for such business.

(2) By a resolution of the members of a club it was resolved, that the members should pay £60 down, or an annual subscription of £10, & that an indemnity should be given to members paying £60, wishing to resign:—*Held:* members paying the £60 were notwithstanding liable to a member of the club for expenses incurred by him, pursuant

Sect. 1.—*In contract: Sub-sects.* 1, 2 & 3.]

to a resolution employing him professionally to do business for the club to which they were parties. —LEE *v.* BISSETT (1856), 26 L. T. O. S. 204; 4 W. R. 233.

68. —— Contract entered into by secretary—Secretary authorised to contract on credit.]—By the rules of a coal-club (duly certified), provision was made for the appointment of a chairman, secretary, & treasurer, the latter of whom was to receive all moneys taken by the secretary, & to pay the coal-merchant as soon after every delivery of coals as he should receive an order signed by the secretary & chairman. It was then provided that certain weekly payments should be made by the members to the secretary, who were to be entitled at the end of twelve weeks to receive half a ton of coals for each share held by them. It was further provided that the secretary should, on the requisition of the members present at a meeting, apply for tenders to such coal-merchants as they should direct; that, when a tender was accepted at the following meeting, the secretary should agree with the merchant for the required supply, the coals to be paid for "on the next Thursday night after each delivery, by an order on the treasurer, signed by the secretary & chairman." Pltf. having tendered to supply the club with about 100 tons of coals, at 23*s.* per ton, the secretary prepared an agreement for "100 tons, more or less," at that price, which was signed by himself & pltf., but, through the default of the secretary, there were not sufficient funds in the treasurers' hands to pay for them:—*Held:* (1) the secretary was the mere servant of the general body, & must be taken to have acted in that capacity in giving the order for the coals; (2) as the club never parted with their control over the money in the hands of the treasurer, or authorised the secretary to expend it, but gave him authority to order the coals for them, & did not furnish him with funds to pay for them, but authorised a contract on credit, the contract so made must be taken to have been made on their credit, & consequently deft., as a member of the club, was liable.—COCKERELL *v.* AUCOMPTE (1857), 2 C. B. N. S. 440; 26 L. J. C. P. 194; 3 Jur. N. S. 844; 5 W. R. 633; 140 E. R. 489.

Annotations:—*As to* (1) **Consd.** Royal Albert-Hall Corpn. *v.* Winchilsea (1891), 7 T. L. R. 362. *Generally* **Consd.** De Vries *v.* Corner (1865), 13 L. T. 636. **Mentd.** Dean *v.* Mellard (1863), 15 C. B. N. S. 19.

69. —— Liability for contribution—Resolution passed at general meeting—At which member present.]—A resolution carried at a general meeting of a club does not create such an obligation as to give a right of action for contribution against a member present at that meeting.—MOUNTCASHELL *v.* ROBERTSON (undated), cited in 16 Jur. 1077.

Annotation:—**Distd.** *Re* St. James's Club & Joint Stock Co.'s Winding-up Acts, 1848 (1852), 16 Jur. 1075.

See, also, No. 99, *post.*

70. —— Goods supplied to club as whole—Personal credit not pledged.] — An individual member of a club, or a member of the committee of management, not having in any way pledged his personal credit, is not personally liable for goods ordered for & supplied to the club as a whole.

Semble: aliter, if the goods are supplied on the credit of the individual members of the club, instead of on the credit of the club as a single body. —OVERTON *v.* HEWETT (1886), 3 T. L. R. 246.

Annotations:—**Refd.** Pilot *v.* Craze (1888), 52 J. P. 311; Barnett & Scott *v.* Wood (1888), 4 T. L. R. 278.

71. —— Of mess—For goods supplied—On order of wine caterer.]—An individual member of a mess, who has not in any way pledged the credit of the mess, is not personally liable for goods supplied to the mess by the orders of the wine caterer.—HAWKE *v.* COLE (1890), 62 L. T. 658, D. C.

72. —— —— —— On order of mess secretary—Liability of commanding officer.]—Pltf. supplied goods to the officers' mess of a brigade of which deft. was at the time the commanding officer, the orders for the goods being given by the secretary of the mess committee. Pltf. sued deft. for the price, alleging that under the King's Regulations deft. was liable or that he was liable as principal for the acts of the mess secretary:—*Held:* (1) the Regulations did not create any liability between the commanding officer & tradesmen; (2) as deft. neither gave nor authorised the orders & pltf. did not give deft. credit, the action failed.—LASCELLES *v.* RATHBUN (1919), 35 T. L. R. 347; 63 Sol. Jo. 410, C. A.

73. Committeeman — On contract made by him—In own name.]—A. B. & C. on behalf of themselves & other members of a club, entered into articles with D. to provide necessaries for the use & accommodation of the Club:—*Held:* they were personally bound by such articles, & D. was not obliged to resort to any of the other members for satisfaction of his demands.—QUEENSBURY (DUKE) *v.* CULLEN (1787), 1 Bro. Parl. Cas. 396; 1 E. R. 646, H. L.; *affg. sub nom.* CULLEN *v.* QUEENSBERRY (DUKE), 1 Bro. C. C. 101, L. C.

Annotations:—**Refd.** Allison *v.* Herring (1839), 9 Sim. 583; Kelner *v.* Baxter (1866), L. R. 2 C. P. 174. **Mentd.** Lloyd *v.* Loaring (1802), 6 Ves. 773; Meux *v.* Maltby (1818), 2 Swan. 277; Douglas *v.* Horsfall (1824), 2 Sim. & St. 184.

74. —— Goods ordered by member of committee for use of club.]—A club was formed, by the regulations of which the members paid entrance-money & an annual subscription, & cash was paid for provisions supplied to the house. The funds of the club were deposited at a banker's, & a committee was appointed to manage the affairs of the club & to administer the funds, but no member of the committee had authority to draw cheques, except three who were chosen for that purpose, whose signatures were countersigned by the secretary. In an action brought against two of the committee by a tradesman who had supplied wine on credit, ordered by a member of the committee for the use of the club:—*Held:* the tradesman was not entitled to recover, without proving either that defts. were privy to the contract, or that the dealing on credit was in furtherance of the common object & purposes of the club.—TODD *v.* EMLY (1841), 7 M. & W. 427; H. & W. 144; 10 L. J. Ex. 161; 151 E. R. 1832.

Annotations:—**Distd.** Cockerell *v.* Aucompte (1857), 2 C. B. N. S. 440. **Refd.** Reynell *v.* Lewis, Wyld *v.* Hopkins (1846), 4 Ry. & Can. Cas. 351.

75. —— On contract authorised by committee.]—In an action against defts. to recover the price of wine furnished to a subscription club, of the committee of which defts. were members, it

PART IV. SECT. 1, SUB-SECT. 1.

70 i. *Member—Goods supplied to club as whole—Personal credit not pledged.*]—MALCOMESS *v.* KUHN, [1911] C. P. D. 546.—**S. AF.**

71 i. —— *Of mess.*]—The officers of a regimental mess are not liable for debts contracted by their messman without their authority.—SUTHERLAND *v.* SPARKE (1841), 6 O. S. 103.—**CAN.**

q. *Treasurer of turf club — For purses run for—& won.*]—Deft., the treasurer of a turf club by which horse races were conducted, received subscriptions from members & others to form a fund out of which the purses run for were to be paid. A. entered horses & won purses, but deft. refused to pay:—*Held:* deft. was not accountable to A.—SIMMS *v.* DENISON (1870), 28 U. C. R. 323.—**CAN.**

was proved that the wine was ordered by the house-steward, who stated that he had authority to do so from the members of the committee. It was not shown that defts. had either personally interfered in ordering the wine, or been present at any meeting of the committee when the authority to order the wine was given, but merely that they were members of the general body of the committee:—*Held:* in these circumstances, the question for the jury was not, whether defts., by their course of dealing, had held themselves out as personally responsible to pltf., but whether they had individually authorised the making of the contract in the ordering of the wine.—TODD *v.* EMLY (1841), 8 M. & W. 505; 10 L. J. Ex. 262; 151 E. R. 1138.

Annotations:—**Refd.** Barnett *v.* Lambert (1846), 15 M. & W. 489; Steele *v.* Gourley & Davis (1887), 3 T. L. R. 772; Royal Albert-Hall Corpn. *v.* Winchilsea, (1891), 7 T. L. R. 362. **Mentd.** Gibbs *v.* Cruickshank (1873), 28 L. T. 735.

76. —— —— Ex officio member of committee employed in professional capacity.]—LEE *v.* BISSETT, No. 67, *ante*.

77. —— ——.] — STEELE *v.* GOURLEY & DAVIS (1887), 3 T. L. R. 772, C. A.

Annotations:—**Refd.** Overton *v.* Hewett (1886), 3 T. L. R. 246; Pilot *v.* Craze (1888), 52 J. P. 311; Draper *v.* Manvers (1892), 9 T. L. R. 73.

78. —— ——.]—STANSFIELD *v.* RIDOUT (1889), 5 T. L. R. 656.

79. —— —— Acquiescence in supply or retention of goods—Ratification of order.]—HARPER *v.* GRANVILLE-SMITH (1891), 7 T. L. R. 284.

80. —— For goods supplied to club as whole—Personal credit not pledged.]—OVERTON *v.* HEWETT, No. 70, *ante*.

81. —— For acts of sub-committee.]—Action by tradesman against a member of committee of a club to which he had supplied goods. Nonsuit on the ground that there was not sufficient evidence of liability to go to the jury.

It was clear that mere membership of the committee would not make deft. liable, & the fact that he acted on the committee did not make him liable for goods which were ordered when he was not present. The rules said that the sub-committee had delegated to them the functions of the general committee, & there was no evidence to show that deft. took part in this particular matter, or in the current finance of the club. The mere fact of joining in the appointment of the sub-committee under the rules of the club was not sufficient evidence to fix deft. with liability (WRIGHT, J.).—DRAPER *v.* MANVERS (EARL) (1892), 9 T. L. R. 73.

—— **On debentures issued by club.**]—*See* No. 105, *post*.

82. Member & director of coal club—For coal supplied to secretary's order—Secretary acting beyond authority.]—A member & director of a coal club, formed on the principle of buying coals, for cash wholesale, out of the paid-up subscriptions:—*Held:* not liable for coals ordered on credit by the secretary.—WOOD *v.* FINCH (1861), 2 F. & F. 447, N. P.

83. Vice-president & secretary — For goods bought by them personally—On behalf of club.]—BARNETT & SCOTT *v.* WOOD (1888), 4 T. L. R. 278, C. A.

Actions by & against clubs.]—*See* Part V., Sect. 1, *post*.

Liability in respect of debentures.]—*See* Part VI., *post*.

See, also, AGENCY, Vol. I., pp. 359–361, 653, 654.

SUB-SECT. 2.—PROPRIETARY CLUBS.

84. Distress for rent—On members' property on club premises—Club for social purposes & for exhibiting pictures with view to sale.]—Pltf. was the proprietor of the U. Club & was tenant of the premises under an agreement by which the premises were sub-demised to him by the lessee of defts. Pltf. undertook all the liabilities of the club, & received all the profits. The club was not formed for social purposes alone, but for the further purpose of selling pictures which were the *bonâ fide* work & property of members of the club, a large proportion of the members being artists. Pltf. received a commission of 10 per cent. on these sales. The sales were effected by periodical exhibitions of paintings, when the pictures were hung on the walls of the club, & could be viewed by a limited section of the public, principally composed of guests introduced by the members. No rent due from pltf. was ever in arrear, but, as some rent was owing from his lessor to defts., defts. during one of the exhibitions, levied a distress for rent, & seized all the pictures. Pltf. then moved to restrain defts. from proceeding with the distress, on the ground that the pictures had been delivered to him to be managed by him on the premises in the way of trade, & that they were wholly exempt from the right of distress. The rules of the club provided (*inter alia*) for the election of a committee, of which pltf. was *ex officio* a member, in whom the general management of the club was vested, & of a picture committee in whom the entire management of the pictures & their exhibition was vested:—*Held:* under the rules the trade or business of pltf. was that of a club proprietor, & not that of a picture dealer; he did not "manage" the pictures in any sense of the word; & the pictures were not exempt from the distress.—CHALLONER *v.* ROBINSON, [1908] 1 Ch. 49; 77 L. J. Ch. 72; 98 L. T. 222; 71 J. P. 553; 24 T. L. R. 38; 52 Sol. Jo. 28, C. A.

See, generally, DISTRESS.

Actions by & against clubs.]—*See* Part V., Sect. 2, *post*.

SUB-SECT. 3.—OTHER ASSOCIATIONS.

Subscribers — Who attend meeting — Building society.]—*See* BUILDING SOCIETIES, Vol. VII., p. 466, No. 73.

85. —— —— Hospital.]—The subscribers who attend a committee for managing the concerns of an hospital, are liable to the creditors of the hospital.—BURLS *v.* SMITH (1831), 7 Bing. 705; 5 Moo. & P. 735; 131 E. R. 272.

Annotation:—**Refd.** Royal Albert-Hall Corpn. *v.* Winchilsea (1891), 7 T. L. R. 362.

Hospital committee.] — *See* AGENCY, Vol. I., p. 361, No. 704.

PART IV. SECT. 1, SUB-SECT. 2.

r. *Committeeman — Goods supplied on order of proprietor & manager.*]—Defts. were sued as the committee of a club for wines supplied on credit to the order of B., who instituted the club, & was the proprietor & secretary & appointed by resolution of the members to manage the business of the club. B. ordered all supplies, made all payments by cheques countersigned by a member of the committee, received the subscriptions of members, & made a profit if the receipts exceeded the expenditure. There was no evidence that defts. had authorised the purchase of these particular goods on credit, or that they had held themselves out to pltf. as liable generally for goods so purchased:—*Held:* defts. were not liable.—CHISHOLM *v.* STRICKLAND (1888), 9 N. S. W. L. R. 391; 5 N. S. W. W. N. 13.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 3.

s. *Committeeman — On contract authorised by committee—Personal liability.*]—CARR *v.* SHAW (1913), 32 N. Z. L. R. 726.—**N.Z.**

Sect. 1.—*In contract: Sub-sect.* 3. *Sects.* 2 & 3. *Part V. Sect.* 1.]

86. Committeeman—On contract made by him—Trade protection society.]—A trade protection society, for supplying members with lists of bkpts. & other persons, consisted of members paying an annual sum, payable in advance, & was managed by a committee of members. By one of the rules the committee had the power of appointing & dismissing the printer, who was to be a member of the society, & had the care of defraying the expenses, & applying & disposing of the funds of the society:—*Held:* the printer could recover the price of goods furnished by him for the society from a committeeman who had ordered them, as the rules created no partnership, & the printer was not bound to look to the funds of the society for payment.—CALDICOTT *v.* GRIFFITHS (1853), 8 Exch. 898; 23 L. J. Ex. 54; 17 J. P. 601; 1 C. L. R. 715; 155 E. R. 1618.

87. —— For remuneration of association's secretary—Agreement by secretary to look to funds of association.]—By the rules & regulations of an unincorporated assocn. called "The International Shipowners Protection Association," it was provided (*inter alia*) that the affairs of the assocn. should be managed by a committee who might be chosen from others than members of the assocn., & that each member of the assocn. should, on entrance, pay a certain entrance fee, & also an annual subscription during membership for each vessel entered, & that, in the event of the funds of the assocn. not being sufficient to meet its liabilities, the committee should have power, after one hundred vessels at least should have been entered, to make calls upon the members of the assocn. in proportion to their interest. Pltf. was appointed secretary to the assocn. at a yearly salary of £150 & a certain commission on the business done, & by the written agreement, under which he was appointed, he "exonerated & indemnified the present or future managing committee from all liability in respect of his salary, & agreed to hold the assocn., subject to the rules & regulations, alone responsible for it." The assocn. was dissolved at the end of the first year of its existence, one hundred vessels never having been entered, & in an action by pltf. against deft., a member of the assocn. & of the committee, to recover his salary, commission, & disbursements:—*Held:* (1) as by the agreement pltf. had agreed to look to the funds of the assocn. for payment of his salary, & to exonerate the individual members therefrom, he could not recover in the action against deft.; (2) (WILLES, J.) it was only in the event of the funds failing that members were to be called upon in proportion to their shares, but the action in question was brought, not by way of contribution, but to make deft. solely liable for the whole amount.—DE VRIES *v.* CORNER (1865), 13 L. T. 636; 14 W. R. 262.

88. President of committee—On contract made by committee—Non-member acting as chairman.]—Deft., president of a society of ladies working for charitable purposes, was sued for the rent of a hall which had been let to the society for the purpose of a bazaar & fête. During the negotiations for the hire of the hall, deft. was abroad & her son, who was acting for her but was not a member of the society, occupied the chair at a meeting which passed a resolution accepting an offer to organise the fête & guaranteeing £200 towards expenses. There was considerable conflict of testimony as to whether deft.'s son knew the terms of the hiring agreement, which only professed to bind the members of the society, before the fête was held. The jury having found for pltfs. for the amount claimed:—*Held:* as deft. & her friends by her invitation had had the use of the hall & she knew it would have to be paid for, deft.'s conduct was sufficient to render her liable on a *quantum meruit* & the verdict against her must be upheld.—ROYAL ALBERT-HALL CORPN. *v.* WINCHILSEA (1891), 7 T. L. R. 362, C. A.

Company provisional committee.]—*See* AGENCY, Vol. I., pp. 356–360, Nos. 643–693. *See, further,* COMPANIES.

Chairman of committee—To promote a society.]—*See* AGENCY, Vol. I., p. 360, No. 694.

Charitable institution committee.]—*See* AGENCY, Vol. I., p. 360, No. 698.

Church building committee.]—*See* AGENCY, Vol. I., p. 360, No. 696.

Dispensary committee.]—*See* AGENCY, Vol. I., p. 360, No. 697.

Election committee.]—*See* AGENCY, Vol. I., p. 361, No. 700.

Exhibition committee.]—*See* AGENCY, Vol. I., p. 361, Nos. 701, 702.

Fête manager.]—*See* AGENCY, Vol. I., p. 353, No. 618.

"The Thimble League."]—*See* AGENCY, Vol. I., p. 630, No. 2540.

Officers' mess.]—*See* Nos. 71, 72, *ante.*

Volunteer officer—Goods supplied to corps.]—*See* AGENCY, Vol. I., pp. 361, 401, 657, Nos. 703, 1020, 2746, 2747.

SECT. 2.—IN TORT.

89. Members' club—Personal liability of members of committee—Incompetent person employed to repair football stand—Injury to public.]—The members of the committee of a football club, who had employed an incompetent person to repair a stand for the accommodation of visitors to the football ground:—*Held:* personally liable for injuries to one of the public caused by the collapse of the stand.—BROWN *v.* LEWIS (1896), 12 T. L. R. 455, D. C.

—— **Theft of club funds—Treasurer not negligent.**]—*See* BAILMENT, Vol. III., p. 62, No. 55.

90. Proprietary club—Liability of proprietor—

PART IV. SECT. 2.

t. *Members' club — Theft from guest—Club not liable.*]—MARTEL *v.* MILITARY INSTITUTE CLUB, 23 C. L. T. Occ. N. 119.—CAN.

u. *Liability of lodge for acts of members during initiation ceremony.*]—Pltf., during his initiation as a member of a lodge, was injured through rough usage of some members of the lodge. The initiation took place at a full meeting of the lodge & the rough usage was permitted by all the members present:—*Held:* the lodge was liable.—KINVER *v.* PHŒNIX LODGE I.O.O.F. (1885), 7 O. R. 377.—CAN.

v. *Racing association — Composed of racing clubs—Bookmaker excluded from race-track by club—Under authority of association—Whether association liable for conspiracy.*]—SCULLY *v.* MADIGAN (1912), 23 O. W. R. 876; 4 O. W. N. 394.—CAN.

w. *Jockey club—Improper practices in connection with racing—Disqualification by stewards.*]—The stewards of R. Jockey Club held an inquiry into alleged improper practices of pltf. in connection with racing, & disqualified him. Pltf. brought an action against the club & its stewards & members, claiming a declaration that the disqualification was illegal & an injunction restraining action thereon, & damages. On the facts:—*Held:* (1) pltf. was entitled to a declaration that the decision of the stewards appointed by the club was invalid; (2) an injunction should be granted restraining the club, its stewards, committee, & members from acting upon or advertising the disqualification.—O'MALLEY *v.* DAWBARN, [1919] St. R. Qd. 128.—AUS.

Nuisances caused by carrying on club—Injunction to restrain.]—Nuisances were caused at a proprietary club in L., first, by the assembling in the street of noisy crowds, which were attracted thither by boxing contests frequently held within the club itself late at night; secondly, by continual whistling for cabs outside the club late at night & early in the morning, & the noise of cabs answering the whistles. The nuisances had disturbed the rest of the other residents in the street, & had diminished the letting value of pltf.'s premises. In an action by the freeholders, lessees & tenants of a neighbouring house:—*Held:* pltfs. were entitled to an injunction to restrain the proprietor of the club from carrying it on so as to cause a nuisance to pltfs., first, by cabs or carriages driving to or leaving the club premises, & the whistling for carriages or cabs to the club between midnight & 7 a.m., & secondly, by any crowd caused to be assembled by the boxing contests held at the club premises.—BELLAMY *v.* WELLS (1890), 60 L. J. Ch. 156; 63 L. T. 635; 39 W. R. 158; 7 T. L. R. 135. *Annotation:*—**Consd.** Barber *v.* Penley, [1893] 2 Ch. 447.

—— —— ——,]—*See, generally,* NUISANCE.

91. —— —— Dishonest servant engaged—Theft of member's property.]—Pltf., who was a member of a residential club, of which defts. were the proprietors, gave the manager certain jewelry to lock up in a safe in the manager's office. The rules provided that no claim in respect of any property alleged to have been left or lost in the club-house would be entertained, & neither the club nor the proprietors would be responsible for any article of value so left or lost in the club, but small articles of value might, on application to the secretary, be deposited in the safe, but neither the club nor the proprietors would be under any liability in respect of such deposits. The jewelry was stolen from the safe by the night porter employed by defts., who before employing him had obtained references from two persons by whom he had been employed, but apparently had made no inquiry as to his previous career. After the theft it was discovered that he was an old & dangerous criminal:—*Held:* defts. had not used due care in engaging the night porter, & as the above rule did not negative defts.' liability for damage due to their neglect to take such care, they were liable for the loss.—WILLIAMS *v.* CURZON SYNDICATE, LTD. (1919), 35 T. L. R. 475, C. A.

See, generally, BAILMENT, Vol. III., p. 60, Nos. 47 *et seq.*

SECT. 3.—TO INDEMNIFY COMMITTEE OR TRUSTEES.

See Part III., Sect. 4, sub-sect. 2, *ante*.

Part V.—Actions and Proceedings by and against Clubs and Members.

SECT. 1.—MEMBERS' CLUBS.

92. Action by club—By trustees of club—Underlease to member on behalf of club.]—A member of an unregistered society, but on behalf of the society, executed & purported to take an underlease made to the society as underlessee. On the head lease being forfeited for breach of covenant, the society brought an action for an order vesting the residue of the term of the underlease in them under Conveyancing & Law of Property Act, 1892 (c. 13), s. 4. The writ was subsequently amended by making three persons who were trustees of the society sue on behalf of all the members of the society:—*Held:* pltfs. were not underlessees within the meaning of the sect. & were not entitled to sue as trustees or at all.—JARROTT *v.* ACKERLEY (1915), 85 L. J. Ch. 135; 113 L. T. 371; 59 Sol. Jo. 509.

—— Petition in bankruptcy—Officer may be allowed to petition in own name.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 247, No. 2342.

93. Action against club—& secretary—Committee as representatives of club—Personal relief against secretary.]—Where the rules of a marine insurance club provided that the committee might sue & be sued on behalf of all the members, & that claims were to be drawn for by the secretary at the order of the committee, & a bill was filed by a member whose claim was disputed, against the committee & the secretary, praying that the committee might order the secretary to draw upon the members for the amount of his claim, & that the secretary should thereupon draw accordingly:—*Held:* (1) the committee sufficiently represented all the members for the purposes of the suit; (2) the secretary was properly joined as a party in respect of the personal relief prayed against him.—HARVEY *v.* BECKWITH (1864), 2 Hem. & M. 429; 4 New Rep. 90, 258; 10 L. T. 632; 12 W. R. 819, 896; 2 Mar. L. C. 63; 71 E. R. 530, L. JJ.

Annotations:—**Folld.** Pepper *v.* Green (1865), 2 Hem. & M. 478. **Consd.** Wright *v.* Ward (1871), 24 L. T. 439. **Reid.** Pepper *v.* Henzell, Woods *v.* Henzell, Reed *v.* Henzell (1865), 2 Hem. & M. 486.

94. —— Service of writ on secretary—Not sufficient.]—GROSSMAN *v.* GRANVILLE CLUB (1884), 28 Sol. Jo. 513.

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x. *Union of football clubs — Personal liability of members of committee—Slander of player.*]—Pursuer of an action of damages for slander called as defenders members of the committee of the Scottish Football Union as individuals. Pursuer averred that the committee, in consequence of a complaint by a referee as to pursuer's conduct at a football match between members of two clubs belonging to the Union in which pursuer was a player, arranged for a meeting of the committee to inquire into the complaint, that the meeting was attended by such committeemen, that they found that pursuer had used offensive language to the referee, & passed a resolution that he should be severely censured, that the finding & resolution were published in newspapers containing football intelligence throughout S. upon the instruction of the committee:—*Held:* pursuer was entitled to an issue of slander against the members of the committee individually.—MURDISON *v.* SCOTTISH FOOTBALL UNION (1896), 23 R. (Ct. of Sess.) 449. —SCOT.

PART V. SECT. 1.

a. *Action against club—Right to make executive committee co-defendants.*]—AIKINS *v.* DOMINION LIVE STOCK ASSOCN. OF CANADA (1896), 17 P. R. 303.—CAN.

b. *Judgment against committee of club—Whether execution against individual member of club.*]—WHITE, RYAN & Co. *v.* HILLIARD (1903), 20 S. C. 334.—S. AF.

c. *Action against trustees.*] — Trustees of a club had under the rules power to institute & defend any action on behalf of the club when authorised so to do by the committee. A member of the club, who had been declared insolvent, *ipso facto* ceased to be a member, but was under the rules entitled to be re-elected if the committee thought fit; the committee declined to re-elect him. He thereupon instituted an action for a declaration

Sect. 1.—*Members' clubs: Sect.* 2. *Parts VI. & VII.*]

95. —— —— In revenue proceedings.]—*Re* DUTY ON ESTATE OF NEW UNIVERSITY CLUB, No. 106, *post.*

96. Action by member—Joint contract of sale.]—Where several persons in a club join to buy a quantity of coals, & afterwards subdivide their shares, & the coals are delivered to each measure, each person cannot maintain an action for the penalty against the seller, for the contract of sale is joint.—EVERETT *v.* TINDALL (1804), 5 Esp. 169, N. P.

97. —— Against committee — Two committeemen authorised to defend—On behalf of all.]—ANDREWS *v.* SALMON (1888), 4 T. L. R. 490.

98. —— On behalf of all other members except defendants—Liability of defendants to produce documents.]—One member of a club, on behalf of himself & the rest, sued two other members, to recover back moneys belonging to the club. It having been determined that the other individual members were not necessary parties:—*Held:* defts. could not resist the production of documents in their possession, on the ground that the other members had an interest in them.—RICHARDSON *v.* HASTINGS (1844), 7 Beav. 354; 13 L. J. Ch. 416; 49 E. R. 1102; *subsequent proceedings* (1847), 11 Beav. 17.

Annotations:—**Consd.** Reynolds *v.* Godlee (1858), 4 K. & J. 88. **Foll.** Hopkinson *v.* Burghley (1867), 2 Ch. App. 447. **Refd.** Labouchere *v.* Hess & Sala (1897), 14 T. L. R. 75.

99. Action against member—On security given by another member—All members liable to contribute equally.]—A certain banking house having obtained security from one of the members of a club or society for a debt due from that society generally to such firm, shortly afterwards in pursuance of an agreement between themselves & the member giving the security, & for his advantage brought an action against another member of the society for the amount:—*Held:* as all the members ought in equity & justice to contribute ratably, the action against that individual member ought to be restrained by injunction.—GILLESPIE *v.* BARNWALL & MOUNTCASHELL (LORD) (1847), 10 L. T. O. S. 263; *subsequent proceedings* (1848), 17 L. J. Ch. 279, L. C.

See, also, No. 69, *ante.*

—— Defaulting secretary or treasurer—Whether fiat of Attorney-General necessary.]—*See* CRIMINAL LAW & PROCEDURE.

100. —— Mutual insurance club.]—An assocn. of ship-owners was formed for the mutual assurance of ships belonging to its members. The regulations, subject to which the policies were effected, provided for the creation of a general fund by payment of premiums, etc., by the several members, &, when these should be found insufficient, by payment of contributions in the shape of a percentage on the sums insured; & a manager, not a member of the assocn., was appointed by a power of attorney which authorised him to sign policies for & in the names of the members of the assocn., & "in their several & respective names, etc.," to demand & sue for all sums which should become due & payable for premiums & contributions from them respectively:—*Held:* the manager could not maintain an action against a member for premiums due from such member, or for moneys paid by the manager out of the funds of the assocn. in respect of such member's share of losses due to other members.—GRAY *v.* PEARSON (1870), L. R. 5 C. P. 568; 23 L. T. 416.

101. —— ——.]—The manager of a mutual insurance assocn. cannot maintain an action for contributions due under the rules from any member, although those rules have been agreed to by the member & profess to give such a power.—EVANS *v.* HOOPER (1875), 1 Q. B. D. 45; 45 L. J. Q. B. 206; 33 L. T. 374; 24 W. R. 226, C. A.

102. Criminal proceedings—Illegally constituted club—Embezzlement of club property.]—A person can be convicted of the embezzlement of the property of an illegally constituted club of which he is a member for though the club has no legal existence as an association, the members thereof may have a legal existence as beneficial owners of property.—R. *v.* TANKARD, [1894] 1 Q. B. 548; 63 L. J. M. C. 61; 70 L. T. 42; 58 J. P. 300; 42 W. R. 350; 38 Sol. Jo. 130; 17 Cox, C. C. 719; 10 R. 149, C. C. R.

Annotations:—**Refd.** Marrs *v.* Thompson (1902), 18 T. L. R. 565; Jeffrey *v.* Bamford, [1921] 2 K. B. 351.

Actions in respect of dissolution or winding up.]—*See* Part X., *post.*

Recovery of subscriptions & entrance fees.]—*See* Part III., Sect. 3, *ante.*

SECT. 2.—PROPRIETARY CLUBS.

103. Proprietor may be sued in club name.]—FIRMIN & SONS, LTD. *v.* INTERNATIONAL CLUB (1889), 5 T. L. R. 694, C. A.

Actions in respect of dissolution & winding up.]—*See* Part X., *post.*

Recovery of subscriptions & entrance fees.]—*See* Part III., Sect. 3, *ante.*

Part VI.—Debentures.

See, generally, COMPANIES.

104. Liability of retired member—On debentures issued during membership.]—Where the committee of a club has under its rules power to borrow moneys and give debenture bonds on the property of the club for their repayment, a past member is liable in respect of any such bonds given during his membership with his knowledge and assent.—PARR *v.* BRADBURY (1885), 1 T. L. R. 525, D. C.

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that he was entitled to re-election, for an order directing the trustees, through the committee, to re-elect him, & for damages:—*Held:* the action was one for an order against the committee in regard to a matter in which the trustees could not represent them, & the action did not lie against the trustees.—RAINSFORD *v.* SALISBURY CLUB TRUSTEES, [1914] App. D. 499.—S. AF.

d. *Action against members — & secretary—No committee.*]—Where there was no committee of a club, a gas co. sued the honorary secretary & two ordinary members to recover the price of gas supplied to the club:—*Held:* they were rightly sued.—FERMOY GAS CO. *v.* SHEEHAN (1895), 29 I. L. T. 597.—IR.

e. —— *For price of goods supplied by club to member—Right of secretary to sue.*]—MICHAEL *v.* BRIGGS (1890), I. L. R. 14 Mad. 362.—IND.

f. *Whether secretary of club can be sued—On contract for benefit of club—By predecessor in office.*]—NORTH-WESTERN PROVINCES CLUB *v.* SADULLAH (1898), I. L. R. 20 All. 497.—IND.

105. Whether charge on club premises created by—Debentures acknowledging receipt of money.]—A member of a club advanced to the club a sum of £10,000 for which the committee issued debentures acknowledging the receipt of the sums therein stated, which were to be paid off as the committee might determine after three months' notice. The exors. of the member claimed a declaration that they were entitled to a first charge on the assets of the club as security for repayment of the sum advanced:—*Held:* (1) there was nothing in the contract that could operate as a charge upon the property of the club; (2) the committee were not personally liable.—WYLIE *v.* CARLYON (1921), 66 Sol. Jo. (W. R.) 6.

Registration under Bills of Sale Acts—Whether necessary.]—*See* BILLS OF SALE, Vol. VII., p. 31, No. 158.

Part VII.—Duty Payable by Clubs.

See, generally, REVENUE.

106. On "annual value, income or profits of the property"—Whether club exempt—"Funds voluntarily contributed"—Entrance fees & subscriptions.]—(1) Exemption was claimed by a members' club, the property of which was vested in trustees, & which had been established less than thirty years, from the duty imposed on the annual value, income, or profits of bodies corporate & unincorporate by Customs & Inland Revenue Act, 1885 (c. 51), s. 11, on the ground that the property of the club was "property acquired by or with funds voluntarily contributed" within thirty years preceding, within the 6th exemption in that sect. By the rules of the club every member on admission paid an entrance fee & the annual subscription for the current year, & until payment was not admitted to any of the benefits or privileges of the club, & payment was considered as a declaration of submission to the rules; an annual subscription was payable on Jan. 1 in each year, & if it was not paid on or before Mar. 1, the member's name was erased from the list of members, & a member intending to withdraw from the club had to give notice on or before Jan. 1, or otherwise was liable to pay his subscription for the current year:—*Held:* as the entrance fees & subscriptions were paid by members in consideration of the right to enjoy the benefits & privileges of the club, they were not "funds voluntarily contributed" to the club, & duty was payable on property acquired with money so paid.

(2) The writ in this case was directed to the secretary of the club, who entered an appearance.

(3) I would not be understood to lay down as a general rule that a member may be sued for his subscription, for much must depend upon the rules of each particular club, & I am not prepared to say that the entrance fee & first year's subscription could be sued for at all, for an elected member has an option to accept or refuse the membership offered him; but once fully admitted as a member, I see no reason why he should not be bound to fulfil all the obligations imposed upon him by the rules, to which he has given his submission as part of the consideration for the benefits he has acquired a right, so long as he continues a member, to enjoy (HAWKINS, J.).—*Re* DUTY ON ESTATE OF NEW UNIVERSITY CLUB (1887), 18 Q. B. D. 720; 56 L. J. Q. B. 462; 56 L. T. 909; 35 W. R. 774; 3 T. L. R. 570; *sub nom.* INLAND REVENUE COMRS. *v.* NEW UNIVERSITY CLUB, 2 Tax Cas. 279, D. C.

Annotations:—As to (1) **Distd.** *Re* Incorporated Council of Law Reporting for England & Wales, Duty on Estate of (1888), 22 Q. B. D. 279. **Refd.** A.-G. *v.* Ellis, [1895] 2 Q. B. 466; Savoy Overseers *v.* Art Union of London, [1896] A. C. 296.

Election of members, entrance fees & subscriptions generally, *see* Part III., Sect. 2, sub-sect. 1, & Sect. 3, *ante.*

107. —— One third of valuation—"Gate-money & other payments received from public"—Cricket club.]—The S. Cricket Club, an unincorporated body of persons, were possessed of real & personal property, the real property consisting of a building & land in the metropolis held under a lease for years & used by them for the purposes of a cricket club. Their receipts included large sums in respect of gate-money & other payments received from persons admitted to view the cricket matches played on the ground. The club was carried on at a profit:—*Held:* (1) the gate-money & other payments received from the public were not "annual value, income, or profits of the property" within Customs & Inland Revenue Act, 1885, s. 11; (2) the annual value of the real property should be arrived at in the same way as upon an assessment of annual value made for the purposes of the property tax under Income Tax Act, 1853 (c. 34), Sched. A., & the club were entitled to include the estimated cost of repairs as a permissible deduction from that annual value.—*Re* SURREY COUNTY CRICKET CLUB, [1901] 2 K. B. 400; 70 L. J. K. B. 823; 85 L. T. 213; 65 J. P. 488; 50 W. R. 173; 17 T. L. R. 494, D. C.

Annotation:—As to (1) **Refd.** Carlisle & Silloth Golf Club *v.* Smith, [1913] 3 K. B. 75.

108. On intoxicating liquor purchased by club—Payable on actual price paid by club.]—The excise duty of sixpence imposed upon every registered club by Finance (1909–10) Act, 1910 (c. 8), s. 48 (1), in respect of every pound's worth of intoxicating liquor purchased by the club is to be paid on the actual price paid by the club for such intoxicating liquor, notwithstanding that in such price there may be included a duty already paid by the merchant from whom the club purchased the liquor.—CALLAWAY *v.* R. (1913), 108 L. T. 1029; 29 T. L. R. 603.

Sale of intoxicating liquor in clubs.]—*See* Part VIII., *post.*

Licensing of servants of club.]—*See* REVENUE.

National Health insurance.]—*See* WORK & LABOUR.

Unemployment insurance.]—*See* WORK & LABOUR.

Income tax—Golf club—Green fees.]—*See* INCOME TAX.

Entertainments duty.]—*See* REVENUE.

Part VIII.—Sale of Intoxicating Liquors in Clubs.

SECT. 1.—**WHETHER LICENSING ACTS APPLY.**

See, Licensing Act, 1921 (c. 42), Part I., Sched. I., Part II., & *generally*, INTOXICATING LIQUORS.

109. Members' club—Sale to member—Whether a "sale by retail"—Consumption off premises.]—Applt. was manager of an institution carried on *bonâ fide* as a club, under rules by which members paid an entrance fee & subscription; trustees were appointed in whom all the club property was vested & there was a committee of management, for whom applt. acted, to conduct the general business. The club was not licensed for the sale of intoxicating liquors, but these were supplied, at fixed prices, to members for consumption on & off the premises, 33 per cent. above the cost price being charged for liquors to be consumed off the premises, & the money produced thereby going to the general funds of the club. Applt. having, in the course of his employment as manager, supplied intoxicating liquors to a member, who paid for them, for consumption off the premises:—*Held:* applt. did not "sell by retail" intoxicating liquors within Licensing Act, 1872 (c. 94), s. 3, & was not liable to conviction for an offence under the sect.—GRAFF *v.* EVANS (1882), 8 Q. B. D. 373; 51 L. J. M. C. 25; 46 L. T. 347; 46 J. P. 262; 30 W. R. 380, D. C.

Annotations:—**Folld.** Ranken *v.* Hunt (1894), 10 R. 249. **Distd.** Mullingar R. D. C. *v.* Rowles (1912), 6 Tax Cas. 85. **Apld.** Metford *v.* Edwards, [1915] 1 K. B. 172. **Refd.** Newell *v.* Hemingway (1888), 58 L. J. M. C. 46; Bowyer *v.* Percy Supper Club (1893), 69 L. T. 447; Woodley *v.* Simmonds (1896), 60 J. P. 150; I. R. Comrs. *v.* Tod, [1898] A. C. 399; Davies *v.* Burnett, [1902] 1 K. B. 666; Humphrey *v.* Tudgay, [1915] 1 K. B. 119.

110. —— —— —— Distribution off club premises.]—The committee of a registered club decided to hold a supper & smoking concert for the members, &, as the accommodation at the club premises was limited, it was arranged that the entertainment should be held at a school some distance from the club premises. On the date arranged a supply of intoxicating liquor belonging to the club was taken by members from the club premises to the school, & during the evening was served by applts., who were members of the club, to their fellow members on payment of the tariff. Only members of the club were supplied with liquor. Applts. were summoned under Licensing (Consolidation) Act, 1910 (c. 24), s. 65, & convicted for having sold intoxicating liquor by retail at the school which they were not then licensed to sell:—*Held:* the conviction was wrong inasmuch as what was done by applts. did not constitute a "sale" of liquor, but merely a distribution of the same among the members of the club.

Qu.: whether, if applts. had been proceeded against under s. 94 of the Act, they could have been convicted.—HUMPHREY *v.* TUDGAY, [1915] 1 K. B. 119; 84 L. J. K. B. 242; 112 L. T. 152; 79 J. P. 93; 24 Cox, C. C. 505, D. C.

111. —— —— —— Liquor part of general property of club.]—Where the members of an assocn. are the owners of intoxicating liquors kept on the premises of the assocn. & intended for consumption by the members the distribution of the liquors among the members by one of their number, although in return for payment, is not a sale by retail within the meaning of Licensing (Consolidation) Act, 1910, s. 65, even though the assocn. having been registered as a club under s. 91 of the Act is liable to be struck off the register under s. 95 on the ground that it is not conducted in good faith as a club.—METFORD *v.* EDWARDS, [1915] 1 K. B. 172; 84 L. J. K. B. 161; 112 L. T. 78; 79 J. P. 84; 30 T. L. R. 700; 24 Cox, C. C. 490, D. C.

112. —— Sale to non-member — Contrary to orders of committee—Committee not liable.]—Applts., trustees & members of the managing committee of a club, were convicted under Licensing Acts for selling liquor without a proper licence to persons not members of the club. The liquor was sold in the club premises by the steward of the club, who in selling it acted contrary to the orders of applts., & without their knowledge or assent. The money which he received for the liquor was paid by him to the accounts of the club:—*Held:* the conviction was wrong, for applts. were not, in the circumstances, responsible for the act of the steward.—NEWMAN *v.* JONES (1886), 17 Q. B. D. 132; 55 L. J. M. C. 113; 55 L. T. 327; 50 J. P. 373; *sub nom.* NEWMAN *v.* LEACH, 2 T. L. R. 600, D. C.

Annotations:—**Distd.** Bond *v.* Evans (1888), 21 Q. B. D. 249; Brown *v.* Foot (1892), 61 L. J. M. C. 110. **Folld.** Inland Revenue *v.* Cardiff Conservative Club Co. (1894), 58 J. P. 120.

113. —— —— Whether "sale without a licence."]—The manager of a club was convicted for selling to a non-member liquor without a licence. The alleged non-member had paid no subscription & the application for membership which he had signed had been torn up. The justices convicted:—*Held:* a rule for *certiorari* should be refused.—R. *v.* GLAMORGANSHIRE JJ. (1889), 5 T. L. R. 636; 53 J. P. Jo. 435, D. C.

114. —— —— ——.]—A stranger entered a working men's subscription club, one rule of which forbade visitors paying money direct to the manager. W., a member, entered the stranger's name as a visitor; then the stranger put down 8*d.*, asking for two pints of ale. W. received it & the ale was supplied to the stranger:—*Held:* W.

PART VIII. SECT. 1.

g. *Members' club—Sale to member—On Sunday.*]—Supplying on Sunday intoxicating liquors, the property of a club registered under Licensing Act, 1908, to a member by the steward in exchange for money paid to him by the member, is a sale of liquor within above Act, notwithstanding that the member has a proprietary interest in all the assets of the club. Such sale is within s. 155 of above Act unless the member supplied comes within certain exceptions therein contained.—KNABE *v.* PRIEST, [1909] S. A. L. R. 47.—**AUS.**

h. —— —— *& guests — Whether sale within Act—Consumption on & off premises.*]—Deft. was steward of C. Club & supplied members & their guests with intoxicating liquor for consumption on & off the club premises. The moneys received were paid into the general funds of the club, the steward having a fixed salary only:—*Held:* not a "sale" in violation of Prohibition Act, 1900.—R. (ON THE PROSECUTION OF JENKINS) *v.* DOYLE (1910), 9 E. L. R. 97.—**CAN.**

113 i. —— *Sale to non-member—Whether "sale without a license."*]—An officer of a club must be taken to know the members of the club. Hence, when an officer of a club serves, on premises certified as a club, liquor to a person not a member, it is *primâ facie* evidence that the officer did not when he sold this liquor, occupy the premises *bona fide* as a club, & he may be convicted of selling liquor without a license under Licensing Act, 1885, s. 134.—O'CONNOR *v.* PRICE (1888), 14 V. L. R. 946.—**AUS.**

113 ii. —— —— *Belief that they were members.*]—X., a servant of a club, which had received a certificate under Licensing Act, s. 4 (8), served liquor to persons who were not members of the club, but who had falsely pretended to be members; they were honestly believed by X. to be members. X. was prosecuted for selling liquor without a license under s. 132 of above Act:—*Held:* the Act did not apply.—GRAVES *v.* WILLIAMS, [1905] V. L. R. 215.—**AUS.**

sold liquor to the stranger without a licence.—STEVENS *v.* WOOD (1890), 54 J. P. 742, D. C.

Annotation :—**Consd.** Williams *v.* Pearce (1916), 85 L. J. K. B. 959.

115. —— Sale to wife of member—No bonâ fide agency.]—The wife of a member of a working men's club bought beer from the club steward for her husband, who was not at that time in the club premises. The magistrates having found that there had been a sale of intoxicating liquor to a non-member :—*Held :* (1) the transaction could not be truly described as a sale or transfer to a member within the meaning of the rules of the club ; (2) the magistrates were justified in drawing the inference that the sale to the woman was not to her as agent for the member.—WOODLEY *v.* SIMMONDS (1896), 60 J. P. 150 ; 12 T. L. R. 196 ; 40 Sol. Jo. 260, D. C.

Annotation :—**Consd.** Davies *v.* Burnett, [1902] 1 K. B. 666.

116. —— —— As duly authorised agent.]—Where intoxicating liquor is sold by a servant of a *bonâ fide* working men's club, not licensed for the sale of intoxicating liquors, to the duly authorised agent of a member for consumption by the member off the club premises, no offence is committed against Licensing Act, 1872, s. 3, & the seller cannot be convicted for selling intoxicating liquors by retail without a licence.—DAVIES *v.* BURNETT, [1902] 1 K. B. 666 ; 71 L. J. K. B. 355 ; 86 L. T. 565 ; 66 J. P. 406 ; 50 W. R. 391 ; 18 T. L. R. 354 ; 46 Sol. Jo. 300 ; 20 Cox, C. C. 193, D. C.

117. Proprietary club — Sale to member— "Honorary member"—Not elected.]—A. visited a proprietary club of which he was neither a member nor a shareholder, & asked for spirits. He was then & there elected an honorary member pending inquiries, & supplied with spirits. The club had no licence for the sale of intoxicants :—*Held :* the proprietors might be convicted for selling without a licence.—BOWYER *v.* PERCY SUPPER CLUB, LTD., [1893] 2 Q. B. 154 ; 69 L. T. 447 ; 57 J. P. 470 ; 42 W. R. 29 ; 9 T. L. R. 498 ; 37 Sol. Jo. 544 ; 17 Cox, C. C. 669 ; 5 R. 472, D. C.

Annotations :—**Distd.** Inland Revenue *v.* Cardiff Conservative Club Co. (1894), 58 J. P. 120. **Consd.** National Sporting Club *v.* Cope (1900), 64 J. P. 310.

118. —— —— Sale for profit.]—The members of a club were formed into a joint stock co. incorporated under the Companies Acts for the purpose of carrying on the club. There was no rule in the memorandum or articles of association or constitution of the club which prevented other than members of the club from holding shares in the co., & in time, owing to the deaths of some members & the resignation of others who were shareholders, a few shares became the property of persons who were not members. The co. in carrying on the club, among other things, sold by retail intoxicating liquors & tobacco to members of the club :—*Held :* the co. was a separate legal entity from the members of the club, & the sale of the intoxicating liquors & tobacco to members was not in law or in fact a distribution of the common property of the members among themselves, but the sale by retail of these articles by the co. to the members, & constituted breaches of Beerhouse Act, 1834 (c. 85), s. 17, & Refreshment Houses Act, 1860 (c. 27), s. 19.—NATIONAL SPORTING CLUB, LTD. *v.* COPE (1900), 82 L. T. 352 ; 64 J. P. 310 ; 48 W. R. 446 ; 16 T. L. R. 158 ; 19 Cox, C. C. 485, D. C.

119. Incorporated club—Every shareholder a member—Sale by manager—Not within Acts.]—The manager of a club in the form of a limited co., the shareholders in which constitute the members of the club, is not liable criminally, under Licensing Act, 1872, for the sale at the club of intoxicating liquors to members.—NEWELL *v.* HEMINGWAY (1888), 58 L. J. M. C. 46 ; 60 L. T. 544 ; 53 J. P. 324 ; 5 T. L. R. 93 ; 16 Cox, C. C. 604, D. C.

Annotations :—**Folld.** Ranken *v.* Hunt (1894), 38 Sol. Jo. 290. **Consd.** National Sporting Club *v.* Cope (1900), 82 L. T. 352. **Mentd.** Metford *v.* Edwards (1914), 112 L. T. 78.

120. —— Some shareholders no longer members —Within Acts.]—NATIONAL SPORTING CLUB, LTD. *v.* COPE, No. 118, *ante*.

121. Pretended club — Within Acts.]—E. was summoned under Licensing Act, 1872, s. 3, for selling liquors without a licence. Over the door a signboard was painted : "The C. working men's club." The interior was fitted up like a public-house, & E. professed to be manager, & ordered everything on the credit of the club, but could not tell who were members nor how the accounts were kept, & neither committee nor secretary had any means of checking him :—*Held :* there was evidence to justify the justices in holding that it was only a pretended club, & that E. was the real proprietor.—EVANS *v.* HEMINGWAY (1887), 52 J. P. 134, D. C.

Annotation :—**Refd.** Bowyer *v.* Percy Supper Club (1893), 57 J. P. 470.

122. Intoxicating liquor (Temporary Restrictions) Act, 1914 (c. 77)—Effect of order made under —As to time of sale or supply of liquor.]—Licensing justices made an order directing that "the sale or

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119 i. *Incorporated club—Every shareholder a member—Sale by manager—Within Act.*]—R. *v.* MCISAAC (1909), 7 E. L. R. 393.—**CAN.**

k. —— *Under Benevolent Societies Act—Sale to member—Whether within Liquor License Act*, 1887.]—Where, in a club incorporated under Benevolent Societies Act, liquor is sold to members, & such sale is not the main object of the club, but is merely an incident resulting from its principal object, there is no violation of above Act, but it is otherwise if the sale is the main object of the incorporation.—R. *v.* AUSTIN (1889), 17 O. R. 743.—**CAN.**

l. —— *Sale to member—By manager—Liquor property of club—Whether manager liable.*]—R. *v.* SLATTERY (1894), 26 O. R. 148.—**CAN.**

m. —— —— *By secretary—At place not authorised—Whether sale without license.*]—A co. was incorporated for establishing a driving park to improve the breed of horses, etc., & for such purposes to acquire a named property, with power to erect a club-house, &, subject to Liquor License Act, 1887, to maintain & rent or lease same, for social purposes, etc. ; & generally to do all things incidental to such objects ; its secretary was found selling liquor at another place than the club-house :—*Held :* properly convicted under s. 50 of above Act of unlawfully keeping liquor for sale, without a license.—R. *v.* CHARLES (1894), 24 O. R. 432.—**CAN.**

n. —— —— *By steward — Club forbidden by charter to sell liquor in club-house—Within Liquor License Act*, 1887.]—R. *v.* HUGHES (1898), 29 O. R. 179.—**CAN.**

121 i. *Pretended club—Within Canada Temperance Club—Attempted evasion of Act.*]—*Ex p.* COULSON (1895), 33 N. B. R. 341.—**CAN.**

121 ii. —— *Whether within Liquor License Act.*]—R. *v.* SIMMONDS (1909), 7 E. L. R. 520.—**CAN.**

121 iii. —— *Within Liquor License Act, ss. 50, 53.*]—R. *v.* CAHOON (1910), 17 O. W. R. 467.—**CAN.**

121 iv. —— *Whether within Licensing Act*, 1872.]—A club was started in 1892, under a president, treasurer, a committee of management, & a manager. The manager who owned a house in D., had made a parol letting of rooms therein to the club. The club did not prosper financially, & in 1894, the members passed a resolution, entered in the minute-book, that the future control of the club be placed in the hands of the manager conditionally that he received the profits as remuneration for his services if he conformed to the requirements of members & paid all expenses, rent, attendance, gas, etc. From this time onward no minutes were kept. The club was carried on by the manager "at his own risk." He received the entrance fees & subscriptions for membership & the profits. The issue of cards of membership & the entire management of the premises was under his control, & he supplied liquor "at the club tariff." He was charged under above Act with the sale by retail of intoxicating liquor without a license :—*Held :* he was guilty.—LYNAM *v.* O'REILLY, [1898] 2 I. R. 48.—**IR.**

121 v. —— *Within Acts.*]—MADIN *v.* MCLEAN (1894), 21 R. (Ct. of Sess.) 40 ; 58 J. P. 247.—**SCOT.**

Sect. 1.—*Whether Licensing Acts apply. Sects.* 2 & 3. *Part IX. Sect.* 1.]

consumption of intoxicating liquor on the premises of persons holding retailers' licences, & the supply or consumption of such liquor in registered clubs, shall be suspended in the evening of each day, after the hour of 10 o'clock until 6 a.m. on the following day being a week-day, & 12.30 p.m. on the following day being a Sunday " :—*Held :* the order did not suspend the sale, supply, or consumption of intoxicating liquor in registered clubs " at an hour earlier than nine at night," within the proviso to s. 1 (1) of the above Act, & took effect without the approval of the Secretary of State.—LEE *v.* AYKROYD, [1915] 2 K. B. 692 ; 84 L. J. K. B. 1831 ; 113 L. T. 454 ; 79 J. P. 381 ; 31 T. L. R. 445, D. C.

SECT. 2.—REGISTRATION.

123. Failure to make return in January — No offence until February 1—Secretary resigning before end of January—Licensing Act, 1902 (c. 28).]—Applt. was in 1903 the secretary of a registered club, & no return was made during Jan. 1904. During Jan. 1904 applt. resigned the secretaryship, & his successor was appointed. On Feb. 1 applt. called at the office of the clerk to the justices for the necessary forms, & a return was made by applt.'s successor on Feb. 4 :—*Held :* applt. had committed no offence in not making the return in proper time, as at the end of Jan. 1904 he was not the secretary, nor was he performing secretarial duties on Feb. 1.—BOOTH *v.* WEIGHTMAN (1904), 91 L. T. 532 ; 68 J. P. 467 ; 20 T. L. R. 651 ; 20 Cox, C. C. 724, D. C.

124. Striking off register—Club occupying premises for which license refused within twelve months—Date from which period runs.]—On May 22, 1908, the compensation authority refused to renew an on-licence on the ground of redundancy of the licensed premises. Pending the determination of the amount of compensation payable under Licensing Act, 1904 (c. 23), the licence in respect of the premises was twice provisionally renewed under Licensing Rules, 1904, rr. 41, 43. On June 5, 1909, the compensation was paid to the persons interested, & on June 9, 1909, the premises which had remained open under the provisional renewals of the licence were closed. On June 10, 1909, the premises were opened as a club :—*Held :* the renewal of the licence was refused within Licensing Act, 1902 (c. 28), s. 28 (1) (*f*), on Mar. 22, 1908, the date when the compensation authority actually gave their decision refusing to renew, & not on June 9, 1909, when the refusal became operative by the closing of the licensed premises, &, as the renewal of the licence had not been refused within twelve months next preceding the formation of the club, the ct. of summary jurisdiction had no power to strike the club off the register under that provision.—PLAISTOW WORKING MEN'S CLUB *v.* HARROD, [1910] 1 K. B. 582 ; 79 L. J. K. B. 654 ; 102 L. T. 20 ; 74 J. P. 100 ; 26 T. L. R. 216, D. C.

Annotation :—Mentd. R. *v.* Walsall Compensation Authority, R. *v.* Walsall Licensing JJ. (1910), 102 L. T. 737.

125. —— Effect of—Club cannot be re-registered —Treated as " unregistered club."]—A club which has been struck off the register of clubs by an order of a ct. of summary jurisdiction, under Licensing (Consolidation) Act, 1910 (c. 24), s. 95, cannot again be registered under the Act as a club, & the sale of liquor on the premises of such a club is a sale on the premises of an unregistered club.—LEES *v.* LOVIE, [1912] 2 K. B. 425 ; 81 L. J. K. B. 978 ; 107 L. T. 165 ; 76 J. P. 372 ; 28 T. L. R. 441 ; 23 Cox, C. C. 92, D. C.

SECT. 3.—OTHER CASES.

126. Covenant not to sell wine etc. on premises —Sale to members—Not a " sale."]—A club of working men were the lessees of premises the lease of which contained a covenant that they should not be used for the sale of wines, malt or spirituous liquors. The rules provided for the purchase of liquor & its distribution at fixed prices among the members by whom it was consumed upon the premises, the profits being applied to the general purposes of the club :—*Held :* this was not a sale within the meaning of the covenant.—RANKEN *v.* HUNT (1894), 38 Sol. Jo. 290 ; 10 R. 249, D. C.

127. " Supply " prohibited — Meaning of " supply "—Liquor Control Regulations.]—Applt., who was the steward of a club, fetched from the club cellar on a Sunday a vessel containing beer which he was about to deliver to a member on the premises. A constable who was present took the beer from applt. before it had left applt.'s possession, & it was never actually delivered to the member. The premises were in an area where the Central Control Board (Liquor Traffic) had prohibited the supply of intoxicating liquor in any club on a Sunday :—*Held :* there was not a supply sufficient to justify a conviction.—BAILEY *v.* SAUNDERS (1917), 86 L. J. K. B. 1066 ; 116 L. T. 573 ; 81 J. P. 285 ; 61 Sol. Jo. 526 ; 25 Cox, C. C. 694 ; 15 L. G. R. 594, D. C.

Annotation :—**Distd.** Ellis *v.* Adames (1920), 90 L. J. K. B. 119.

" Sale " within Licensing Acts.]—*See* Sect. 1, *ante.*

Entry by police—Room in public-house occupied by society.]—*See* INTOXICATING LIQUORS.

Use of club premises for election purposes.]—*See* ELECTIONS.

128. Defence of the Realm (Liquor Control) Regulations—Effect of order under—As to sale or

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121 vi. —— ——.]—GALLAGHER *v.* DAVIDSON, [1915] S. C. (J.) 52.—**SCOT.**

o. *Breach of order of Liquor Traffic Central Control Board—Time of sale or supply of liquor—Sufficiency of complaint.*]—BARNETTE *v.* MACKENNA, [1917] S. C. (J.) 20.—**SCOT.**

PART VIII. SECT. 2.

p. *Appeal from order granting registration.*] — Liquor (Amendment) Act, 1905, was passed for the purposes of making fresh provision for the control of the sale of liquor in houses licensed under Liquor Act, 1898, & also for placing clubs in which liquor was sold on a footing analogous to that of licensed houses. It gave licensing cts. jurisdiction to deal with the registration of such clubs :—*Held :* the two Acts should be construed together, & an appeal lies to Quarter Sessions from an order made by a licensing ct. granting registration to a club.—SWEENEY *v.* FITZHARDINGE (1906), 4 C. L. R. 716.—**AUS.**

PART VIII. SECT. 3.

q. *Permit to keep liquor for use of members—Powers of License Commissioners—Mandamus.*]—The exercise by the License Commissioners of the power of granting permission to a club to keep liquor on the club premises for the use of its members is discretionary & not obligatory, although the club applying for such permission may have fulfilled the statutory requirements ; &, where the comrs. have exercised their discretion by refusing the permission, the ct. should not interfere by mandamus to compel them to grant the permission, except in special circumstances.—*Re* CLUB LAURIER (1913), 23 W. L. R. 380 ; 10 D. L. R. 823.—**CAN.**

r. *Attack on incidental character of registered club—Procedure.*]—Any attack upon the character or conduct of a registered club is competent only by procedure under Licensing (Scotland) Act, 1903, pt. V.—GALLAGHER *v.* DAVIDSON, [1915] S. C. (J.) 52.—**SCOT.**

supply of liquor—In registered clubs.]—The Central Liquor Control Board, by orders made under Defence of the Realm (Amendment) (No. 3) Act, 1915 (c. 42), & Regulations 1915, Regulation 2, Defence of the Realm (Liquor Control), ordered that no person should introduce or cause to be introduced into a certain area any intoxicating liquor unless it were paid for before it was so introduced, & that no person should solicit or canvass for orders for intoxicating liquors, except at licensed premises, but that sales either to a registered club or to a canteen carried on under the authority of a Secretary of State were not to be affected :—*Held :* the exception as to "registered clubs" & "canteens," did not except from the operation of the orders officers' & sergeants' messes carried on under the King's Regulations & not licensed as canteens under the Licensing (Consolidation) Act, 1910 (c. 24), or registered as clubs under that Act. —BARKER *v.* SCOTT, EHRMANN *v.* SCOTT (1917), 82 J. P. 48 ; 34 T. L. R. 22 ; 15 L. G. R. 916, D. C.

Part IX.—Betting and Gaming in Clubs.

SECT. 1.—BETTING.

See, generally, GAMING & WAGERING.

129. Whether within Betting Houses Act, 1853 (c. 119)—Betting among members.]—A club whose members habitually bet is not within the above Act.

Pltf. was a betting agent & member of a club, of which W. was also member, & in which bets were habitually made. For & at the request of deft., who was not a member of the club, pltf. made a bet with W., which he lost & paid. Suing deft. to recover the money as paid to his use, he was met by the pleas that the money was paid in discharge of a wagering contract, & also that the bet was made in a house used in contravention of the above Act :—*Held :* pltf. was entitled to recover, & a rule to enter a verdict for deft. as to the wagering contract refused, & as to the alleged contravention of the Act, discharged.—OLDHAM *v.* RAMSDEN (1875), 44 L. J. C. P. 309 ; 32 L. T. 825 ; 39 J. P. 583.

Annotations :—**Mentd.** Thacker *v.* Hardy (1878), 4 Q. B. D. 685 ; Read *v.* Anderson (1882), 10 Q. B. D. 100.

130. —— ——.]—S. 1 of the above Act does not apply to the case of members of a *bonâ fide* club betting with each other in the club.—DOWNES *v.* JOHNSON, [1895] 2 Q. B. 203 ; 64 L. J. M. C. 238 ; 72 L. T. 728 ; 59 J. P. 487 ; 43 W. R. 556 ; 11 T. L. R. 426 ; 39 Sol. Jo. 540 ; 15 R. 466, D. C.

Annotations :—**Consd.** R. *v.* Corrie & Watson (1904), 68 J. P. 294. **Distd.** R. *v.* Bradley, Fleming & Lanceley (1908), 1 Cr. App. Rep. 146. **Consd. & Distd.** Jackson *v.* Roth, [1919] 1 K. B. 102.

131. —— —— **Bookmakers.**]—Evidence was given that betting was carried on on certain club premises, but it appeared that the members of the club did not ordinarily bet with one another indiscriminately, but that they were divided into two classes, defts. generally being the bookmakers laying the odds, & the other members of the club betting with them :—*Held :* there was some evidence on which the jury could convict defts. of offences under the above Act, & under Gaming Act, 1845 (c. 109).—R. *v.* CORRIE & WATSON (1904), 68 J. P. 294 ; 20 T. L. R. 365, C. C. R.

Annotation :—**Consd.** Jackson *v.* Roth, [1919] 1 K. B. 102.

132. —— —— ——.]—Where a portion of club premises is kept & used for the purpose of betting, all the facilities for carrying on a betting business being provided, to which place certain members of the club habitually resort, having particular places or pitches where they can be found, in order to carry on a betting business by laying odds against horses running in horse races with any member of the club that chooses to back them, the fact that the club is a *bonâ fide* social club, & that all the persons betting are members of the club, will not preclude proceedings being taken for an offence under ss. 1, 3 of the above Act.—JACKSON *v.* ROTH, [1919] 1 K. B. 102 ; 88 L. J. K. B. 397 ; 119 L. T. 769 ; 83 J. P. 26 ; 35 T. L. R. 59 ; 26 Cox, C. C. 340 ; 16 L. G. R. 907.

133. —— —— —— **What is conducting the business.**]—Applts. had been convicted on an indictment with various counts, under Betting Act, 1853 (c. 119), s. 3. B. was only charged with "assisting in conducting the business." In 1906 the I. Social Club was incorporated as a limited co. F. & L., who were bookmakers, were directors of the co, & on the committee of management, of which F. was chairman, & each had fifty shares. B. originally had acted as secretary, latterly he had been auditor. He was also a member, & had proposed one member & seconded two other members of the club out of a total membership of 354. The premises consisted of one room & a lavatory, & it was not denied that they were fitted up with the ordinary appliances of a betting club, *e.g.* a tape machine & a telephone, & that during racing hours members resorted thither for the purpose of betting, & that some made books ; but it was contended for the defence that the place was a *bonâ fide* social club, where, at proper times, members had food, played cards & billiards, & read. When the police raided the club, F. & L. were seated conspicuously at a table next to the tape machine, & B. was sitting at their side. It was not denied that the two former were making a book, & habitually used the room or table for that purpose. It was not proved that B. had ever been there during racing hours before, but it appeared that, as secretary, he had signed the agreement for the telephone & for the tape machine, the hire of which was £100 *per annum,* & that the latter sum did not appear in the accounts of the co. :—*Held :* there was evidence to go to the jury whether (1) the room was or was not being used for the purpose of F. & L., persons using it, "betting with persons resorting thereto," & (2) B. was assisting in conducting the business ; (3) there was no sufficient reason for disturbing the finding of the jury that the club was a bogus one.—R. *v.* BRADLEY, FLEMING, & LANCELEY (1908), 1 Cr. App. Rep. 146, C. C. A.

Annotation :—**Consd.** Jackson *v.* Roth, [1919] 1 K. B. 102.

134. —— —— —— ——.]—The facts in this case were similar to those in the case of *R.* v. *Bradley, Fleming, & Lanceley.* No. 133, *ante.* The tenth count purported to charge defts. with an offence under Gaming Act, 1845 (c. 109), s. 4, the wording of that sect. being followed in the

s. *Whether within Criminal Code, s.* 209—*Betting among members—Bookmakers.*]—R. *v.* BOARDMAN, HERMAN & WILSON (1905), 7 W. A. L. R. 313.—**AUS.**

Sect. 1.—*Betting.* *Sect.* 2. *Part X.*]

count, in "acting in conducting," etc. There was evidence that deft. H. was upon the premises for the purposes of bookmaking during the past year. There was some evidence that deft. F. assisted him. Against both there was evidence of their taking part in the business:—*Held:* (1) there was evidence to go to the jury; (2) the tenth count of the indictment by the words "conducting the business, etc." sufficiently charged defts. with taking part in the business to convict applts. under Betting Houses Act, 1853 (c. 119), s. 3.—R. *v.* HITCHIN & FLEMING (1908), 1 Cr. App. Rep. 161, C. C. A.

Racing & turf clubs—Powers over persons other than members.]—*See* GAMING & WAGERING.

SECT. 2.—GAMING.

See, generally, GAMING & WAGERING.

135. Common gaming house — Whether proprietary club is—Members admitted by ballot—Entrance fees & yearly subscriptions.]—An establishment which is owned by one man & to which members are admitted by ballot, where an entrance fee is demanded, & a yearly subscription is payable in advance, is not a "common gaming-house" within Gaming Act, 1744 (c. 34), s. 1, though cards & dice may be played therein, & a gratuitous supper is provided for the members.

If the rules which regulated the ballot for members, & the payment of fees & subscriptions by them were nominal merely, & the establishment were shown to be open to all who chose to frequent it:—*Semble:* it would then be a common gaming-house.—CROCKFORD *v.* MAIDSTONE (LORD) (1846), 8 L. T. O. S. 217; 10 J. P. 807.

136. —— —— House kept chiefly for playing games of chance.]—Upon an information charging eight persons named with having committed offences against Gaming Houses Act, 1854 (c. 38), s. 4, A., the proprietor, was adjudged to have been guilty of "keeping & using the P. Club for the purpose of unlawful gaming." The four committeemen were adjudged to have been guilty, as persons "having the care or management of & assisting in conducting the business" of the house so kept & used for the purpose of unlawful gaming. Three players were also adjudged to have been guilty of the offence, as persons who "assisted by playing in conducting the business of the house so kept & used for the purpose of unlawful gaming":—*Held:* the proprietor of the club & the four members of the committee were properly convicted, but the players, though possibly liable to be indicted for unlawful gaming in a common gaming-house, were not liable to be summarily convicted under the above Act.—JENKS *v.* TURPIN (1884), 13 Q. B. D. 505; 53 L. J. M. C. 161; 50 L. T. 808; 49 J. P. 20; 15 Cox, C. C. 486, D. C.

Annotations:—**Consd.** Jackson *v.* Roth, [1919] 1 K. B. 102. **Refd.** Fairtlough *v.* Whitmore (1895), 64 L. J. Ch. 386; Murphy *v.* Arrow (1897), 77 L. T. 435; Morris *v.* Godfrey (1912), 106 L. T. 890; R. *v.* Hendrick (1921), 37 T. L. R. 447. **Mentd.** R. *v.* Preedy (1888), 17 Cox, C. C. 433; Dyson *v.* Mason (1889), 5 T. L. R. 231; Fielding *v.* Turner, [1903] 1 K. B. 867; Thompson *v.* Mason (1904), 68 J. P. 270; L. C. C. *v.* Hankins (1913), 12 L. G. R. 314; Fairburn *v.* Evans, [1916] 1 K. B. 218.

137. —— Who are liable as persons assisting in conducting business—Committeemen—Players.]—JENKS *v.* TURPIN, No. 136, *ante.*

138. —— —— Person buying bank at faro.]—Resp., who was at a proprietary club which was used as a common gaming-house, but who was not a member thereof, bought the bank at a game called faro, which was an unlawful game within Gaming Act, 1738 (c. 23), s. 2, & acted as banker, a number of other persons taking part in the game:—*Held:* resp. thereby assisted in conducting the business of the house, & was liable to be convicted under Gaming Houses Act, 1854, s. 4.—DERBY *v.* BLOOMFIELD (1904), 91 L. T. 99; 68 J. P. 391; 20 T. L. R. 549; 20 Cox, C. C. 674, D. C.

139. What is unlawful game—Game of pure chance—Chemin de fer—Breach of covenant.]—The tenant of certain premises agreed not to permit "games of baccarat, hazard, or roulette" to be played thereon, & so to carry on the club for the purpose for which the premises were let "as not to contravene any laws of the land for the time being in force":—*Held:* both baccarat chemin de fer, & baccarat banque were absolutely prohibited by the agreement.—FAIRTLOUGH *v.* WHITMORE (1895), 64 L. J. Ch. 386; 72 L. T. 354; 43 W. R. 421; 11 T. L. R. 288; 39 Sol. Jo. 332; 13 R. 402.

140. —— Game of skill & chance—Whist drive for prizes—Held by whist club.]—Applt., a licensed person, let a room to a club, who played there a whist drive, for prizes provided by members of the club & their friends, but not to be played for by the persons providing such prizes. Applt. knew the purpose for which the room was engaged, & that the players were playing for prizes:—*Held:* applt. could not be convicted under Licensing Act, 1872 (c. 94), s. 17, for suffering a game of skill & chance, not being an unlawful game in itself, to be played on the licensed premises.—LOCKWOOD *v.* COOPER, [1903] 2 K. B. 428; 72 L. J. K. B. 690; 89 L. T. 306; 67 J. P. 307; 52 W. R. 48; 19 T. L. R. 610; 47 Sol. Jo. 672; 20 Cox, C. C. 539, D. C.

Annotations:—**Distd.** Welton *v.* Ruffles, [1920] 1 K. B. 226. **Refd.** Morris *v.* Godfrey (1912), 106 L. T. 890.

141. Cheque in payment for counters—Given to secretary—Cannot be sued on.]—A cheque given in payment for counters obtained from the secretary of a club to enable the purchaser to gamble at cards, cannot be sued upon by the secretary.—ST. CROIX *v.* MORRIS (1885), Cab. & El. 485.

Part X.—Dissolution of Clubs.

See, generally, COMPANIES; FRIENDLY SOCIETIES.

142. Clubs not partnerships or associations—Within Companies Winding Up Acts.]—*Re* ST. JAMES' CLUB, No. 1, *ante.*

143. —— ——.]—*Re* BRISTOL ATHENÆUM, No 2, *ante.*

144. —— —— National Society of Qualified Accountants.]—S. joined a society called the "In-

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PART X.

t. *Halifax Yacht Club — Winding up Act—Applicability.*]—*Re* HALIFAX YACHT CLUB (1880), R. E. D. 475.—CAN.

v. *Club registered under Friendly Societies Acts.*]—The ct. has jurisdiction, under the Companies Act, 1862, s. 199, to wind up compulsorily, as an unregistered co., a club registered under Friendly Societies Acts, but not registered under Companies Act, 1862. The fact that such club has passed a resolution to dissolve, & is actually in process of dissolution, does not prevent a creditor of the club from obtaining an order for winding it up.—*Re* IRISH

stitute of Accountants & Book-keepers " & became a fellow thereof on payment of a subscription of £1 1*s.*, the society was not registered under the Companies Act. An action was brought against the society by the Chartered Accountants Institute & S. received a notice that the name of the society had been changed to the " National Society of Qualified Accountants " & stating that each member of the society was personally liable for the costs of the litigation. S. in consequence resigned his membership. On the winding up of the society S.'s name was placed on the list of contributories & in a summons against the official liquidator to vary the list, it was contended that the society was really a club & could not be wound up under the Companies Acts & that S. was not liable to pay to the funds beyond his subscription : —*Held :* S.'s name should be removed from the list of contributories.—*Re* NEWCOMBE (1908), *Times*, Oct. 21.

145. Suit seeking to wind up affairs—Necessary parties—All persons interested.]—(1) To a suit seeking to wind up the affairs of a club or partnership, all persons interested must be made parties, though they are numerous ; it is not sufficient for one to sue on behalf of the others.

(2) A club was dissolved, & the committee were authorised to realise the assets & wind up the affairs. For that purpose the lease was vested in A., B. & C. A. & B., without the concurrence of the other members of the committee, sold the lease & property, & received the amount. A., B. & D., another committeeman, signed the receipt, but A. & B. alone received the money. In a bill to make A. & B. account :—*Held :* C. & D. were not necessary parties.—RICHARDSON *v.* HASTINGS (1844), 7 Beav. 301 ; 13 L. J. Ch. 129 ; 8 Jur. 72 ; 49 E. R. 1081.

Annotations :—As to (1) **Refd.** Apperly *v.* Page (1847), 1 Ph. 779. *Generally* **Mentd.** Fairthorne *v.* Weston (1844), 3 Hare, 387.

146. Action for account—What parties necessary.] — RICHARDSON *v.* HASTINGS, No. 145, *ante*.

147. —— ——.]—By the rules of a club, the bankers were alone authorised to receive money on account of the club. Some of the members subscribed & purchased the furniture, which, by deed executed by the subscribers, was vested in pltf. A., in trust to repay the amounts subscribed, & to pay the surplus to the committee for the benefit of the club. The club becoming embarrassed, was afterwards dissolved, & the committee were authorised to wind up the affairs. Two of the committee, C. & D., sold the furniture, & alone received the produce, together with other general assets of the club. A bill was filed by A. on behalf etc., against C. & D., & E., a non-subscribing member, to recover the moneys in the hands of C. & D., & praying that the furniture money might be paid to pltf., on the trusts of the deed, or otherwise as the ct. might direct, & that the general assets recovered might be paid to the bankers or otherwise, etc. :—*Held :* the bill was not defective for want of parties ; neither the other parties to the deed, nor the other members of the club, were necessary parties.—RICHARDSON *v.* HASTINGS (1844), 7 Beav. 323 ; 13 L. J. Ch. 142 ; 2 L. T. O. S 456 ; 8 Jur. 207 ; 49 E. R. 1089.

148. —— ——.]—A club, composed of numerous members, was dissolved. Two of the managing committee possessed themselves of the assets, & applied them in winding up the affairs :—*Held :* they might be sued by one member " on behalf," etc., for an account of the moneys received & its application, & to bring back the balance, if any, without making the other members parties, & without seeking a general winding up of the concern.—RICHARDSON *v.* HASTINGS (1847), 11 Beav. 17 ; 16 L. J. Ch. 322 ; 50 E. R. 722.

MERCANTILE LOAN SOCIETY, [1907] 1 I. R. 98.—**IR.**

w. *Club formed for betting purposes.*]—An assocn. formed with the principal object of enabling its members to bet on horse-racing, occupied premises & provided a reading-room supplied with newspapers, billiard tables, & rooms for playing cards & other games usual in social clubs. The assocn. itself did not actually do any betting, but the members met in its premises for the purposes of betting with one another for gain or profit, & the assocn. regulated the betting between members, & applied the revenue to the proprietary members. In an application for compulsory liquidation of the assocn. :—*Held :* the assocn. was not an ordinary social club, but an assocn. with a business having for its object the acquisition of gain by its members, & was such an assocn. as might be liquidated under Act 31 of 1909.—MURRAY *v.* SOUTH AFRICAN TATTERSALLS SUBSCRIPTION ROOMS, [1910] W. L. D. 35. —**S. AF.**

x. *Racing club — Not formed for gain—Whether capable of being wound up under Companies Act, s.* 203.]—BRUYNS *v.* RAND SPORTING CLUBS, [1919] W. L. D. 51.—**S. AF.**

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COASTGUARD.

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